| From: | $\underline{\text { Han, James }}$ |
| :--- | :--- |
| To: | Hill, Shannon; Keyon, David |
| Cc: | Downtown West Project; $\underline{\text { sanjoseplan@google.com }}$ |
| Subject: | FW: Correspondence \| Downtown West Mixed-Use Plan, Item 8.a. | 4/28 PC Meeting |
| Date: | Wednesday, April 28, 2021 4:26:51 PM |
| Attachments: | Correspondence 05.pdf |

James Han
Planner | Planning Division | PBCE
City of San José | 200 East Santa Clara Street
Email: james.han@sanjoseca.gov | Phone: (408)-535-7843
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.

From: Canales-Mora, Elizabeth [Elizabeth.Canales-Mora@sanjoseca.gov](mailto:Elizabeth.Canales-Mora@sanjoseca.gov)
Sent: Wednesday, April 28, 2021 3:52 PM
Cc: Todorov, Vera [vera.todorov@sanjoseca.gov](mailto:vera.todorov@sanjoseca.gov); Phan, Johnny [Johnny.Phan@sanjoseca.gov](mailto:Johnny.Phan@sanjoseca.gov); Tu, John [john.tu@sanjoseca.gov](mailto:john.tu@sanjoseca.gov); Han, James [James.Han@sanjoseca.gov](mailto:James.Han@sanjoseca.gov); Ruano, Jose [Jose.Ruano@sanjoseca.gov](mailto:Jose.Ruano@sanjoseca.gov); Rood, Timothy [timothy.rood@sanjoseca.gov](mailto:timothy.rood@sanjoseca.gov); Do, Sylvia [sylvia.do@sanjoseca.gov](mailto:sylvia.do@sanjoseca.gov); Manford, Robert [Robert.Manford@sanjoseca.gov](mailto:Robert.Manford@sanjoseca.gov); Brilliot, Michael [Michael.Brilliot@sanjoseca.gov](mailto:Michael.Brilliot@sanjoseca.gov); Blanco, Maira [Maira.Blanco@sanjoseca.gov](mailto:Maira.Blanco@sanjoseca.gov); Hawkins, Kara [Kara.Hawkins@sanjoseca.gov](mailto:Kara.Hawkins@sanjoseca.gov); Hill, Shannon [Shannon.Hill@sanjoseca.gov](mailto:Shannon.Hill@sanjoseca.gov); Keyon, David [david.keyon@sanjoseca.gov](mailto:david.keyon@sanjoseca.gov); Le, Thai-Chau [Thai-Chau.Le@sanjoseca.gov](mailto:Thai-Chau.Le@sanjoseca.gov); Mahamood, Reema [reema.mahamood@sanjoseca.gov](mailto:reema.mahamood@sanjoseca.gov); Telahun, Bethelhem [Bethelhem.Telahun@sanjoseca.gov](mailto:Bethelhem.Telahun@sanjoseca.gov); Van Der Zweep, Cassandra [Cassandra.VanDerZweep@sanjoseca.gov](mailto:Cassandra.VanDerZweep@sanjoseca.gov); Provedor, Jennifer [jennifer.provedor@sanjoseca.gov](mailto:jennifer.provedor@sanjoseca.gov)
Subject: Correspondence | Downtown West Mixed-Use Plan, Item 8.a.| 4/28 PC Meeting

Hello Commissioners,

Please see attached correspondence for GP19-009, PDC19-039, PD19-029, HP20-002, and PT20-027 (Downtown West Mixed-Use Plan), Item 8.a., on the 4/28 Planning Commission Agenda. This is available to view online at:
https://www.sanjoseca.gov/home/showdocument?id=71452\&t=637546155515577847

Please let me know if you have any questions.

## Elizabeth Canales

Senior Office Specialist
City of San José | Planning Division

200 E. Santa Clara St, T3| San José, CA 95113
elizabeth.canales-mora@sanioseca.gov

From: Laurie Berger <
Sent: Wednesday, April 28, 2021 12:01 PM
To: Hill, Shannon [Shannon.Hill@sanjoseca.gov](mailto:Shannon.Hill@sanjoseca.gov)
Cc: Jim Goddard (igoddard@sapcenter.com) [jgoddard@sapcenter.com](mailto:jgoddard@sapcenter.com); Lucy Lofrumento [lal@Imallp.com](mailto:lal@Imallp.com); Klein, Nanci [Nanci.Klein@sanjoseca.gov](mailto:Nanci.Klein@sanjoseca.gov); Day, Cameron [Cameron.Day@sanjoseca.gov](mailto:Cameron.Day@sanjoseca.gov); Hughey, Rosalynn [Rosalynn.Hughey@sanjoseca.gov](mailto:Rosalynn.Hughey@sanjoseca.gov)
Subject: Sharks Sports \& Entertainment LLC Comments Regarding Google’s Downtown West Mixed-Use Plan First Amendment to the Draft Environmental Impact Report
[External Email]

Dear Ms. Hill,

Attached please find the Sharks Sports \& Entertainment LLC comment letter regarding the First Amendment to the Draft Environmental Impact Report for Google’s Downtown West MixedUse Plan.

Best regards,

Laurie Berger
SILICON VALLEY LAW GROUP
Laurie Berger
Silicon Valley Law Group
1 North Market St., Suite 200
San Jose, CA 95113

Fax:
lb@svlg.com
www.svlg.com

# SILICON VALLEY LAW GROUP <br> A LAW CORPORATION 

April 28, 2021

## Via Electronic Mail: shannon.hill@sanjoseca.gov

Ms. Shannon Hill, Planner III
Department of Planning, Building, and Code Enforcement
200 E. Santa Clara Street, T-3
San Jose, CA 95113

## RE: Sharks Sports \& Entertainment LLC Comments Regarding Google's Downtown West Mixed-Use Plan First Amendment to the Draft Environmental Impact Report, File Nos.: GP19-009, PDC19-039, and PD19-029; SCH \#2019080493 (CEQA and Non-CEQA Comments)

Dear Ms. Hill:
Sharks Sports \& Entertainment LLC (SSE) submitted a comment letter regarding the Draft Environmental Impact Report, dated October 2020 (DEIR) for the Downtown West Mixed-Use Plan (the project) on December 8, 2020. As was stated in that comment letter, SSE supports the redevelopment of the Diridon Station area, consistent with the objective of the Diridon Station Area Plan (DSAP) to "ensure the continued vitality of the San Jose Arena, recognizing that the San Jose Arena is a major anchor for both Downtown San Jose and the Diridon Station area, and that sufficient parking and efficient access for San Jose Arena customers, consistent with the provisions of the Arena Management Agreement, are critical for the San Jose Arena's on-going success."

## PART I. INTRODUCTION

## 1. The City's Responses to SSE's Comments Regarding the DEIR are Inadequate

Our comment letter identified multiple instances where the DEIR discussion and analysis failed to comply with the requirements of the California Environmental Quality Act (CEQA). These deficiencies include the lack of a complete project description, the insufficient evaluation of certain significant impacts, and the failure to provide effective mitigation measures.

It was our sincere hope that by drawing attention to these significant issues after the DEIR was released, the DEIR could be revised to provide complete, accurate, and realistic information regarding the project to the City Council, as well as to the general public. Unfortunately, this is

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not the case, and we have found no substantive changes to the document that protect the Arena from the potential adverse effects of the proposed project.

We feel that the First Amendment to the Draft EIR (FADEIR) does not adequately address our comments or the comments of other responders. As a result, the City Council lacks the information necessary to make an informed decision regarding the project. Under CEQA, the City must consider the potential negative effects of the project on the Arena.

## 2. Arena Management Agreement

Pursuant to the Arena Management Agreement (AMA), the City has a long-standing obligation to work closely with SSE on all development projects near the Arena to ensure that appropriate measures are taken to protect Arena operations. (See Sections 21 and 23 of AMA attached as EXHIBIT A.)

We understand that it may be difficult to reconcile the desires of Google with the rights of SSE and the responsibilities of the City under the AMA. However, in the event of any conflict it is clear that the AMA controls over the Development Agreement (or other project documents) in connection with any matter that may affect title to or use of Lots A, B and C or other Arena facilities, the operation of the Arena facilities (including Operating Revenues and Operating Expenses), access and parking for Arena customers, and other matters that are addressed by the AMA.

Both the City and Google are obligated to respect SSE's rights under the AMA and related contracts, and to not take any actions that would lead to a breach of the AMA. In fact, the Option/Negotiation Rights Agreement between the City and Google dated December 4, 2018 attached as EXHIBIT B (Option Agreement), to which SSE is an express third-party beneficiary, emphasizes the supremacy of the AMA in numerous provisions, including the following:

- The Recitals to the Option Agreement recognize (among other things) that: SSE leases Lots A, B \& C (the Property), and has the exclusive right to all revenues from operating the Property; the City must not convey any interest in the Property; the City must take all actions necessary to meet its parking obligations under the AMA; and one of the primary objectives under the DSAP is to ensure continued vitality of the Arena.

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- Section 1.7(a)(ii) provides that SSE is not obligated to agree to any amendment of the AMA that would permit a sale of the Property to Google, and that SSE may disapprove of such sale in its sole and absolute discretion.
- Section 1.8 provides that the Option Agreement remains subordinate to the AMA and the rights of SSE under the AMA.

The provisions of the AMA primarily relate to SSE's contract and property rights under the AMA, and may not directly relate to CEQA issues or to other laws and policies governing the City's actions in connection with the entitlements for the project. However, SSE believes it is important to point out SSE's rights. They are important factors to be considered by the City Council in making its decisions, and they also govern what Google may or may do with respect to Lots $\mathrm{A}, \mathrm{B}$ and C .

## 3. Restriction on Development along Delmas Avenue

In SSE's Comment Z.13, we made the point that "under agreements signed by Google concurrently with its option agreement with the City, the development of certain replacement parking spaces, specifically on Lot E and the Milligan site, is a condition precedent to Google's right to develop its properties along Delmas Avenue at Santa Clara Street. Therefore, replacement parking on Lot E and the Milligan site is inextricably linked to the project...the City is obligated to construct parking on those two sites under the AMA and its agreements with Google. In furtherance of this [obligation], the City has prepared plans for these parking facilities. Thus, environmental review for them could have been included in the proposed project."

Response Z .13 states the "the City does not agree that any such plans have progressed to the point where CEQA review for replacement parking facilities would be warranted" and then asserts that "neither the City nor the applicant are aware of any agreements requiring that the City develop Lot E and/or Milligan to allow development along Delmas Avenue." This is startling and disappointing, especially since such agreements were heavily negotiated with the involvement of key representatives of both the City and Google. In addition, those agreements were a material inducement for SSE's willingness to allow the City to sell Lot D to Google and to enter into the Option/Negotiation Rights Agreement with Google.

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For the record, attached are copies of the following agreements relevant to the above discussion:

EXHIBIT C: First Amendment to the Second Amended and Restated Arena Management Agreement, dated December 4, 2018, between the City and San Jose Arena Management, LLC (SSE's subsidiary). Note the following applicable provisions:

- The Delmas West, Delmas East, Lot E and Milligan parcels are specifically identified on Page 2 and are depicted on Exhibits A and B.
- Section 2.2 provides that, as a condition precedent to SSE's agreement to allow Google to relocate parking from Lot $D$ to Delmas West, the Lot $D$ lease between Google and SSE must include an operating covenant, as described below.
- Section 3.1 includes a covenant by the City to complete construction of surface parking facilities on Lot E and Milligan, as soon as is reasonably possible, containing the maximum number of parking spaces that can be constructed on each parcel, in accordance with the conceptual plans attached as Exhibits C and $D$.

EXHIBIT D: Settlement Agreement and Release, dated December 1, 2016, between the City, SSE, and the prior owners of Delmas West and Delmas East. This agreement is referenced in the First Amendment to the AMA, and requires that the City construct parking spaces on Lot E . It also gives SSE an option to purchase the "City Parcels" if the City decides to transfer those properties prior to the termination of the AMA. Any vertical development on Lot E is required to include shared use parking.

EXHIBIT E: Parking Lease, dated December 19, 2018, between Google (as Landlord) and San Jose Arena Management, LLC (as Tenant), with respect to Lot D (now identified as D4 in Google's development plan). This Parking Lease includes, as part of Exhibit C, the following:

Covenant to Operate Delmas West: As a material part of the consideration for Tenant's agreement to enter into this Lease, Landlord hereby covenants, promises and agrees to continue to keep all of the Delmas West Parking (not just the 228 Replacement Parking spaces) open for public parking, commencing on the Effective Date of this Lease and continuing until Landlord obtains a grading permit for its development project on

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Delmas West; provided, however, that notwithstanding the issuance of any such grading permit, Landlord shall, at a minimum, keep the Delmas West Parking open until the earlier of the following:
a. City's completion of its obligation to build-out new parking lots containing at least 408 Available Parking Spaces (180 spaces required under the Settlement Agreement and 228 incremental spaces required under the First Amendment to the AMA) pursuant to the terms and conditions of Section 3 of the First Amendment; OR
b. Provided that the City is otherwise in compliance with its off-site parking obligations under Section 19 of the Arena Management Agreement, when:
i. BART service to the Diridon Station area is operational; OR
ii. Landlord has constructed at least 500 Available Parking Spaces as part of its development project on Delmas East; provided, however, that if the 500 spaces are shared spaces (i.e., not exclusively reserved for Arena customers) they must be designed such that all 500 vehicles can safely exit from the parking structure onto the public streets within a period of 30 minutes.

Because the PD Zoning General Development Plan calls for reconfiguring Delmas West and Delmas East into the new parcels E1, E2 and E3, it will not be possible for Google to separately develop Delmas East from Delmas West, and therefore item b. ii. above, will not be available to Google to satisfy its operating covenant. Rather, the operating covenant will be in effect until the City completes its obligations under the First Amendment to the AMA, or BART service to the Diridon Station area commences.

Both Google and the City are well aware of the above agreements. In fact, Section 3.3.7 of the Option Agreement acknowledges that Google has approved of the First Amendment to the AMA (which incorporates the applicable provisions of the Settlement Agreement). The First Amendment to the AMA, the Settlement Agreement and Release, and the Lot D Parking Lease are legally valid, binding, and enforceable in accordance with their terms. And, as stated in our

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Comment Z.13, they serve to inextricably link Google's project to the completion of parking facilities on Lot E and the Milligan site.

## PART II. NON-RESPONSIVE AND COUNTERFACTUAL RESPONSES TO COMMENTS

## 1. The Project Will Result in Significant Safety Impacts Under CEQA

Our review of the FADEIR has determined that many of the responses are either non-responsive or inaccurate. We have the following comments on the FADEIR. Our original letter and all of its attachments are incorporated by reference.

CEQA Guidelines Section 15088(a) states:
"The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments that were received during the noticed comment periods and any extensions and may respond to late comments."

The purpose of each response to a comment on the DEIR is to address the significant environmental issue(s) raised in each comment and CEQA requires that the specific nature of each comment raised [Section 15088(b)]. The environmental issues raised must be addressed in detail giving reason why specific comments and suggestions were not accepted by the City. We believe that a good faith, reasoned analysis was not provided in the responses found in the FADEIR. This is a violation of CEQA and must be corrected.

We are particularly concerned with the utter lack of response to our comments pertaining to the project's pedestrian and bicycle safety impacts to residents, workers, and SAP Center patrons. As we stated in our comments, these impacts continue to be CEQA impacts, both during construction and in the long-term, which must be discussed and analyzed in the DEIR. In fact, Caltrans issued a Memorandum on December 18, 2020 ${ }^{1}$ that establishes the safety impact review expectations of Caltrans and lead agencies to comply with CEQA for land use projects. The "guidance prioritizes vulnerable users and communities; enhances safety for pedestrians, bicycle, transit, and vehicular modes" from both reactive and systemic perspectives.

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Three new memos were included as part of the FADEIR process, including the Delmas Avenue Closure memo, Site-wide Focused LTA, and Neighborhood Traffic and Parking Intrusion Monitoring Plans, which are all labeled as "Non-CEQA". None of these documents provide an adequate evaluation of safety impacts or a discussion as to how the City has determined that these impacts are not CEQA impacts. The public deserves a robust explanation. In 2019, San José experienced the deadliest year for pedestrians in decades!

There are three main reasons SSE believes the project will result in significant safety impacts under CEQA:
(1) The project does not include an adequate amount of parking;
(2) The project does not include adequate mitigation measures with measurable success criteria including Transportation Demand Measures (TDMs), Recommended Temporary Traffic Control Plans (RTTCPs), and Construction Impacts Mitigation Plans (CIMPs); and
(3) The closing of Delmas Avenue.

We discuss these important issues below.

## A. Lack of Parking

Page 1-8 Parking of the FADEIR states the following:
"A minimum of 2,850 public/commercial parking spaces would be provided, consistent with the project's proposed General Development Plan. (The Draft EIR stated only a maximum of up to 4,800 public/commercial spaces.) This change would not alter the conclusions of the Draft EIR because parking impacts are not considered significant impact under CEQA, and this minimum is within the range studied as part of the Draft EIR Project Description. Moreover, these changes do not otherwise constitute "significant new information" that would require recirculation of the Draft EIR pursuant to CEQA Guidelines Section 15088.5. Refer to the revisions in Chapter 4 of this First Amendment with respect to Draft EIR pages 2-14, 2-15 (Table 2-1), 2-22, 3.1-84, and 3.13-64."

To have changed the amount of parking provided to be a minimum rather than a maximum does not change the fact that the project is woefully under parked. Couple that with the fact that no data driven parking study has been completed, existing parking for the Arena is not

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being replaced, and future transit projects are not requiring ANY parking, and it is easy to see that the parking situation will be a disaster. Not just during Arena events, but gridlock can be assured at least during the AM and PM peak hours.

There can be no dispute that a lack of adequate parking results in many workers or residents driving around for an extended period of time looking for parking, impacts to air quality and greenhouse gas emissions could occur, as well as safety impacts to bicyclists and pedestrians. In fact, the project is inconsistent with General Plan Land Use Policy LU-3.5 which states:

Balance the need for parking to support a thriving Downtown with the need to minimize the impacts of parking upon a vibrant pedestrian and transit oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.

The lack of adequate parking both during construction and in the long-term will result in many situations where the safety of bicycle and pedestrian facilities will be compromised. When parking is not available, the occurrence of illegal on-street parking (in loading zones and restricted parking areas or across driveways and sidewalks) affects the ability of pedestrians and bicyclists to have a good line of sight, and the quality of pedestrian and bicycle paths of travel is compromised and could result in injury or death. In addition, the lack of information regarding the driveway locations proposed will exacerbate these serious indirect impacts of the project which are not discussed in the DEIR or the FAEIR, which is a violation of CEQA.

To prove this point, we must direct the City to Section XVII. Transportation of Appendix G of the CEQA Guidelines which poses the question that all projects must answer:
"Would the project conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?"

This question is not meaningfully answered in either the DEIR or the FADEIR. As stated above, the project is not consistent with the City's General Plan Land Use policies related to promoting bicyclist and pedestrian safety. Yet, the FADEIR does not adequately address this issue that is described in many of our comments (Comments Z.7, Z.19, Z.20, Z.24, Z.27, Z.28, Z.31, Z.38, Z.43, Z.44, Z.45, Z.48, and Z.49).

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Response Z.18 is particularly non-responsive to the specific comments we provided related to a lack of parking and the ensuing secondary impacts to pedestrian and bicyclist safety. While required of the City, there is no discernable movement on the construction of a parking structure on Lot E north of the Arena. There is no discussion of this fact or the fact that the environmental review for this REQUIRED lot is not included in the DEIR for the project. If the project is depending on this structure to mitigate secondary safety impacts, CEQA requires that it be included in the proposed project with environmental analysis included.

This discussion also seems to be depending on Uber and Lyft to reduce parking and traffic impacts without a discussion for where and how drop-off/pick-up will occur. Depending on a future plan to address parking demand that the City now admits will spill over into adjacent neighborhoods is not adequate mitigation under CEQA. The City has not adopted "specific performance standards the mitigation will achieve" [CEQA section 15126.4(a)(1)(B)]. The analysis of performance standards must also be completed. This has not been accomplished by the City and is not included in the FADEIR. This must be corrected.

Response Z. 20 states that the project's proposed design standards have been "proven to calm traffic and improve safety, particularly for people walking and bicycling." We request this proof, and the neighborhood deserves to see the analysis now. The City has admitted the impact will occur yet only provides design standards without an actual data driven analysis. We ask for examples of where and how just the implementation of design measures can be considered to be mitigation under CEQA.

Response Z. 24 (page 3-416 of the FADEIR) seems to state that a "forthcoming study supports the premise that limited parking encourages active transportation and public transit use". A cursory review finds that this "study" does not support this premise and in fact, only attempts to overcome research limitations pertaining to the housing lottery programs in San Francisco. The study only provides "causal interpretations" of the impacts of specific neighborhood characteristics and parking provision on households' transportation behavior and economic outcomes.

This response also states that people will not choose to drive downtown because parking supply will be limited. While we do not believe this to be the case and we can find no supporting evidence of it, parking must not be limited for Arena customers per the AMA. How does the City propose to limit use by others, while making sure parking spaces are "available"

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for Arena patrons? There are no specific strategies, techniques, mechanisms, or programs that we can find in the FADEIR, the Development Agreement, Exhibit K, or otherwise, to ensure spaces will be available in the quantities needed. This lack of parking will correspond to impacts to pedestrians and bicyclists. Vehicle occupant safety could also be affected in gridlock.

Further, Response Z. 44 is incorrect. As stated in SSE's comment letter, it is counterfactual and there is no substantial evidence that the project will not result in significant impacts to bicycle or pedestrian facilities under CEQA. It is common sense that increased traffic volumes on local roadways will create hazardous conditions for bicyclists and pedestrians. As the City admits, increased traffic volumes may lead to increased levels of traffic stress for bicyclists and pedestrians. However, the discussion is incorrect in relation to Appendix $G$ of the CEQA Guidelines, which asks if a project would "substantially increase hazards due to a design feature...or incompatible uses."

The response states:
"Increases in traffic volumes would not involve any design changes, and the land uses proposed are generally consistent with the General Plan land use designations for the project site and are consistent with, and complementary to, other planned development in the project vicinity (e.g., Diridon Station Area Plan, the Diridon Integrated Station Concept Plan)."

SSE is not sure what this sentence means. The project will definitely increase traffic volumes and design changes to roadways are included in the project (Autumn Street conversion, Delmas Avenue closure). Just because the project may be generally consistent with General Plan land use designations does not mean the ensuing increase in traffic will not result in safety impacts. Please explain this confusing response which is insufficient.

None of the above are adequate responses to our important comments and as we explicitly prove in our December 8, 2020 letter, the condition will be compounded by the fact that neither the future BART nor HSR projects include any parking. There will not be sufficient parking available in the project area to meet the project's parking demand or the requirements of the Arena. The effects of a lack of parking can be devastating, resulting in indirect safety

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impacts to pedestrians and cyclists, that are not adequately addressed in the FADEIR. This must be corrected.
B. Lack of Adequate Mitigation

As we state in our comments on the DEIR, CEQA does not allow the preparation of future plans (TDM, RTTCP, and CIMPs) without specific success criteria as adequate mitigation. There is no way the public can know whether these plans will be prepared or how they will be monitored for success. As we stated in Comment Z.42, the CEQA Guidelines (15126.4B) do not allow mitigation measures to be deferred to some future time. To provide only lists of potential measures robs the public of the ability to be sure that measures are not only adequate but also feasible.

The specific measures are not identified in the DEIR or FADEIR and we must depend on unclear "Subsequent City Review and Approvals" for the preparation of project-specific mitigation plans as building permits are issued. How can we be sure that "each site-specific CIMP/RTTCP would contain a traffic control plan providing for safety and continuity of movement for traffic, pedestrians, bicyclists, and transit whenever a roadway's normal function is suspended for construction"? Again, CEQA does not allow this, and the responses do not adequately defend this process.

For example, the proposed CIMP for the project included on the City's website (entitled, "Downtown West Construction Impact Mitigation Plan") is not a real plan at all - it is basically just a rudimentary template that restates the requirements of Chapter 13.26.220 of the Municipal Code. The document professes to be a construction mitigation program that will be followed for each "sub-project" as it is submitted for Conformance Review, but it is nothing more than what is already required by the ordinance. Page 3-8 of the FADEIR states:
"The Subsequent CIMPs would be consistent with the CIMP that would be reviewed and approved by the City Council in conjunction with project entitlements, and the City's recently adopted Downtown Construction Guidelines."

More information is required for such a large and complicated project. Similar references to a City Council-approved CIMP for the overall project are included in the revisions to the Transportation Section of the DEIR (see pages 4-87 and 4-89 of the FADEIR, for example). It is

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clear to us that neither the City or Google have put any effort into developing a true construction mitigation plan for the overall project, which CEQA requires to ensure pedestrian and bicyclist safety during construction.

We have attached a white paper that was provided to the City, to give the City an indication of what types of project information must be included in a CIMP since the one provided is so rudimentary. In our EXHIBIT F, the City will find a much more complete outline of what we and the public expect to be prepared for such a large project with an incredibly long construction timeframe. The area will be disturbed in a way never before experienced in San José, with road and lane closures that will affect the daily lives of existing residents and patrons of the Arena, in such a way as pedestrian and bicyclist safety will be affected. Please address this issue seriously.

Further, it is unclear how each phase of project construction will be reviewed and approved by the City Council. Will each building permit require Council approval and a CIMP? Or will it be done as each phase of development is considered? We are confused since the DEIR alluded to some unfounded process by which either City staff or the Director of PBCE use some sort of checklist to approve future development. This process is so confusing, how can we or the public have any confidence in its success?

## C. The Closing of Delmas Avenue

The Delmas neighborhood is understandably concerned about pedestrian and bicyclist safety, yet the City's response to their comment in the FADEIR about the closing of Delmas Avenue includes the following statement:
"... the project would be required to monitor neighborhood traffic intrusions via preparation and implementation of a Neighborhood Traffic and Parking Intrusion Monitoring Plan. The City is also working with the SAP Center regarding circulation planning. Traffic congestion and local circulation are not CEQA impacts requiring further response.

Again, the preparation of a future plan without success criteria is not mitigation under CEQA. Where are the details? Simply monitoring conditions without a specific plan for how impacts will be addressed and when is not mitigation under CEQA. How can the neighborhood know

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they will be safe when streets are closed pushing traffic and congestion to other locations, potentially within their neighborhoods? To state that traffic congestion and local circulation are not CEQA impacts when they will lead to the harm of pedestrians and bicyclists is not correct as determined by Caltrans. These neighborhoods deserve better and may ultimately be considered to be "vulnerable users and communities" when it comes to safety. This must be corrected in the FEIR.

## 2. Transportation Review

Pertaining to the Site-wide Focused LTA (FLTA) prepared by Fehr \& Peers subsequent to the DEIR (April 16, 2021) and included in the FADEIR, as in the previous LTA, the FLTA provides that future LTA's will only cover topics not previously studied in the project-wide LTA. FLTAs must be prepared for each subsequent phase and individual projects as they come forward and these FLTAs must be reviewed by SSE per the AMA as each are prepared to ensure that Arena operations will not be adversely affected.

Page 3-29 of the FADEIR states that both the California High-Speed Rail Authority (Comment C.4) and SSE (Comment Z.63) request to have an opportunity to provide feedback on sitespecific LTAs that are prepared in conjunction with individual development projects. The page goes on to state:
"During their review of focused LTAs, City staff would submit these materials to transit agencies and other identified stakeholders for review. Agency and stakeholder responses received by the City staff would be addressed in the focused LTAs as appropriate, and any concerns requiring further coordination will be the subject of outreach by City staff to the commenting parties during the review process. Refer to the project-wide LTA (Draft EIR Appendix J2) for more detail on the scope of the focused LTAs."

We ask that this vital language be included in the Implementation Guide to ensure that this coordination and consultation is legally binding as required mitigation or covenants. Otherwise, we have no confidence that comments will be solicited as projects come forward and the Arena will continue to be adversely affected. As we state in comments below, "coordination" and "cooperation" amongst agencies is not mitigation under CEQA.

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## A. Site-wide Focused LTA

The FLTA was reviewed by Krupka Consulting. The following are comments pertaining to the FLTA, which was prepared after the DEIR was prepared and the public comment period expired. Therefore, all comments below must be adequately addressed prior to any project City Council meetings or project approvals.
i. The document is incomplete. The file reviewed did not include Attachment A - the DETAILS of the SimTraffic analysis. Also, while Figure 2 shows intersection lane layouts, there is no depiction of the SimTraffic network.
ii. It appears the FLTA evaluates the same project definition as the LTA did. However, the LTA was qualified as follows: "...the Project currently does not include a specific site plan that designates exact building location and access for each parcel." As a result, the LTA did not address intersections and street segments critical to area access and circulation. Therefore, the same issues remain - why have complete analyses been conducted in either the LTA or the FLTA?
iii. The adjustments to traffic projections to: a) reflect "full trip reductions ... required by mitigation measure AQ-2h,..." (27\% trip reduction vs. $18 \%$ in LTA for same scenario) are not defined. Furthermore, the noted trip reductions due to the "enhanced TDM program" are not supported by any analysis and result in a hypothetical, speculative evaluation.
iv. The modification of Background to "...include up to one million square feet of office development on the Caltrain parcels..." is arbitrary and outside of the standard definition of the Background scenario. Is this the property adjacent to Diridon Station that is excluded from the project? We know of no approved projects for one million square feet of office on that property. It should be in the cumulative condition if it is reasonably foreseeable, not in the Background condition. This is an incorrect analysis that could have implications for the cumulative analysis.
v. Table 1 shows many movements where 95th percentile queues exceed storage and several where average queues exceed storage. The former are red flags, and the latter indicate blockage. However, the summary says some operational

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improvements "could be implemented" to improve the situation. The summary goes on to say "...the vesting tentative map right of way for internal roadways are sufficient...". We find no support for this conclusion.
vi. Two intersections are noted as partially or fully outside of the Project area and "not subject to the vesting tentative map" - The "Delmas Access" and "Park/BirdAutumn". These are critical project area entry points where the project contributes substantial traffic. Regardless of the map boundary, there are adverse effects at these locations that must be addressed.
vii. The quick note about right turn lanes at the end of the FLTA is a confusing. How could roadways be modified to include dedicated right-turn lanes within the vesting tentative map bounds? We find no evidence that this can be accomplished within the current rights-of-ways.
B. Supplemental Analysis for the Downtown West Mixed-Use Project

Since the DEIR was circulated, another supplemental analysis was completed (Supplemental Analysis for the Downtown West Mixed-Use Project", Fehr \& Peers, April 16, 2021. This supplemental analysis was prepared to support the closure of two street segments that are currently part of the City's Transportation Diagram, including Delmas Avenue between Santa Clara Street and San Fernando Street. Krupka Consulting reviewed this analysis and provided the following comments.
i. The document is incomplete. The purpose is unclear. The file provided and reviewed did not include Attachment A - the DETAILS of the SimTraffic analysis. Also, while Figure 1 shows intersection lane layouts, there is no depiction of the SimTraffic network.
ii. The Background section describes the project change, which is useful. However, it says "through access would be provided for pedestrians and bicyclists only." How so?
iii. The adjustments to traffic projections to a) reflect "full trip reductions ... required by mitigation measure AQ-2h,..." ( $27 \%$ trip reduction vs. $18 \%$ in LTA for same scenario) are not defined. Furthermore, the noted trip reductions due to the "enhanced TDM

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program" are not supported by any analysis and result in a hypothetical, speculative evaluation.
iv. It appears the traffic volumes shown in Figure 1 match those in the FLTA, which included assumed development of Caltrain parcels. Are the two analyses based on the same traffic volumes?
v. The Street Capacity Level of Service provides no estimate of Delmas traffic that might be shifted yet concludes "the roadway closure of Delmas Avenue is not expected to have any adverse effect on the (sic) Autumn Street." Based on what analysis? Moreover, there is no rationale for using daily traffic to determine effect. This contradicts the use of peak hour traffic to evaluate roadway capacity.
vi. The Summary indicates "...Autumn Street would operate within acceptable range." It does not define what "acceptable range" is. The discussion calls out future considerations for turn lanes and leaves open the question of viability. Without any data to support, the supplemental analysis says the segment of Delmas Avenue could be vacated. Additional information must be provided, and it must be demonstrated that impacts will not occur.

Krupka Consulting also notes that the incorrect assignment of NO traffic on Cahill Street north of Santa Clara Street found in the LTA prepared for the DEIR has not been corrected. This appears to be a fatal flaw in the traffic and circulation analysis given the project includes an extension of Cahill Street to connect to North Montgomery Street to serve substantial project land uses and the Arena. Please correct this mistake.

## 3. Curb Cuts/Access for Delmas Parking

Watry Design also reviewed the supplemental transportation documents prepared for the FADEIR as well as the responses themselves (EXHIBIT G). There continues to be confusion over entry/exits to the underground parking to be provided at the future development proposed at the southeastern corner of the intersection of Santa Clara Street/Delmas Avenue (the "Trammel Crow" site). This parking is vital for Arena customer use, yet we still do not see consistent details that would allow for this parking, including curb cuts.

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As stated in the analysis by Watry Design, there are inconsistencies in the approach to the access for parking to the Delmas parcel from Santa Clara Street, including the following:
i. The revised graphics on page 299 of the Revised Downtown West Design Standards and Guidelines March 2021 remove Santa Clara Street as a preferred location for off street parking and loading entrance/exit.
ii. Page 134 of the Revised Downtown West Design Standards and Guidelines March 2021 shows a graphic for the area, yet a location for a curb cut is still not shown.
iii. The Site-Wide Focused LTA dated 4/16/2021 describes a driveway access from Santa Clara Street near the location of existing Delmas Avenue.
iv. The Supplemental Analysis for the Downtown West Mixed-Use Project dated 4/16/2021 regarding the closure of Delmas Avenue does not describe the access from Santa Clara Street on page 1-2 when describing the proposed future condition of Delmas Avenue.
v. In addition, the analyses that have been presented in meetings between SSE, the City of San José, and Google have all assumed that there would be an egress and ingress to this site from Santa Clara Street for parking, yet its location is contradicted in all of the documents as described above.

Providing entry/exits to underground parking on the Delmas site from both westbound and eastbound directions on W. Santa Clara Street are important for event customer use of this site for parking and this access has been promised in numerous discussions. It should be properly shown and consistently described in all the documentation. There must be clarity about how the access would be convenient, visible, etc. for event customers.

## 4. New Live Entertainment Uses and Hours of Operation

Page 1-8 of the FADEIR also states:
"Modification to proposed live entertainment venue(s): The project applicant proposes to add Block D7 as an additional potential site for a live entertainment venue, in

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addition to D4, D5, D6, as stated in the Draft EIR. Additionally, the entertainment venue(s) would operate up to 7 days per week from 11 a.m. to 11 p.m., as opposed to hours from 11 a.m. to 3 p.m., Wednesday through Sunday, and 7 p.m. to 11 p.m., Thursday through Saturday, as stated in the Draft EIR."

As we state in Comment $Z .5$ regarding the lack of a complete, stable project description, not enough information is given regarding these "entertainment venues". Now, it appears that an additional block (D7) will be developed with such uses without any additional environmental review. These blocks are located directly across from SAP Center where events can occur every day of the week. The proposed increase in these uses and extension of operating hours to 11 p.m. everyday rather than 3 p.m. will adversely affect the ability of the Arena to efficiently operate in the evenings.

Traffic and parking conflicts will undoubtedly occur, and no information is provided to account for these issues and no response is given in the FADEIR regarding this important impact. The reader is referred to Master Response 2, which does not address impacts associated with the proposed entertainment venues and guaranteed conflicts with events at the Arena. This must be corrected in the FADEIR.

Page 3-409 of the FADEIR includes a discussion regarding secondary effects related to parking supply, including the following:
"...it is not anticipated that a substantial shortfall in parking would occur with respect to either SAP Center events or users of Diridon Station, or for employees of and visitors to the proposed [project] site. Many public/commercial parking spaces on the project site would be available on evenings and weekends, when most SAP Center events take place."

This recent extension of time for live entertainment uses would significantly deplete the amount of parking available to the Arena, yet we can find no analysis or discussion in the FADEIR regarding the increase in parking demand as a result of this land use change. This must be corrected.

## 5. Miscellaneous Comments on the FADEIR

We also have the following comments which demonstrate that the City has not adequately responded to SSE's comments on the draft. The City must correct the document to contain

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substantive and accurate responses. We do not find that the City has provided a good faith, reasoned analysis in response to our comments. Therefore, the responses can only be classified as non-responsive, in violation of CEQA.

Page 3-369: This response states:
"Improvements that increase vehicle capacity could result in secondary effects and must not have unacceptable effects on existing or planned transportation facilities."

We can find no supporting evidence of this claim, which must be provided. Given the number of drive-alone trips that are anticipated, we believe not increasing vehicle capacity will create gridlock and ensuing impacts to pedestrian, bicyclist, and vehicular modes of transportation. This will adversely affect transit as well.

Page 3-373: This response states:
"The parking that has been proposed by the project applicant would allow the City to continue to meet the obligations under the Parking Agreement section of the AMA and address the City's obligation related to parking for the SSE."

As we have stated in multiple letters, memos, and supplemental traffic and parking exhibits for both the Google project and DSAP Amendments (all incorporated here by reference), this is clearly not the case. We also want to point out that Exhibit $K$ to the Development Agreement does not have monitoring or consequences for failure to keep $85 \%$ of accessible spaces "available" for arena customers. This must be addressed.

Page 3-39: This response states:
"The AMA does not require the commenter's review of all site specific Local Transportation Analyses or other specific documents."

This is not accurate as shown in EXHIBIT A. The AMA requires SSE be included in the review process by means of advance notice, with the ability to provide input and suggestions. This is the definition of review and consultation prior to approval of development proposals near the arena that may affect its operations including ingress and egress. Please correct this inaccurate statement. This review which is required under the LTA is vitally important as demonstrated in Response Z.40. The use of "dynamic lanes" is critically important to the operations of the Arena

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and implementation of our event Transportation and Parking Management Plan (TPMP). That is why SSE's review is included in the AMA and why SSE should be reviewing LTA's.

Response Z.43, page 3-437 seems to state that somehow the project does not have to meet the requirements of CEQA if it is consistent with the City's Municipal Code. That assumption is not consistent with the provisions of CEQA. Of course, there can be no argument that the project this massive is a "project" as defined by CEQA and must be evaluated per State law. Because the project will include some future proposed plan to manage traffic during construction -a plan without performance standards as required by CEQA - does not equate to consistency with Municipal Code.

In addition, as is described previously, there is no decipherable process by which the City Council will approve such a plan or plans for the project and subsequent phases. The so-called project-side CIMP is a mere template that regurgitates the existing City requirements set forth in Chapter 13.26.220 of the Municipal Code. The community deserves better for a project of this magnitude and construction duration. An actual project-wide mitigation plan with performance measures should be provided now, at project approval, rather than relegated to some future approval(s) for which there is no predicated process.

Page 3-450: Response $Z .50$ states:
"There is no evidence that non-CEQA impacts related to traffic congestion or parking, if they were to occur, would be sufficiently dire to prevent access to the Arena during onor off-peak hours or cause substantial numbers of people to choose not to attend events."

SSE has issue with this unsubstantiated statement and asks for legitimate data to show that impacts will not be "sufficiently dire to prevent access to the Arena". The project is proposing to remove safe and vital parking located immediately adjacent to the Arena (Lots A, B, and C) and constructing a public street along this completely safe access route to the north and west sides of the structure. Arena parking will be eliminated and not replaced. There is no analysis provided in the DEIR, LTA, or any of the supporting documentation to show access will NOT be affected and pedestrians could be injured or worse (the definition of "sufficiently dire"). For these reasons, we believe there is substantial evidence that the project will result in significant and unavoidable impacts to the public.

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## PART III. CONTINUING SUCCESS OF THE ARENA

We continue to be very concerned that the success of the SAP Center is not considered to be a priority. Also, even though we have been asking for years for an Arena-specific protection plan, the FADEIR reflects the City's still-prevalent attitude that the City's existing ordinance and policies, along with good communication among transit agencies, will be sufficient to protect the SAP Center. Page 3-8 of the FADEIR states:
[The Sharks' Comments] "stress the importance of maintaining access during construction and having adequate traffic construction plans in place. The City acknowledges these comments and the Department of Public Works will ensure that site-specific CIMPs address these issues adequately in conformance with the City's Downtown Construction Guidelines."

Page 3-9 of the FADEIR states that the City [through Jessica Zenk] also "acknowledges the need to coordinate major new development and public infrastructure projects over a prolonged period of time, and the need to bring private and public partners together on an ongoing basis to properly plan for, coordinate, and construct various improvements. Specifically, in conjunction with the anticipated update to the Diridon Station Area Plan infrastructure analysis, the City will summarize the inter-related projects identified in this plan, provide information about their scope, cost, and schedule, and identify the primary agency responsible for their delivery."

We believe this should have been done now as part of the Downtown West and DSAP Amendment processes. We have been in talks with years with the City and now with Google to stress the importance of the City meeting the requirements of the AMA and making the protection of the Arena a priority. The FADEIR does not accomplish this very important objective and we fear the Arena economic and social success will be catastrophically diminished.

While the same section of the FADEIR states that coordination "will clarify how each project contributes to the whole, leverage investments for mutual benefit, minimize impact, and avoid duplicative efforts. Understanding and guiding investments based on anticipated phasing is critical, as is coordinating projects well in advance of construction. The City will be responsible for bringing individual projects (e.g., BART Phase II, the Diridon Integrated Station Concept, and

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private development) together to minimize potential impacts to existing and future neighborhoods and businesses, including ensuring ongoing access to the SAP Center during construction. "

CEQA does not allow "coordination", "cooperation", or statements that future plans will be prepared to be mitigation for significant environmental impacts. The public and SSE have little confidence that simple coordination similar to what has already occurred without success, will reduce the impacts of the project. We would like the City and Google to provide examples of where this has successfully occurred in the past in San Jose. North San José? We know that legal challenges by adjacent cities and the County have stymied development in North San José when this "coordination/cooperation" either did not occur or was insufficiently implemented. We must learn from those lessons and not allow that type of calamity to also occur in the DSAP area.

We must also point out that the City's standard "Downtown Construction Guidelines" in no way address SAP Center's unique needs. Please refer to EXHIBIT F for the minimum amount of information what must be provided now to assess construction impacts to the Arena.

## PART IV. DOWNTOWN WEST MIXED-USE PLAN REQUESTS FOR MODIFICATIONS TO PROTECT THE SAP CENTER

On April 2, 2021, SSE sent a paper to the City entitled "Request for Modifications to Protect the SAP Center" (RFM). In the RFM, SSE sets forth modifications to protect the Arena throughout this unprecedented land use entitlement process. The RFM was requested by the mayor of San Jose, and it contains detailed comments explaining the rationale for each requested modification. A copy of the RFM is attached as EXHIBIT H.

## PART V. CONCLUSION

In closing, I would like to reiterate the mutual intention of the City and SSE as expressed in the AMA Side Letter two years ago:

We believe that with proper planning, the Diridon Station Area can support robust corporate development, a multi-modal transportation system, and a successful world-class sports and entertainment arena. However, the plan must

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also address critical needs of the SAP Center regarding transportation and parking.

Consistent with this, SSE supports the City's desire to redevelop the Diridon Station area.
However, the FADEIR does not adequately address the comments received on the DEIR, especially as they relate to pedestrian and bicyclist safety, and the inclusion of adequate project description details, and mitigation measures as required by CEQA. It is SSE's belief, grounded in long experience, that revisions to the DEIR and by extension FADEIR in this regard will result in a project that can achieve the goals of the City, while preserving the viability of the Arena.

Sincerely,
Silicon Valley Law Group

By: /s/Laurie Berger Laurie Berger

cc: Jim Goddard, Executive Vice President JGoddard@sapcenter.com<br>Lucy Lofrumento, LMA Law lal@LMALLP.com<br>Nanci Klein, Director of Economic Development Nanci.Klein@sanjoseca.gov<br>Cameron Day, City Attorney's Office Cameron.Day@sanjoseca.gov<br>Rosalynn Hughey, Director of PBCE Rosalynn.Hughey@sanjoseca.gov

Exhibits

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A: Sections 21 and 23 of Arena Management Agreement
B: Option/Negotiation Rights Agreement between the City and Google dated December 4, 2018
C: First Amendment to the Second Amended and Restated Arena Management Agreement, dated December 4, 2018, between the City and San Jose Arena Management, LLC (SSE's subsidiary).
D: Settlement Agreement and Release, dated December 1, 2016, between the City, SSE, and the prior owners of Delmas West and Delmas East.
E: Parking Lease, dated December 19, 2018, between Google (as Landlord) and San Jose Arena Management, LLC (as Tenant), with respect to Lot D (now identified as D4 in Google's development plan).
F. Preliminary White Paper on Construction Management Plan Minimum Requirements
G. Watry Design Memo, April 26. 2021
H. Request for Modifications to Protect the SAP Center

## SECTION 21. COORDINATION AND COOPERATION.

21.1 Parking Matters. City shall continuously monitor and evaluate development within the $1 / 2$ Mile Radius, to help ensure that its parking obligations under this Agreement will continue to be met throughout the entire Term. Among other things, City reaffirms its intent to comply with the following obligations mandated by the City Council in connection with approval of the Diridon Plan:
21.1.1 Significant Land Use Decisions. City shall coordinate with Manager regarding significant land use and development decisions within the $1 / 2$ Mile Radius, to ensure that the required number of Available Parking Spaces is maintained. Such coordination obligations shall include the following measures:
(a) City shall refer to Manager all development proposals on parcels within approximately $1 / 3$ of a mile of the Diridon Station that have off-street public parking facilities, and are in excess of 25,000 square feet. Referrals shall include the cover letter, plan set, and other relevant materials the applicant provides as part of the project submittal. Referrals shall also include notification of preliminary review applications, initial studies, and environmental impact reports (including draft and final EIR's, amendments and addenda). Staff shall provide comments received in a timely manner from Manager to the applicant and consider them in formulating initial comments the City may provide on the proposed project.
(b) City shall require development proposals on parcels within the central and northern zone of the Diridon Plan that have off-street public parking facilities, and are in excess of 100,000 square feet of commercial space or in excess of 50,000 square feet of stand-alone retail/restaurant projects, to conduct a parking analysis for the project. City shall similarly request the same of development proposals within approximately $1 / 3$ of a mile of the Diridon Station. These projects would be required to analyze and identify the projected parking demand, demand management strategies, and the parking supply to be provided by the project. The analysis would identify the impacts of the project on the existing parking supply within the Diridon Station Area, and suggest ways to mitigate the impact if it is deemed significant. The analysis would also include an assessment of spaces impacted or needed during construction.
(c) For the BART and High Speed Rail transit projects, the City shall request that the lead agency conduct a project parking analysis. The analysis should include a projection of parking demand, demand management strategies, recommended parking supply solutions, and potential impacts on the existing parking supply within the Diridon Station Area, including suggested ways to mitigate the impact if it is deemed
significant. The results of any parking analysis shall be provided to Manager for review and comment. City shall consider Manager's timely feedback in formulating comments that City forwards to the lead agency as part of the project development and approval process.
21.1.2 Shared Parking for Non-Residential Development. For non-residential development that would result in the substantial loss of Available Parking Spaces, City will strive to include shared parking as a condition of development if necessary to mitigate the loss of parking. The shared parking condition would require that the development's parking facilities be available for the general public, with or without fees, at times when the parking facilities within the development are not being fully used by the development.
21.2 Transportation Matters. City shall coordinate with Manager regarding transportation projects, transportation plans, and other transportation matters in the vicinity of the Diridon Station Area or that may otherwise affect ingress to and egress from the Arena, including as follows:
21.2.1 Transportation Projects. For transportation projects such as BART and High Speed Rail, City will request that the lead agency conduct a transportation analysis that evaluates potential adverse impacts on traffic and parking in the vicinity of the Diridon Station Area, with the objective of ensuring that appropriate mitigation measures are included to protect the Arena's operations from such adverse impacts. City shall also consider Manager's timely feedback in formulating comments that City forwards to the lead agency as part of the project development and approval process.
21.2.2 TPMP's. City and Manager shall coordinate regarding the Transportation and Parking Management Plan for the Arena as well as TPMP's for the Arena Green, BART, High Speed Rail, and other major development projects, all as set forth in Section 23 below.
21.2.3 Streets and Intersections. City and Manager shall also coordinate regarding any material changes to the design, configuration or operation of the major streets and intersections in the vicinity of the Arena to the extent that they may have a direct impact on the safe and efficient flow of vehicular, bicycle, and pedestrian traffic to and from the Arena, including Autumn Street and the intersection at Autumn Street and Park Avenue.
(a) City shall give Manager advance notice of any such material changes, including copies of relevant plans and specifications, and shall meet with Manager in advance of any work in order to discuss Manager's input and suggestions.
(b) The Parties shall work together in good faith with the goal of achieving the best overall function of the streets and intersections for the benefit of both the Arena and all other development in the Diridon Area.
21.3 Coordination Meetings. City and Manager agree that time is of the essence with respect to the obligations under this Agreement, and agree to use reasonable good faith efforts to meet and confer as often as necessary to prioritize and resolve parking, traffic and transportation issues in the vicinity of the Arena.
21.3.1 Meeting Participants. The City Manager's office, with the assistance of the Arena Authority, will engage the appropriate City departments and other agencies to participate in meetings with Manager as necessary, including the Department of Transportation, the Police Department, the Planning Department, the Public Works Department, SARA, and the VTA.
21.3.2 Issues to be Addressed. Issues to be addressed between the Parties shall include the following:
(i) The operation and management of Off-Site Parking Facilities;
(ii) The location and manner of providing the Minimum Employee Parking Requirements;
(iii) Any Temporary Conditions that impact the Available Parking Spaces and any requested Temporary Parking Agreements;
(iv) Preparation of the Parking Supply Report, the Parking Forecast Report, and the Schedule of Parking Solutions, and any issues related thereto;
(v) Preparation of the Parking Utilization Report, and any adjustments to the Minimum Off-Site Parking Requirements based on the results of such Report;
(vi) The design, construction and operation of BART, High Speed Rail and other transportation projects, including associated parking facilities and traffic impacts;
(vii) Development projects with the $1 / 3$ Mile Ring and the $1 / 2$ Mile Ring;
(viii) The identification and evaluation of sites for development of additional Off-Site Parking Facilities as needed, including both surface lots and structured parking facilities;
(ix) Shared parking in the vicinity of the Arena;
(x) The extension and realignment of Autumn Street;
(xi) Revisions to the TPMP's for the Arena, the Arena Green, transportation projects, and other major projects; and
(xii) Other on-site and off-site transportation and parking issues.

## SECTION 23. TRANSPORTATION AND PARKING MANAGEMENT PLANS.

23.1 Arena TPMP. Manager and City have agreed to a traffic and parking management plan for the Arena, entitled "Transportation \& Parking Management Plan, $6^{\text {th }}$ Edition," a copy of which is attached as Attachment No. 13 hereto (the "Arena TPMP"). The Arena TPMP identifies goals and strategies for: (i) the operation and management of the On-Site Parking Facilities; (ii) the provision of convenient Off-Site Parking Facilities for Arena employees and customers; and (iii) the provision of safe and efficient traffic and pedestrian movement of Arena customers.

### 23.1.1 Background.

(a) The parties agree that because of the lack of adequate On-Site Parking Facilities, the success of the Arena is dependent on an effective TPMP to move people to and from the Arena.
(b) Manager and City agree to use reasonable good faith efforts to correct by appropriate means and methods any material deficiencies in the provision of and effective use of the On-Site Parking Facilities and Off-Site Parking Facilities. This includes an obligation by the City to use its reasonable good faith efforts to devote sufficient operating funds and resources to make the movement of cars and people effective and efficient.
23.1.2 Contents of Arena TPMP. The Arena TPMP is intended by the Parties to address traffic, parking and pedestrian issues of concern to City, Manager, Arena customers and the neighborhood arising from the usage of the Arena. The Arena TPMP specifically addresses, among other things, the following:
(i) ingress and egress to the Arena Facilities and Off-Site Parking Facilities;
(ii) coordinated traffic control procedures for signalization, pedestrian flow movement, vehicular flow movement, and coordination of conflicts between same;
(iii) the provision, replacement and substitution of Off-Site Parking Facilities by City;
(iv) the use and availability of on-site and off-site parking spaces for Arena Events;
(v) off-site traffic control (including personnel and Arena Employee parking, bus parking, parking payments and charges);
(vi) guide signs on regional and local roadways and San Jose freeways for motorists coming to the Arena, guide signs for parking and pedestrians, public information promotion and signage;
(vii) coordination with mass transit authorities; and
(viii) all other provisions deemed necessary by the Parties to set forth the means by which they shall implement their respective rights and obligations pertaining to traffic and parking.
23.1.3 Modification of Arena TPMP. The Arena TPMP shall be subject to modification as the Parties may agree from time to time.
(a) The Arena TPMP is intended to be a working document and contains both the ability and the requirement to adjust to changing conditions, and to improve as the Parties may agree, provided that no such changes shall operate to limit or reduce the scope and purpose of the Arena TPMP.
(b) The Parties agree that as of the Execution Date, the Arena TPMP needs to be updated to address recent changes in the Diridon Station Area. The Parties shall work together in good faith to mutually agree upon appropriate revisions to the Arena TPMP as soon as reasonably practicable following the Execution Date of this Agreement.
(c) Manager and City shall consult and act reasonably to monitor performance of the Arena TPMP on an ongoing basis. At least every three years following the update described above, the Parties shall review the Arena TPMP together to determine whether any correction, minor modification, complete update or other revision is warranted based on then-current facts and circumstances. If needed, the Parties shall work together in good faith to correct, modify, update or otherwise revise the Arena TPMP and the security plans, with the common objective of providing the most effective use of the On-Site Parking Facilities and Off-Site Parking Facilities and security measures during Arena Events.
23.1.4 Legal Effect of Arena TPMP. Neither the Arena TPMP nor any modification thereto shall be construed to amend this Agreement, but the Arena TPMP may be used to help interpret the Parties' intentions and respective obligations under this Agreement. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Arena TPMP, the terms of this Agreement shall control.

### 23.2 Transit Project TPMP's.

23.2.1 Definitions. In this Agreement, the following terms have the meanings given below:
(a) "Transit Project" means the High Speed Rail project or station, or the BART project or station.
(b) "Project TPMP" means a transportation and parking management plan for either an Assembly Venue or a Transit Project.
23.2.2 TPMP's and Construction Mitigation Plan Required. In the event that the City or SARA transfers real property for the construction of a Transit Project in the Diridon Area, City or SARA shall include in any document of transfer of property a requirement for a Project TPMP and a construction mitigation plan for the proposed project.
(a) Each Project TPMP shall adhere to the framework set forth on document entitled "Framework for Project Transportation and Parking Management Plans" attached as Attachment No. 14 to this Agreement and incorporated herein by reference. The Project TPMP's shall be coordinated with, be consistent with and not be in conflict with the Arena TPMP.
(b) The Project TPMP's will be reviewed on a periodic and as needed basis by a TPMP committee which will include representatives from the City, the entity operating the Transit Project, and Manager. Amendments and updates to the TPMP's will be as needed in order to conform to changed circumstances, provided that any such amendment shall be consistent with and not in conflict with the Arena TPMP.
(c) The costs of administration and management of the TPMP's shall be addressed and provided for in the TPMP's.
23.2.3 Event Operations Committee. City and Manager will provide leadership and follow-through on Event Operations Committee to implement an extensive communications program for both Arena and other event producers to encourage parties to use routes and parking facilities that would minimize conflicts with each other.

## OPTION/NEGOTIATION RIGHTS AGREEMENT <br> (Lots A-C; SAP Center Parking Lots)

THIS OPTION/NEGOTIATION RIGHTS AGREEMENT ("Agreement") is dated as of December 4, 2018 ("Effective Date"), and is entered into by and between the CITY OF SAN JOSE, a municipal corporation ("Seller"), and GOOGLE LLC, a Delaware limited liability company ("Buyer"). Seller and Buyer are each a "party" and sometimes collectively referred to herein as the "parties."

## RECITALS

A. Seller owns the land described on Exhibit "A" ("Property").
B. The Property is encumbered by that certain Second Amended and Restated Arena Management Agreement between the Seller and San Jose Arena Management, LLC ("SJAM") executed as of August 15, 2018 ("Parking Agreement").
C. Chapter 4.20 of the San José Municipal Code authorizes the City Council to declare Cityowned real property surplus to the needs of the City. Section 4.20 .100 allows the Seller to authorize the transfer of such surplus property through direct sale for purposes of economic development. The City Council determines that the Property is surplus to the needs of the Seller and the sale of the Property to Buyer will provide for economic development within the Diridon Specific Plan and surrounding area.
D. Buyer desires to acquire the Property and eventually develop the Property, possibly as part of larger development. Buyer has acquired other property from Seller adjacent to the Property for eventual development.

E Under the Parking Agreement, SJAM leases the Property for the operation of parking facilities and other activities associated with the SAP Center located at 525 W. Santa Clara Street in San Jose ("Arena"), and has the exclusive right to all revenues from the operation of the Property. In addition, the Parking Agreement prohibits Seller from conveying any interest in the Property during the Term of the Parking Agreement. Thus, unless the Parking Agreement is amended, it would prevent Buyer's desired development of the Property.
F. Also under the Parking Agreement, Seller is obligated to take whatever actions may be necessary to ensure that the supply of parking spaces within close proximity to the Arena will continue to be maintained throughout the term of the Parking Agreement, such that a certain minimum number of parking spaces will be available for parking by Arena customers, all as more specifically set forth in the Parking Agreement ("Seller's Arena Parking Obligations").
G. Pursuant to the Diridon Station Area Plan adopted by the City Council of San Jose on June 17, 2014, one of the primary objectives was to "ensure the continued vitality of the San Jose Arena, recognizing that the Arena is a major anchor for both Downtown San Jose and the Diridon Station Area, and that sufficient parking and efficient access for Arena customers consistent with the provisions of the Arena Management Agreement, are critical for the Arena's on-going success."
H. Seller and Buyer, along with SJAM, wish to encourage and facilitate Buyer's plans to develop projects in the Diridon Station Area, while at the same time respecting the above-stated
objective, preserving SJAM's prior rights under the Parking Agreement (including without limitation sufficient parking and efficient access for Arena customers as well as operational and revenue-generating aspects of the parking facilities), and providing a substantial source of funding to ensure that Seller will be able to satisfy Seller's Arena Parking Obligations, even with the anticipated reduction in parking supply and increase in parking demand due to the BART project. The parties believe that the purchase price for the Property will be sufficient to provide such source of funding.
I. Subject to the terms and conditions of this Agreement, Buyer and Seller desire to enter into this Agreement to give Buyer the option to purchase the Property, for a period of up to five years from and after the Effective Date (the "Option Period"), with the effectiveness of the exercise of the option conditioned upon either (i) the execution by SJAM of an amendment to the Parking Agreement that is also acceptable to both Buyer and Seller ("Parking Agreement Amendment") or (ii) the natural expiration or earlier termination of the Parking Agreement for reasons not related to Buyer's acquisition of the Property.
J. Subject to the terms and conditions of this Agreement, Buyer and Seller further desire to give Buyer the right of first offer to purchase the Property, for a period of time commencing upon the Effective Date and continuing until the later of June 30, 2041, or one year following the date the Parking Agreement has terminated (the "ROFO Period"), with the effectiveness of the exercise of the right of first offer conditioned upon either (i) the execution by SJAM of a Parking Agreement Amendment or (ii) the natural expiration or earlier termination of the Parking Agreement for reasons not related to Buyer's acquisition of the Property; provided, however, that such right of first offer shall not apply in the event of an Arena-Related Sale, as defined in this Agreement.

IN CONSIDERATION of the above recitals and the Option Consideration (hereafter defined), the sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

## ARTICLE 1 <br> GRANT OF OPTION; OPTION CONSIDERATION

Section 1.1 Grant. Seller grants to Buyer an option (the "Option") to purchase the Property from Seller, on the terms and subject to the conditions hereafter set forth herein; provided, however, that the Option may not be exercised until the earlier of (i) the execution of the Parking Agreement Amendment or (ii) the date the Parking Agreement is terminated for any reason not related to Buyer's acquisition of the Property (such earliest date being the "Permitted Exercise Date").

Section 1.2 Option Consideration. The consideration for such option ("Option Consideration") is set forth in the schedule below. The first Option Payment will be paid by Buyer to Seller within three (3) business days after the delivery of executed counterparts of this Agreement. The first three Option Payments (less any refund of the first Option Payment described below) shall be credited against the Fixed Purchase Price at Close of Escrow; the fourth and fifth Option Payments shall not be credited. The Option Consideration shall only be refundable to Buyer in the event of a default by Seller under this Agreement that is not cured within forty-five (45) days after written notice from Buyer.

| Payment Date | Amount Due |  |
| :--- | :--- | :--- |
| Upon Execution of Option Payments <br> Agreement | $\$ 1,100,000$ | $\$ 1,100,000$ |

However, if the Parking Agreement Amendment is not approved and executed by all parties thereto on or before the first anniversary of the Effective Date, then Seller shall promptly refund to Buyer Six Hundred Thousand and No/100 Dollars (\$600,000.00) of the first Option Payment.

Buyer shall have the right, but not the obligation, by depositing the following additional optional Option Payments into Escrow when due (hereinafter, the "Fixed Price Option Payments"), to extend the Option and secure the Fixed Purchase Price beyond the first anniversary of the Effective Date of the Agreement, as described in Section 1.5 below.

| Payment Date | Amount | Total Option Payments |
| :--- | :--- | :--- |
| $1^{\text {st }}$ Anniversary of <br> Effective Date | $\$ 1,100,000$ | $\$ 2,200,000$ |
| 2nd Anniversary of <br> Effective Date | $\$ 1,100,000$ | $\$ 3,300,000$ |
| 3rd Anniversary of <br> Effective Date <br> 4th Anniversary of <br> Effective Date | $\$ 1,100,000$ | $\$ 1,100,000$ |

If Buyer has not exercised the Option prior to the applicable anniversary of the Effective Date of this Agreement as specified above, but has made the first Option Payment theretofore payable, then Buyer shall have the rights described in Section 1.6 below.

Section 1.3 Memorandum. Buyer and Seller shall execute and deliver to the First American Title Insurance Company (hereafter referred to as "Escrow Holder" or "Title Company") for immediate recording in the Official Records of Santa Clara County, counterparts of a Memorandum of Option Agreement in the form attached as Exhibit "B" attached hereto ("Memorandum").

Section 1.4 Exercise of Option. Subject to Sections 1.1 and 1.2, Buyer may exercise the Option by giving Seller written notice (the "Option Notice") of its unconditional exercise of the Option by the date that is sixty (60) days following the Permitted Exercise Date. However, in no event may Buyer exercise the Option following the expiration of the Option Period.

Section 1.5 Purchase Price for the Property. If Buyer makes the Fixed Price Option Payment, then for each year for which such Fixed Price Option Payment is made (but not after the fifth anniversary of the Effective Date of this Agreement), the purchase price for the Property shall be Two Hundred Thirty-Seven and 50/100 Dollars (\$237.50) per square foot, and shall be determined based on the actual square footage once the lot line adjustment(s) and street vacation(s) have been approved by SJAM, Buyer, and Seller, and finalized ("Fixed Purchase Price"), subject
to the credits hereinafter described. If Buyer fails to make any Fixed Price Option Payment in accordance with the schedule set forth above, then the Option shall terminate and be of no further force or effect.

If the Fixed Purchase Price applies pursuant to this Section 1.5, then Buyer shall be entitled to credit against the Fixed Purchase Price the following:
(i) an amount equal to the increased costs Buyer will incur to develop the Property as a result of the existing environmental condition of the Property (the "Estimated Development Remediation Costs"). The Estimated Development Remediation Costs shall include, without limitation, the cost of any vapor barriers which must be constructed as a result of the presence of Hazardous Materials in the soil, soil gas or ground water and the estimated costs to excavate, transport and dispose of soil containing Hazardous Materials present at the Property as of the Closing Date in connection with Buyer's proposed development that exceeds the costs that Buyer would incur for such excavation, transportation and disposal if Hazardous Materials were not present in such excavated soil. The parties shall undertake to mutually agree upon the Estimated Development Remediation Costs within thirty (30) days following Buyer's delivery of the Option Notice. If the parties are unable to mutually agree upon the Estimated Development Remediation Costs within such 30-day period, then within fifteen (15) days following the expiration of such 30 -day period, each party shall cause an independent qualified third-party environmental consultant to determine the Estimated Development Remediation Costs (the "Environmental Consultant Estimate"). Each party shall submit its Environmental Consultant Estimate to a third independent thirty-party qualified environmental consultant agreed upon by the parties who will determine the Estimated Development Remediation Costs by selecting either Buyer's or Seller's Environmental Consultant Estimate as the most representative of the Estimated Development Remediation Costs and shall not be permitted to determine any other amount. The credit against the Fixed Purchase Price based on the Estimated Development Remediation Costs is hereafter referred to as the "Remediation Credit". The parties agree that there will be no adjustment to the Remediation Credit if the actual increased costs are more or less than the Estimated Development Remediation Costs;
(ii) an amount equal to the "Estimated Increased Development Costs", which shall mean the costs that Buyer is required to incur as a result of the Parking Agreement Amendment, including (A) the increased costs to design, permit and construct Buyer's proposed development of the Property, (B) any increased costs for any onsite or offsite work, (C) any additional payments or obligations Buyer must pay or incur. However, Estimated Increased Development Costs shall not include costs that Buyer incurs in order for Buyer's proposed development to comply with then-applicable legal requirements (such that the costs are not the result of the Parking Agreement Amendment), including in such excluded costs, without limitation, costs of any and all parking required for Buyer's development and costs of any parking required by or as the result of any parking district attributable to Buyer's proposed development. The parties shall undertake to mutually agree upon the Estimated Increased Development Costs within thirty (30) days following Buyer's delivery of the Option Notice. If the parties are unable to mutually agree upon the Estimated Increased Development Costs within such 30-day period, then within fifteen (15) days following the expiration of such 30-day period, each party shall cause an independent, licensed, qualified third-party general contractor to prepare its estimate of the Estimated Increased Development Costs (the "Contractor's Estimate"). Each party shall submit
its Contractor's Estimate to a third independent, qualified and licensed general contractor agreed upon by the parties who will determine the Estimated Increased Development Costs by selecting either Buyer's or Seller's Contractor's Estimate as the most representative of the Estimated Increased Development Costs and shall not be permitted to determine any other amount. The credit against the Fixed Purchase Price based on the Estimated Increased Development Costs is hereafter referred to as the "Increased Development Cost Credit". The parties agree that there will be no adjustment to the Increased Development Cost Credit if the actual Increased Development Costs are more or less than the Estimated Increased Development Costs;
(iii) the estimated costs to Buyer (including reasonable opportunity cost and loss of potential revenue) of any and all easements, restrictions, covenants, rights to revenue and any other rights required to be granted to SJAM over the Property by the Parking Agreement Amendment that are not included in the Increased Developinent Cost Credit (collectively, the "SJAM Interests"). The parties shall undertake to mutually agree upon such costs of the SJAM Interests within thirty (30) days following Buyer's delivery of the Option Notice. If the parties are unable to mutually agree upon the costs to Buyer of the SJAM Interests within such 30-day period, then within fifteen (15) days following the expiration of such 30 -day period, the costs will be determined through submission by each party of an Appraisal or other written evaluation prepared by an independent, qualified third-party appraiser. Each party shall submit its Appraisal or written evaluation to a third independent, qualified third-party appraiser agreed upon by the parties who will determine the costs only by selecting which Appraisal or written evaluation is the most representative of the costs; such third-party appraiser shall not be permitted to select any other amount. The credit against the Fixed Purchase Price based on the costs is hereafter referred to as the "SJAM Interests Credit". The parties agree that there will be no adjustment to the SJAM Interests Credit if the actual costs of the SJAM Interests are more or less over the SJAM Interests Credit.

The date upon which the Remediation Credit, the Increased Development Cost Credit and the SJAM Interests Credit have all been finally determined as provided above is referred to as the "Basic Purchase Price Credit Determination Date".

The purchase price for the Property shall be paid in immediately available funds to Seller at the closing of the purchase and sale of the Property to the Buyer pursuant to this Agreement (the "Closing"), but shall first be used to satisfy any loans secured by deeds of trust and any other liens on Seller's title to the Property such that title will be conveyed free of all deeds of trust and monetary encumbrances (other than liens for property taxes and assessments not yet payable).

Section 1.6 Buyer ROFO Rights. If Buyer does not exercise its Option, and Seller thereafter elects to sell all or any portion of the Property prior to the expiration of the ROFO Period, then Buyer shall have the right of first offer (the "Buyer's Right of First Offer") to purchase the Property on the following terms and conditions; provided, however, that the Buyer's Right of First Offer shall not be effective until the Permitted Exercise Date (defined in Section 1.1 above) and shall not apply in the event of an Arena-Related Sale (defined below), in which case Seller shall have the right to transfer the Property unencumbered by the Buyer's Right of First Offer and Buyer's Right of First Offer shall terminate and be of no further force and effect. Further, when the ROFO Period expires, the provisions of this Section shall automatically terminate and be of no further force and effect.
(a) Seller's Sale Notice. If Seller elects to sell the Property during the ROFO Period, Seller shall notify the Buyer in writing of the terms and conditions upon which Seller is willing to sell the Property ("Seller's Sale Notice"). Buyer shall have sixty (60) days after receipt of Seller's Sale Notice ("Response Period") to notify Seller in writing of Buyer's desire to purchase the Property on the terms stated in Seller's Sale Notice pursuant to the terms for sale set forth herein and a purchase and sale agreement (the "Google ROFO PSA") in substantially the form of purchase and sale provisions set forth in this Option Agreement except to the extent the terms in Seller's Sale Notice differ from the terms in this Option Agreement.
(b) Buyer Election. If Buyer desires to acquire the Property on the terms set forth in Seller's Sale Notice, the Buyer shall notify Seller in writing within the Response Period and the parties shall promptly enter into the Google ROFO PSA. If the Buyer fails to so notify Seller within the Response Period, then subject to Buyer's right of reoffer as set forth below, Buyer shall be deemed to have waived its right to purchase the Property and Seller shall have the right thereafter to offer the Property for sale and to sell the Property to any person or entity without further notice to Buyer.
(c) Seller's Revised Sale Notice. If after the date Buyer waived (or is deemed to have waived) its right to purchase the Property, Seller offers the Property for a purchase price that is less than Ninety-Five Percent ( $95 \%$ ) of the purchase price that was set forth in Seller's Sale Notice, Seller shall re-offer the Property to Buyer on such terms ("Seller's Revised Sale Notice") and the same procedures shall apply with respect to Seller's Revised Sale Notice as are set forth above with respect to Seller's Sale Notice, except that the sixty (60) day period in Section 1.6 (a) above shall be reduced to thirty (30) days. If Buyer waives (or is deemed to waive) its rights to purchase the Property on the terms offered in Seller's Revised Sale Notice, then Buyer's Right of First Offer and the provisions of this Section shall automatically terminate and be of no force or effect.
(d) Arena-Related Sale. As used in this Agreement, the term "ArenaRelated Sale" means any sale, option, or other conveyance of all or any portion of the Property or interest therein to any of the following parties: (i) SJAM or any person or entity that, directly or indirectly, controls, is controlled by, or is under common control with SJAM; (ii) any person or entity that acquires the San Jose Sharks hockey team or another NHL franchise that will play its home games in the City of San Jose; (iii) any other person or entity in connection with the construction, renovation and/or operation of a sports and entertainment facility on or adjacent to the Property; or (iv) any governmental entity, agency or authority.

Section 1.7 Parking Agreement Amendment; SJAM Approval. As long as the Parking Agreement is in effect, it shall be a condition to the closing of any sale of the Property by Seller to Buyer under this Agreement (whether pursuant to the Option or the Buyer's Right of First Offer) that SJAM and Seller shall have entered into the Parking Agreement Amendment (which must include approval by SJAM of this Agreement). If a sale is not closed because of the failure of such condition, Buyer's Right of First Offer shall remain in full force and effect.
(a) No Reliance. Buyer acknowledges agrees as follows:
(i) Nothing im this Agpreement obligates either Seller or SJAM to agree to any Parking Agreement Amendment, or to use good faith efforts to come to any agreement regarding a Parking Agreement Amendment, and any such Parking Agreement Amendment may be approved or disapproved by either of them in their sole and absolute discretion;
(ii) Neither Seller nor SJAM, nor any of their respective representatives, has made any representations or warranties of any type regarding the likelihood that Seller and SJAM will agree to a Parking Agreement Amendment, or that any such Parking Agreement Amendment will be acceptable to Buyer; and
(iii) Buyer understands that its Option Consideration will be "at risk" if Seller and SJAM fail to agree upon a Parking Agreement Amendment acceptable to Buyer, and the failure of such condition precedent to the exercise of the Option or the Buyer's Right of First Offer shall not give rise to any right on Buyer's part to a refund of the Option Consideration or to any other legal or equitable claim by Buyer against either Seller or SJAM.
(b) Condition Precedent to Parking Agreement Amendment. As a condition precedent to the effectiveness of any Parking Agreement Amendment, Seller and/or SJAM may in their sole and absolute discretion require that Buyer agree to construct onsite and offsite improvements, pay compensation to SJAM for loss of revenues, and incur other expenses, the aggregate costs of which may exceed any available "SJAM Interests Credit" or other credits against the Fixed Purchase Price as described above. Such condition precedent to the Parking Agreement Amendment shall not be limited by any provisions of this Agreement. However, Buyer shall have the right, in its sole and absolute discretion, to either accept such requirements (if Buyer wishes to proceed to purchase the Property), or reject such requirements (in which case Buyer will not proceed to purchase the Property).

Section 1.8 Subordination to Parking Agreement. This Agreement, and the Option and Buyer's Right of First Offer granted by this Agreement, are subordinate to the Parking Agreement and the rights of Seller and SJAM under the Parking Agreement. Without limiting the foregoing, the following shall apply:
(i) The rights and obligations of Seller and SJAM under the Parking Agreement shall not be diminished or impaired in any way by this Agreement.
(ii) Nothing in this Agreement shall restrict or affect the right of Seller and SJAM to agree between them to make alterations or improvements to the Property, to extend the term of the Parking Agreement, or to otherwise modify the Parking Agreement as they may desire.

Section 1.9 Continuing Obligations under Parking Agreement. Nothing in this Agreement shall relieve Seller of the sole responsibility to fulfill Seller's Arena Parking Obligations, notwithstanding the loss of parking spaces anticipated to occur due to the BART project and development projects on Buyer's other properties within the Diridon area. Buyer shall have no obligation to provide replacement parking spaces except as may be expressly agreed by Buyer in connection with a Parking Agreement Amendment, a development agreement with Seller as described in Article 9 below, or another written agreement, or as may be required in connection
with conditions of approval of Buyer's development projects based on then-applicable legal requirements.

## ARTICLE 2 CLOSING AND ESCROW

Section 2.1 New Escrow; Conveyance. Upon Buyer's timely exercise of the Option, or purchase of the Property under the Buyer's Right of First Offer, the parties shall deliver a copy of this executed Agreement and the Buyer's written notice of Buyer's exercise of the Option or Buyer's written notice of Buyer's exercise of the Right of First Offer and the Google ROFO PSA, as applicable, to the Title Company at 1737 North First Street, Suite 500, San Jose CA 95112, and shall open a new escrow at Title Company for the purchase and sale of the Property pursuant to the exercised Option or Buyer's Right of First Offer. Seller shall convey the Property to Buyer by grant deed in the form attached hereto as Exhibit "C" ("Grant Deed"). Seller agrees that Seller will, at its sole cost and expense, complete the street vacations and the lot line adjustments for the Property conceptually described and depicted on Exhibit "F" attached hereto, subject to approval by SJAM of such lot line adjustments in accordance with the Parking Agreement Amendment if the Parking Agreement is still in effect, and the date upon which such street vacations and lot line adjustments have been completed is referred to as the "Lot Line Adjustment/Street Vacation Completion Date".

Section 2.2 Title. It is a condition to Buyer's obligation to purchase that the Title Company be irrevocably committed to issue to Buyer an ALTA extended coverage owner's title policy ("Title Policy") in the amount of the Purchase Price, insuring that the Buyer owns the Property subject only to the Title Exceptions set forth in the owner's pro forma title insurance policy attached hereto as Exhibit "D" (the "Pro Forma Title Policy") and, if applicable, the Parking Agreement Amendment.

Section 2.3 Escrow Instructions. This Agreement shall serve as the instructions to the Title Company, as escrow holder, for consummation of the purchase and sale contemplated by this Agreement, but Seller and Buyer shall also execute such reasonable additional supplementary escrow instructions as may be reasonably appropriate to enable the Title Company to comply with the terms of this Agreement.

Section 2.4 Closing; Closing Date. The closing of the purchase and sale of the Property pursuant to the exercised Option ("Closing") shall occur as soon as reasonably possible after the Permitted Exercise Date, but no later than 45 days after the later of (i) the Option Notice is delivered, (ii) the Lot Line Adjustment/Street Vacation Completion Date or (iii) the Basic Purchase Price Credit Determination Date ("Outside Closing Date"). If the sale is pursuant to Section 1.6, then the Closing shall occur as soon as reasonably possible, but no later than 45 days after the parties enter into the Google ROFO PSA.

## Section 2.5 Deposit of Documents and Funds into Escrow.

(a) At least one (1) business day prior to the Closing Date, Seller shall deposit into escrow the following:
(i) a duly executed and acknowledged Grant Deed conveying the Property to Buyer;
(ii) a true and correct affidavit, pursuant to Section 1445(b)(2) of the Internal Revenue Code, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code; and
(iii) a true and correct California Form 593 certifying that Seller is exempt from withholding.
(b) At least one business day prior to the Closing Date, Buyer shall deposit into escrow the Purchase Price and costs payable by Buyyer under Section 2.7(b).
(c) Buyer and Seller shall each deposit such other reasonable documents as are reasonably required by the Title Company to consummate the purchase and sale of the Property.

Section 2.6 Escrow Actions. Subject to Section 2.2, Title Company as escrow holder shall record the Grant Deed and apply or deliver all funds in accordance with a preliminary settlement statement consistent with this Agreement prepared by Title Company as escrow holder and reasonably approved by Buyer and Seller.

Section 2.7 Prorations; Costs.
(a) Assessments (if any) shall be prorated as of 12:01 a.m. on the date the Grant Deed is recorded. Seller is exempt from property taxes.
(b) Each party shall pay fifty percent (50\%) of the escrow fees and local (City of San Jose) transfer taxes. The cost of the standard coverage owner's title policy and County of Santa Clara transfer taxes shall be paid by Seller. The cost of an ALTA survey and extended coverage (i.e., deletion of survey exception) and any endorsements shall be paid by Buyer.

Section 2.8 Possession. Seller shall deliver possession of the Property to Buyer upon the recording of the Grant Deed, subject to the Approved Title Exceptions.

ARTICLE 3
CONDITION OF PROPERTY
Section 3.1 Further Due Diligence. Buyer acknowledges that Buyer has had access to the Property under one or more right of entry agreements between Buyer and Seller and has thoroughly inspected the Property. Buyer shall nevertheless have fifteen (15) business days after the date of exercise of its Option to further inspect the Property for the purpose of confirming that no material adverse change in the physical or environmental condition of the Property has occurred since Buyer last inspected the Property. If Buyer determined that such material adverse change shall have occurred, Buyer may terminate this Agreement by written notice to Seller given within such fifteen (15) business day period describing the material adverse change.

Section 3.2 Hazardous Materials. Hazardous Materials means any chemical, material or substance now or hereafter defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, extremely hazardous waste, restricted hazardous waste, toxic substances, pollutant or contaminant, imminently hazardous chemical substance or mixture, hazardous air pollutant, toxic pollutant, or words of similar import under any local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto applicable to the Property, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 1801, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.; and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq. ("RCRA"). The term Hazardous Materials shall also include any of the following: any and all toxic or hazardous substances, materials or wastes listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances ( 40 CFR. Part 302) and in any and all amendments thereto in effect as of the Close of Escrow; oil, petroleum, petroleum products (including, without limitation, crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, not otherwise designated as a hazardous substance under CERCLA; any substance which is toxic, explosive, corrosive, reactive, flammable, infectious or radioactive (including any source, special nuclear or by-product material as defined at 42 U.S.C. 2011, et seq.), carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; asbestos in any form; urea formaldehyde foam insulation; transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls; radon gas; or any other chemical, material or substance (i) which poses a hazard to the Property, to adjacent properties, or to persons on or about the Property, (ii) which causes the Property to be in violation of any of the aforementioned laws or regulations, or (iii) the presence of which on or in the Property requires investigation, reporting or remediation under any such laws or regulations.

Section 3.3 Seller's Representations and Warranties. Subject to the provisions of this Agreement, Seller hereby represents and warrants to Buyer, as of the date of this Agreement and as of the close of escrow:

Section 3.3.1 Authority. Seller has the full power and authority to execute, deliver and perform this Agreement and all documents to be executed at the close of escrow pursuant to this Agreement (the "Closing Documents"). The individual(s) executing this Agreement and the Closing Documents on behalf of Seller have the full power and authority to bind Seller thereto. Seller has taken all necessary actions and has obtained all necessary authorization actions to execute, deliver and perform this Agreement and the Closing Documents.

Section 3.3.2 Violations of Law. To Seller's actual knowledge without investigation or inquiry, neither the Property nor the use thereof is in violation of any applicable laws, except as set forth on Schedule X attached hereto.

Section 3.3.3 Hazardous Materials. Except as disclosed in the environmental reports set forth on Schedule X attached hereto, Seller has not received any written notice regarding Hazardous Materials existing in, on or under the Property.

Section 3.3.4 Litigation. There is no litigation, arbitration or other legal or administrative action or proceeding (including, without limitation, any condemnation proceeding) pending and served, against or involving Seller and related to the Property, except as set forth on Schedule X attached hereto.

Section 3.3.5 Leases. Seller is not a party to any lease, license or other agreement for the occupancy or use of the Property or any portion thereof that would be binding upon the Property from and after the close of escrow.

Section 3.3.6 Contracts. Seller is not currently a party to any contracts or other agreements with respect to the operation or maintenance of or the provision of services to the Property or any portion thereof that would be binding upon the Property from and after the close of escrow, except as set forth on Schedule $\underline{X}$ attached hereto (the agreements disclosed on Schedule X being referred to herein as the "Existing Contracts"). With respect to the Existing Contracts, if any: (i) Seller has provided Buyer with complete copies of the Existing Contracts and all amendments thereto to the extent they are in Seller's possession or control; and (ii) to Seller's actual knowledge, there are no uncured defaults existing under the Existing Contracts, except as set forth on Schedule X attached hereto.

Section 3.3.7 Parking Agreement. With respect to the Parking Agreement between Seller and SJAM executed as of August 15,2018 with a commencement date of July 1, 2015: (i) Seller has provided Buyer with a complete copy of the Parking Agreement; (ii) the Parking Agreement is in full force and effect, and has not been amended, supplemented, assigned or terminated, except for a First Amendment thereto entered into between Seller and SJAM concurrently with this Agreement, a copy of which has been approved by Buyer; (iii) to Seller's actual knowledge, there are no uncured defaults existing under the Parking Agreement, except as set forth on Schedule X attached hereto; and (iv) to Seller's actual knowledge, there are no claims or disputes outstandmg in connection with the Parking Agreement, except as set forth on Schedule X attached hereto.

Seller's representations and warranties shall survive the closing for period of one (1) year. If an action is not commenced by Buyer against Seller within such period, then no such action on the express representation and warranty may be brought by Buyer.

Section 3.4 AS-IS. Buyer is acquiring the Property in its "AS-IS" condition. Except for the express representations and warranties set forth in this Agreement, the Seller makes no representations or warranties, express or implied, whatsoever to the Buyer as to the condition of the Property, including but not limited to whether the Property contains any Hazardous Materials, or the suitability of the Property for the purposes for which it is acquired by Buyer. If the Property is not in a condition suitable for the use or uses to which they shall be put, then it is the sole responsibility and obligation of the Buyer to take such action (or cause another responsible or obligated party to take such action) as may be necessary to place the Property in a condition suitable to Buyer. Except for Seller's Retained Environmental Liabilities (as defined below), Buyer acknowledges and agrees specifically that the Seller shall have no responsibility or obligation with respect to the suitability of the Property for the purposes for which it is acquired by the Buyer or the existence of any Hazardous Materials on, under, in or about the Property. Buyer is responsible for any claims brought its invitees, occupants and/or lessees during Buyer's
period of ownership of the Property regarding the condition of the Property as of the Close of Escrow and shall install, to the extent required by law or governmental order, vapor barriers in any new buildings constructed on the Property by Buyer.

Section 3.5 Disclosure. Buyer acknowledges that the Seller has delivered to Buyer the documents described on Exhibit "E". Seller intends that such delivery constitutes, among other things, written notice of the release of hazardous materials under California Health and Safety Code Section 25359.7. The environmental condition of the Property existing as of the date of this Agreement and as of the Closing of Escrow hereunder shall be described and referred to as the "Pre-Existing Condition."

Section 3.6 Buyer Indemnity. If the Closing occurs, then Buyer agrees to indemnify, protect, defend (with counsel selected and engaged by Buyer which counsel does not have a conflict of interest with Seller in undertaking such defense; if Seller elects to retain independent counsel, it shall do so at Seller's own cost and expense) and hold harmless the Seller, including, but not limited to, the Seller's servants, employees, agents, representatives, successors, administrators, assigns, and attorneys (collectively, "Seller Parties"), and of each of them alone, from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, damage, or expense, resulting from, arising out of, or based upon a third-party claim to the extent proximately caused by (i) the presence, discharge or release of any Hazardous Materials which first came to exist on or about the Property after the Close of Escrow and during Buyer's period of ownership of the Property (but excluding any Hazardous Materials which migrate to the Property from any adjacent properties or any Hazardous Materials released by Seller or any of the Seller Parties) ("Buyer Caused Release") or (ii) Buyer's excavation, transportation or disposal of any Hazardous Materials present at the Property as of the Closing Date in connection with Buyer's development of the Property ("Buyer's Development Activities"). The provisions of this Section shall survive the Close of Escrow. Notwithstanding anything to the contrary in this Agreement, in no event will Buyer's indemnification obligations include diminution in value claims of Seller.

Section 3.7 Seller Retained Environmental Liabilities. Notwithstanding anything to the contrary in this Agreement, except for Buyer's Development Activities and costs that are or would be the basis for determining Estimated Development Remediation Costs and costs of relocating any existing monitoring wells on the Property to accommodate Buyer's development (and Buyer and Seller shall reasonably cooperate as to the new location of such wells to be relocated), Seller retains liability and responsibility for claims and response actions relating to the Pre-Existing Condition of the Property ("Seller's Retained Environmental Liabilities") including, without limitation, ongoing environmental monitoring, new groundwater well installation (excluding costs of relocation of existing wells to accommodate Buyer's development), repair, replacement and momitoring of wells, and removal or remedial actions of any kind ("Pre-Existing Environmental Work") and Seller shall execute manifests for disposal of contaminated soil off-site in connection with Seller's Retained Environmental Liabilities and Buyer's Development Activities. Seller covenants to continue undertaking the Pre-Existing Environmental Work during the Term and following Buyer's acquisition of the Property, at Seller's sole cost and expense. Buyer agrees to provide Seller with reasonable access to the Property to perform the Pre-Existing Environmental Work, and Buyer and Seller shall have the right to further reasonably relocate from time to time, at the relocating party's expense, any momitoring or other wells and any other remediation equipment so long as such relocation has been approved by the applicable governmental agency
overseeing the Pre-Existing Environmental Work and is consistent with Buyer's proposed development of the Property. If the Closing occurs, then Seller agrees to indemnify, protect, defend (with counsel selected and engaged by Seller which counsel does not have a conflict of interest with Buyer in undertaking such defense; if Buyer elects to retain independent counsel, it shall do so at Buyer's own cost and expense) and hold harmless Buyer, including, but not limited to, Buyer's members, employees, agents, representatives, successors, administrators, assigns, and attorneys (collectively, "Buyer Parties"), and each of them alone, from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, damage, or expense, arising out of, related to or connected with a third-party claim based on the Pre-Existing Condition except for claims or response actions arising out of the Buyer's Development Activities. The provisions of this Section shall survive the Close of Escrow. Notwithstanding anything to the contrary in this Agreement, in no event will Seller's indemnification obligations include diminution in value claims of Buyer.

Section 3.8 Release. Except as expressly provided herein, Buyer hereby waives, releases, acquits, and forever discharges Seller, and Seller's agents, directors, officers, and employees to the maximum extent permitted by law, of and from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs, expenses, compensation, attorneys' fees, consultants' fees and costs and expert fees (collectively "Claims") whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that it now has or that may arise in the future because of or in any way growing out of or connected with the physical condition of the Property, including without limitation, the physical and environmental condition of the Property or any law or regulation applicable thereto, including, without limitation, any Claim or matter (regardless of when it first appeared) relating to or arising from (i) the presence of any environmental problems, or the use, presence, storage, release, discharge, or migration of Hazardous Materials on, in, under or around the Property regardless of when such Hazardous Materials were first introduced in, on or about the Property, (ii) any patent or latent defects or deficiencies with respect to the Property, (iii) any and all matters related to the Property or any portion thereof, including without limitation, the condition and/or operation of the Property and each part thereof, and (iv) the presence, release and/or remediation of asbestos and asbestos containing materials in, on or about the Property regardless of when such asbestos and asbestos containing materials were first introduced in, on or about the Property. Buyer hereby waives and agrees not to comnience any action, legal proceeding, cause of action or suit in law or equity, of whatever kind or nature, including, but not limited to, a private right of action under the federal superfund laws, 42 U.S.C. Section 9601 et seq. and California Health and Safety Code section 25300 et seq. (as such laws and statutes may be amended, supplemented or replaced from time to time), directly or indirectly, against Seller or Seller's agents, directors, officers, and employees in connection with the Property, except (i) matters arising from Seller's fraud, intentional misrepresentation, or concealment of a material fact about Hazardous Materials on or under the Property not known to Buyer; (ii) any claims arising from a breach of Seller's express covenants, obligations, representations and warranties set forth in this Agreement or in any documents delivered by Seller under Section 2.5 above; (iii) any claims for personal injury, death or damage to personal property based on events prior to Closing and not covered by Buyer's indemnity under Section 4.1(a) below; (iv) any Hazardous Materials which migrate from, to or under the Property after the Close of Escrow to the extent originating from any real property owned by the Seller from and after closing; and/or (v) Seller's Retained Environmental Liabilities (collectively, "Excluded Claims").

IT IS UNDERSTOOD AND AGREED THAT EXCEPT FOR ANY EXPRESS REPRESENTATIONS AND WARRANTIES OR OBLIGATIONS OF SELLER SET FORTH IN THIS AGREEMENT, SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT UPON THE CLOSING DATE SELLER SHALL SELL AND CONVEY THE PROPERTY TO BUYER "IN ITS THEN EXISTING CONDITION AS IS, WHERE IS, WITH ALL FAULTS," BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR relating thereto made or furnished by seller or any agent PURPORTING TO REPRESENT SELLER.

BUYER REPRESENTS TO SELLER THAT BUYER HAS CONDUCTED SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS MATERIALS ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS. UPON CLOSING, BUYER SHALL ASSUME THE RISK THAT adVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS, AND BUYER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND COUNCIL MEMBERS, BOARD MEMBERS, SELLER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH BUYER MIGHT HAVE ASSERTED OR ALLEGED against seller (and seller's officers, directors, Shareholders, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY EXISTING AT OR OCCURRING PRIOR TO CLOSING EXCEPT FOR EXCLUDED CLAIMS. IN CONNECTION THEREWITH, BUYER EXPRESSLY WAIVES ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES THAT:

# A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TÖ EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. 

BUYER'S INITIALS:


# THE RELEASES SET FORTH IN THIS SECTION SHALL SURVIVE CLOSE OF ESCROW AND DELIVERY OF THE GRANT DEED. 

ARTICLE 4<br>INDEMNITY

Section 4.1 Non-Hazardous Materials Indemnity. From and after the Effective Date with respect to claims covered by subsections (i) and (iii) below, and from and after the Closing with respect to claims covered by subsections (ii) and (iv) below, Buyer shall indemnify, defend, protect, and hold harmless Seller and any and all Seller's board members, council members, officials, agents, employees and representatives ("Indemnitees"), from and against all losses, liabilities, claims, damages, penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) and demands of any nature whatsoever (but excluding punitive, consequential and speculative damages), related directly or indirectly to, or arising out of or in connection with:
(i) Buyer's investigations of the Property under Section 3.1 above or otherwise, excluding the mere discovery of any pre-existing adverse physical or environmental conditions impacting the Property;
(ii) any claims for personal injury or damage to personal property based on any acts, occurrences, omissions or other matters that take place on or with respect to the Property after the Close of Escrow and during Buyer's period of ownership or the period of ownership of any entity owned directly or indirectly, in whole or in part, by Buyer (except for acts by Seller);
(iii) third-party challenges to the validity of this Agreement; and
(iv) third-party claims based on any failure to comply with California Labor Code Sections 1720 et seq., with respect to construction on the Property that are based in whole or in part upon any claim that the Purchase Price was below the fair market value of the Property as of the Close of Escrow or that the option consideration or consideration for Buyer's Right of First Offer was inadequate.

This Section 4 shall not apply to any claims based on or arising out of Hazardous Materials, which are governed solely by Section 3.4 relative to Buyer's obligations to Seller. Notwithstanding anything to the contrary in this Agreement, in no event will Buyer's indemnification obligations include diminution in value claims of Seller. The provisions of this Section shall survive the Close of Escrow.

## ARTICLE 5 BROKERS

The parties represent and warrant to each other that except for CBRE, no broker or finder was engaged or used in arranging or bringing about this transaction and that there are no other claims or rights for brokerage commissions or finders' fees in connection with the transactions contemplated by this Agreement. Buyer shall pay any and all commissions, fees and changes payable to CBRE. If any other person or entity brings a claim for a commission or finders' fee based upon any contact, dealings or communication with Buyer or Seller, then the party through whom such person makes his claim shall defend the other party (the "Indemnified Party") from such claim, and shall indemmify the Indemnified Party and hold the Indemnified Party harmless from any and all claims, liabilities, damages, costs and expenses (including without limitation, reasonable attorneys' fees and costs). The provisions of this Article shall survive the close of escrow, or, if the purchase and sale is not consummated, any termination of this Agreement.

## ARTICLE 6

 NOTICESWhen notices are provided for herein, the same shall be in writing and served on the parties at the addresses listed below. Any notice shall be either (a) sent by certified mail, return receipt requested, in which case it shall be deemed delivered as shown on the return receipt as the date of delivery (or attempted delivery/refusal of acceptance); or (b) sent by nationally recognized overnight courier, in which case it shall be deemed delivered one (1) business day after deposit with such courier. The addresses listed below may be changed by written notice to the other party.

## SELLER: City of San Jose

200 E. Santa Clara Street, 16th Floor
San Jose, California 95113
Attn: City Manager
BUYER:
Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attn: Vice President, Real Estate and Workplace Services

Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attn: Legal Department/RE Matters
Allen Matkins Leek Gamble Mallory \& Natsis LLP
1900 Main Street, Fifth Floor
Irvine, CA 92614
Attn: Richard E. Stinehart, Esq.

## ARTICLE 7 <br> MISCELLANEOUS

Section 7.1 Applicable Law. This Agreement shall be construed and enforced according to the laws of the State of California.

Section 7.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter.

Section 7.3 Successors and Assigns. Neither this Agreement nor any interest herein may be assigned by Buyer without the prior written consent of Seller (which consent may be withheld in Seller's sole and absolute discretion). Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors, assigns and successors-in-interest.

Section 7.4 Time. Time is of the essence of every provision of this Agreement in which time is a factor.

Section 7.5 Counterparts; Electronic Delivery. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by email (PDF).

Section 7.6 City Manager Authority. This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller, provided, however, that Buyer and Seller shall not have the power to amend any of the provisions described in Section 7.7 below without the express written consent of SJAM. The City Manager of Seller may amend this Agreement on behalf of Seller provided the Option Consideration and the Purchase Price are not decreased and the amendment is in writing. The City Manager of Seller shall also have the power and authority to give all notices, make all elections and give approvals and consents on behalf of Seller provided they are in writing.

Section 7.7 SJAM as Third Party Beneficiary. Buyer and Seller acknowledge and agree that SJAM is an intended third party beneficiary of Subsection $1.6(\mathrm{~d})$, Sections 1.7, 1.8, and 1.9, and all other provisions of this Agreement concerning, affecting or relating to: (i) the execution of a Parking Agreement Amendment as a condition of the effectiveness of the Option or the Buyer's Right of First Offer (if the Parking Agreement is still in effect); (ii) an Arena-Related Sale as a carve-out to the Buyer's Right of First Offer; and (iii) the fact that SJAM's rights under the Parking Agreement are superior to Buyer's rights under this Agreement. SJAM shall have the right to enforce all of such provisions directly to the extent that SJAM deems such enforcements necessary or advisable to protect its rights.

## ARTICLE 8

## CITY/SELLER ROFO

For purposes of this Article 8, the term "Google" means Buyer (i.e., Google LLC), and the term "City" means Seller (i.e., the City of San Jose).

If Google acquires the Property under this Agreement, and then subsequently elects to sell all or any portion of the Property other than as part of an Affiliated Transaction described in subsection (d) below (hereinafter, "Third Party Transaction"), whether individually or as part of a portfolio of properties which may include properties other than the Property in the Diridon Station Planning Area (the properties Google elects to sell with the Property being hereinafter referred to as the "Sale Property") prior to the date Google obtains a permit to commence grading on the Property (the "Google Infrastructure Commencement Date") (hereinafter, "City ROFO Period"), then City shall have the right of first offer (the "City Right of First Offer") to purchase the Sale Property on the following terms and conditions. The provisions of this Article shall automatically terminate and be of no further force and effect upon the Google Infrastructure Commencement Date.
(a) Google's Sale Notice. If Google elects to sell the Sale Property during the City ROFO Period, Google shall notify the City in writing of the terms and conditions upon which Google is willing to sell the Sale Property ("Google's Sale Notice"). City shall have sixty (60) days after receipt of Google's Sale Notice and all non-privileged, material third party prepared documents in Google's possession relating to the Sale Property that was not previously owned by the City, which Google shall provide to the City without representation or warranty, and a reasonably current title report or reports for the Sale Property ("City Response Period") to notify Google in writing of City's desire to purchase the Sale Property on the terms stated in Google's Sale Notice pursuant to the purchase and sale agreement in the form attached hereto as Exhibit "G" (the "City ROFO PSA"). During such sixty (60) day period, City may enter the Sale Property that was not previously owned by the City to conduct reasonable due diligence inspections (including a reasonable Phase II inspection), and shall defend, indemnify and hold Google harmless from and against any claims, liabilities, losses, damages, costs and expenses arising from such entry or inspections (excluding those that relate to matters discovered during the inspections).
(b) City Election. If City desires to acquire the Sale Property on the terms set forth in Google's Sale Notice, City shall return the executed City ROFO PSA to Google within the City Response Period. If City fails to deliver the executed City ROFO PSA within the City Response Period, then subject to City's right of reoffer as set forth below, City shall be deemed to have waived its right to purchase the Sale Property and Google shall have the right thereafter to offer the Sale Property for sale and to sell the Sale Property to any Third Party without further notice to City. If City delivers the executed City ROFO PSA within the City Response Period and then defaults by failing to close escrow, the provisions of this Article shall automatically terminate and be of no further force and effect.
(c) Google's Revised Sale Notice. If after the date City waived (or is deemed to have waived) its right to purchase the Sale Property, Google offers the Sale Property in a proposed Third Party Transaction for a purchase price that is less than Ninety-Five Percent (95\%) of the purchase price that was set forth in Google's Sale Notice, Google shall re-offer the Sale Property to City on the terms offered to such Third Party ("Google's Revised Sale Notice") and the same procedures shall apply with respect to Google's Revised Sale Notice as are set forth above with respect to Google's Sale Notice, except that the sixty (60) day period in clause a. above shall be reduced to thirty (30) days. If City waives (or is deemed to waive) its rights to purchase the Sale Property on the terms offered in Google's Revised Sale Notice, then City's Right of First

Offer and the provisions of this Section shall automatically terminate and be of no further force or effect.
(d) Affiliated Transactions. Notwithstanding the foregoing, the City Right of First Offer shall not apply to any sale or contribution of the Property or any portion thereof by Google to an entity, including a joint venture or other entity in which Google (or an affiliate of Google) will be an owner, if the terms of such sale or joint venture require the vertical development of the Property to be sold or contributed within a reasonable period of time; however, the City Right of First Offer shall apply to any subsequent proposed Third Party Transaction sale by such entity.

ARTICLE 9
DEVELOPMENT AGREEMENT; COSTS
Following the Close of Escrow for the sale of the Property by Seller to Buyer pursuant to the Option, the parties seek to enter into a development agreement pursuant to Chapter 18.02 of the San Jose Municipal Code for the properties that Buyer is acquiring from Seller (including the Property), and Buyer shall reimburse Seller for Seller's costs in connection with the development agreement to the extent provided in an amendment to that certain Funding and Reimbursement Agreement between Buyer and Seller dated June 17, 2018 ("Reimbursement Agreement"). Buyer's and Seller's obligations under this Section and the Reimbursement Agreement shall survive the Close of Escrow and the delivery and recording of the deeds by Seller to Buyer for the properties being acquired by Buyer from Seller (including the deed for the Property).
[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

## SELLER:

CITY OF SAN JOSE, a municipal corporation

By: $\qquad$
APPROVED AS TO FORM:


Senior Deputy City Attorney

## BUYER:


$\qquad$


## List of Exhibits

Exhibit "A" Legal Description of Land
Exhibit "B" Memorandum of Option
Exhibit "C" Form of Grant Deed
Exhibit "D" Owner's Pro Forma Title Policy and Endorsements
Exhibit "E" Documents Delivered/Disclosures to Buyer
Exhibit "F" Conceptual Description and Depiction of Street Vacations and Lot Line Adjustments for Lots A,B, And C
Exhibit "G" Form of City ROFO PSA

## EXHIBIT "A"

## LEGAL DESCRIPTION OF LAND

# EXHIBIT "A" <br> LEGAL DESCRIPTION 

## Parcel One

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being all of Parcels A, B, X and Y as described in that certain Grant Deed recorded on May 14, 1935 in Book 730, Page 255 of Official Records, Santa Clara County, a portion of the land as described in that certain Grant Deed recorded on April 10, 1974 in Book 0872, Page 77 of Official Records, Santa Clara County, all that land as described in that certain Grant Deed recorded on April 10, 1974 in Book 0872, Page 79 of Official Records, Santa Clara County, all that land as described in that certain Grant Deed recorded on April 10, 1974 in Book 0872, Page 81 of Official Records, Santa Clara County, all that land as described in that certain Grant Deed recorded on June 12, 1974 in Book 0939, Page 700 of Official Records, Santa Clara County, and a portion of the land as described in that certain Quitclaim Deed recorded on June 26, 2003 as Document No. 17140351 of Offieial Records, Santa Clara County, said above described property being shown on that certain Record of Survey filed for record on $\qquad$ , $\qquad$ in Book $\qquad$ of Maps at Pages $\qquad$ Santa Clara County Records, and being more particularly described as follows:

Commencing at the intersection of the westerly line of North Autumn Street with the northerly right of way line of West Santa Clara Street as shown on said Record of Survey;

Thence along said northerly right of way line South $87^{\circ} 38^{\prime} 14^{\prime \prime}$ West, 489.94 feet to the Point of Beginning;

Thence continuing along said northerly right of way line South $87^{\circ} 38^{\prime} 14^{\prime \prime}$ West, 289.41 feet to a point on the easterly line of the lands of Peninsula Conidor Joint Powers Board as shown on said Record of Survey;

Thence along said easterly line the following ten (10) courses and distances:

1. North $13^{\circ} 53^{\prime} 49^{\prime \prime}$ West, 162.78 feet;
2. North $6^{\circ} 00^{\circ} 56^{\prime \prime}$ West, 142.79 feet;
3. North $14^{\circ} 47^{\prime} 22^{\prime \prime}$ West, 144.81 feet;
4. North $24^{\circ} 39^{\prime} 45^{\prime \prime}$ West, 14.49 feet;
5. North $49^{\circ} 47^{\prime} 59^{\prime \prime}$ East, 37.34 feet;
6. North $40^{\circ} 08^{\prime} 42^{\prime \prime}$ West, 195.34 feet;
7. North $34^{\circ} 08^{\prime} 42^{\prime \prime}$ West, 99.45 feet;
8. North $33^{\circ} 36^{\circ} 47^{\prime \prime}$ West, 90.81 feet;
9. North $40^{\circ} 10^{\prime} 46^{\prime \prime}$ West, 60.03 feet;
10. North $34^{\circ} 56^{\prime} 36^{\prime \prime}$ West, 120.53 feet to a point in the southeasterly right of way line of Julian Street as shown on said Record of Survey;

Thence along said southeasterly right of way line the following four (4) courses and distances:

1. North $49^{\circ} 40^{\prime} 07^{\prime \prime}$ East, 261.99 feet;
2. Along a curve to the right having a radius of 240,00 feet, through a central angle of $15^{\circ} 15^{\prime} 37^{\prime \prime}$ for an arc distance of 63.92 feet;
3. North $64^{\circ} 55^{\prime} 44^{\prime \prime}$ East, 66.94 feet;
4. Along a curve to the right having a radius of 30.00 feet, through a central angle of $74^{\circ} 54^{\prime} 30^{\prime \prime}$ for an arc distance of 39.22 feet to a point on the southwesterly right of way line of Montgomery Street as shown on said Record of Survey;

Thence along said southwesterly right of way line South $40^{\circ} 09^{\prime} 46^{\prime \prime}$ East, 733.65 feet;
Thence leaving said southwesterly right of way line South $42^{\circ} 32^{\prime} 40^{\prime \prime}$ West, 211.25 feet;
Thence South $2^{\circ} 21^{\prime} 46^{\prime \prime}$ East, 425.88 feet to the Point of Beginning.
Containing $10.775 \pm$ acres.

As shown on Exhibit "B" attached hereto and by this reference made a part hereof.

## Legal Description prepared by Kier \& Wright Civil Engineers and Surveyors, Inc.




| SAN JOSE | EGAL DESCRIPTION | DATE | DEC., 2018 |
| :---: | :---: | :---: | :---: |
|  | CALIFORNIA | SCALE | $1^{\prime \prime}=200^{\prime}$ |
|  |  | DR. BY | EK |
| EXHIBIT "B" <br>  | ( ${ }_{w}$ KIER \& WRIGHT <br> CIVIL ENGINEERS \& SURVEYORS, INC. <br> 3350 Scott Boulevard, Building 22 (408) 7276665 ax (408) 7275641 | JOB | A18056 |
|  |  | SHEET NO. |  |



## Parcel Map Check Report

## Client: Prepared by:

Kier \& Wright Civil Engineers \& Survyeyors, Inc.
3350 Scott Boulevard, Bldg. 22
Date: 12/4/2018 12:57:26 PM

Parcel Name: BNDRY - PARCEL ONE
Description:
Process segment order counterclockwise: False
Enable mapcheck across chord: False
North: 1943446.2397' East: 6154158.1993'

Segment \#1: Line
Course: $587^{\circ} 38^{\prime} 14^{\prime \prime} \mathrm{W}$ Length: 289.41'
North: 1943434.3083' East: 6153869.0354'

Segment \#2: Line
Course: N $13^{\circ} 53^{\prime} 49^{\prime \prime} \mathrm{W}$ Length: $162.78^{\prime}$
North: 1943592.3236 ${ }^{\prime}$ East: 6153829.9395'
Segment \#3: Line
Course: $\mathrm{N}^{\circ} 00^{\prime} 56^{\prime \prime} \mathrm{W}$ Length: $142.79^{\prime}$
North: 1943734.3274 ${ }^{\prime}$ East: 6153814.9753'
Segment \#4: Line
Course: N14 $47^{\prime} 22^{\prime \prime} \mathrm{W}$ Length: $144,81^{\prime}$
North: 1943874.3399' East: 6153778.0100'


Segment \#5 : Line
Course: N24 ${ }^{\circ} 39^{\prime} 45^{\prime \prime} \mathrm{W}$ Length: $14.49^{\prime}$
North: 1943887.5081' East: 6153771.9637'

Segment \#6 : Line
Course: N49 $47^{\prime} 59^{\prime \prime} \mathrm{E}$ Length: $37.34^{\prime}$
North: 1943911.6096' East: 6153800,4837 ${ }^{\prime}$

Segment \#7: Line
Course: N40 $08^{\circ} 42^{\prime \prime} \mathrm{W}$ Length: $195.34^{\prime}$
North: 1944060.9305 ${ }^{1}$ East: 6153674.5433'

Segment \#8: Line
Course: N3408'42"W Length: $99.45^{\prime}$
North: 1944143.2373' East: 6153618.7231 ${ }^{\prime}$

## Segment \#9: Line

Course: N $33^{\circ} 36^{\prime} 47^{\prime \prime} \mathrm{W}$ Length: $90.81^{\prime}$
North: 1944218.8634' East: 6153568.4524 ${ }^{\prime}$

```
Segment #10 : Line
Course: N40'10'46'W Length: 60.03'
North: 1944264.7280' East: 6153529.7220'
Segment #11 : Line
Course: N34'56'36"W Length: 120.53'
North; 1944363.5287' East: 6153460.6865'
Segment #12: Line
Course: N49`40'07"E Length: 261.99'
North: 1944533.0906' East: 6153660,4051'
Segment #13:Curve
Length: 63.92' Radius: 240.00'
Delta: 15'15'37'' Tangent: 32.15'
Chord: 63.73' Course: N57'17'56"E
Course In: S40 19'53'E Course Out; N25'04'16"W
RP North: 1944350.1353' East: 6153815.7349'
End North: 1944567.5212' East: 6153714.0340'
Segment #14 : Line
Course: N64*55'44"E Length: 66.94'
North: 1944595.8865' East: 6153774.6670'
Segment #15: Curve
Length: 39.22' Radius: 30.00'
Delta: 74*54'30' Tangent: 22.98'
Chord: 36.49' Course: }57\mp@subsup{7}{}{\circ}3\mp@subsup{7}{}{\prime}01"
Course In: S25*O4'16"E Course Out: N49'50'14"E
RP North: 1944568.7130' East: 6153787.3793'
End North: 1944588.0614' East: 61S3810.3081'
Segment #16 : Line
Course: S40'09'46'E Length: 733.65'
North: 1944027.3949' East: 6154283.4840'
Segment #17 : Line
Course: S42 }\mp@subsup{}{}{\circ}3\mp@subsup{2}{}{\prime}4\mp@subsup{0}{}{\prime\prime}\textrm{W}\mathrm{ W Length: 211.25'
North: 1943871.7558' East: 6154140.6448'
Segment #18 : Line
Course: S2`01'46"E Length: 425.88'
North: 1943446.2379' East: 61541S8.2024'
Perimeter: 3160.64' Area: 10.775acres 469371 Sq. Ft.
Error Closure: 0.0036 Course: S59`18'32"E
Error North: -0.00182 East:0.00307
Precision 1:877141.67
```


## EXHIBIT "B"

## FORM OF MEMORANDUM OF OPTION AGREEMENT

Recording requested by, and after recording return to:
Google LLC

Attn:
With a copy to:
City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, California 95113
Attn: City Clerk
APN's: $\qquad$
SPACE ABOVE THIS LINE FOR RECORDER'S USE

## MEMORANDUM OF OPTION AGREEMENT

THIS MEMORANDUM OF OPTION AGREEMENT ("Memorandum") is dated for reference purposes as of $\qquad$ , 20 _, and is entered into by and between the CITY OF SAN JOSE, a California municipal corporation ("Optionor") and GOOGLE LLC, a Delaware limited liability company ("Optionee").

1. Optionor and Optionee have entered into that certain Option/Negotiation Rights Agreement dated $\qquad$ , 2018 (the "Option Agreement") in which Optionor has granted to Optionee an option with a duration of up to five (5) years (the "Option") to purchase the property described on Exhibit "A" (the "Property"), in accordance with the terms and conditions set forth in the Option Agreement.
2. Optionee may exercise the Option for the period and upon the terms, covenants and conditions set forth in the Option Agreement. All of the terms, covenants and conditions of the Option are hereby incorporated into this Memorandum by reference.
3. Owner and Optionee desire to record this Memorandum so that successors-ininterest to Owner as to any portion of or interest in the Property shall have constructive notice of the existence of and be bound by the Option Agreement, which is intended to and shall run with the land and bind any person or entity acquiring any portion of or interest in the Property.
4. Upon the expiration of the Option period without exercise of the Option, Optionee shall promptly execute, acknowledge and deliver to Optionor for recording a reasonable Termination of Memorandum of Option Agreement.
5. In the event of a conflict between this Memorandum and any of the terms and conditions of the Option Agreement, the terms and conditions of the Option Agreement shall govern, and nothing herein contained shall be construed to be a modification of or amendment to any of such terms and conditions.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed as of the date first above written for the purpose of providing an instrument for recording.

OPTIONOR:

> CITY OF SAN JOSE, a municipal corporation

By:
Tom J. Taber, CMC
City Clerk
APPROVED AS TO FORM:

Johnny V. Phan
Senior Deputy City Attorney
OPTIONEE:
GOOGLE LLC
By:
Print Name:
Title: $\qquad$

## EXHIBIT "A"

DESCRIPTION OF LAND

# EXHIBIT "A" <br> LEGAL DESCRIPTION 

## Parcel One

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being all of Parcels A, B, X and Y as described in that certain Grant Deed recorded on May 14, 1935 in Book 730, Page 255 of Official Records, Santa Clara County, a portion of the land as described in that certain Grant Deed recorded on April 10, 1974 in Book 0872, Page 77 of Official Records, Santa Clara County, all that land as described in that certain Grant Deed recorded on April 10, 1974 in Book 0872, Page 79 of Official Records, Santa Clara County, all that land as described in that certain Grant Deed recorded on April 10, 1974 in Book 0872, Page 81 of Official Records, Santa Clara County, all that land as described in that certain Grant Deed recorded on June 12, 1974 in Book 0939, Page 700 of Official Records, Santa Clara County, and a portion of the land as described in that certain Quitclaim Deed recorded on June 26, 2003 as Document No. 17140351 of Official Records, Santa Clara County, said above described property being shown on that certain Record of Survey filed for record on $\qquad$ , $\qquad$ in Book $\qquad$ of Maps at Pages $\qquad$ , Santa Clara County Records, and being more particularly described as follows:

Commencing at the intersection of the westerly line of North Autumn Street with the northerly right of way line of West Santa Clara Street as shown on said Record of Survey;

Thence along said northerly right of way line South $87^{\circ} 38^{\prime} 14^{\prime \prime}$ West, 489.94 feet to the Point of Beginning;

Thence continuing along said northerly right of way line South $87^{\circ} 38^{\prime} 14^{\prime \prime}$ West, 289.41 feet to a point on the easterly line of the lands of Peninsula Corridor Joint Powers Board as shown on said Record of Survey;

Thence along said easterly line the following ten (10) courses and distances:

1. North $13^{\circ} 53^{\prime} 49^{\prime \prime}$ West, 162.78 feet;
2. North $6^{\circ} 00^{\circ} 56^{\prime \prime}$ West, 142.79 feet;
3. North $14^{\circ} 47^{\prime} 22^{\prime \prime}$ West, 144.81 feet;
4. North $24^{\circ} 39^{\prime} 45^{\prime \prime}$ West, 14.49 feet;
5. North $49^{\circ} 47^{\prime} 59^{\prime \prime}$ East, 37.34 feet;
6. North $40^{\circ} 08^{\prime} 42^{\prime \prime}$ West, 195.34 feet;
7. North $34^{\circ} 08^{\prime} 42^{\prime \prime}$ West, 99.45 feet;
8. North $33^{\circ} 36^{\prime} 47^{\prime \prime}$ West, 90.81 feet;
9. North $40^{\circ} 10^{\prime} 46^{\prime \prime}$ West, 60.03 feet;
10. North $34^{\circ} 56^{\prime} 36^{\prime \prime}$ West, 120.53 feet to a point in the southeasterly right of way line of Julian Street as shown on said Record of Survey;

Thence along said southeasterly right of way line the following four (4) courses and distances:

1. North $49^{\circ} 40^{\prime} 07^{\prime \prime}$ East, 261.99 feet;
2. Along a curve to the right having a radius of 240.00 feet, through a central angle of $15^{\circ} 15^{\prime} 37^{\prime \prime}$ for an arc distance of 63.92 feet;
3. North $64^{\circ} 55^{\prime} 44^{\prime \prime}$ East, 66.94 feet;
4. Along a curve to the right having a radius of 30.00 feet, through a central angle of $74^{\circ} 54^{\prime} 30^{\prime \prime}$ for an arc distance of 39.22 feet to a point on the southwesterly right of way line of Montgomery Street as shown on said Record of Survey;

Thence along said southwesterly right of way line South $40^{\circ} 09^{\prime} 46^{\prime \prime}$ East, 733.65 feet;
Thence leaving said southwesterly right of way line South $42^{\circ} 32^{\prime} 40^{\prime \prime}$ West, 211.25 feet;
Thence South $2^{\circ} 21^{\prime} 46^{\prime \prime}$ East, 425.88 feet to the Point of Beginning.
Containing $10.775 \pm$ acres.

As shown on Exhibit "B" attached hereto and by this reference made a part hereof.

## Legal Description prepared by Kier \& Wright Civil Engineers and Surveyors, Inc.




| SAN JOSE | EGAL DESCRIPTION | DATE | DEC., 2018 |
| :---: | :---: | :---: | :---: |
|  | CALIFORNIA | SCALE | $1^{\prime \prime}=200$ |
|  |  | DR. BY | EK |
| EXHIBIT "B" <br>  |  | JOB | A18056 |
|  |  | SHEET NO. | OF 2 |



| SAN JOSE | CALIFORNIA | DATE DEC., 2018 <br> SCAIE $^{\text {NOT TO SCALE }}$  |  |
| :---: | :---: | :---: | :---: |
|  |  |  |  |
|  |  | DR. BY | EK |
|  | (*) KIER \& WRIGHT <br> CIVIL ENGINEERS \& SURVEYORS, INC. <br> $\begin{array}{lr}3350 \text { Scott Boulevard, Bullding } 22 & \text { (408) } 7276665 \\ \text { Santa Clara, Callfornia } 95054 & \text { fax (408) } 7275641\end{array}$ | JOB | A18056 |
| EXHIBIT "B" <br>  |  | [ SHEET NO. | $\text { of } 2$ |

## Parcel Map Check Report

## Client: Prepared by: <br> Kier \& Wright Civil Engineers \& Survyeyors, Inc, 3350 Scott Boulevard, Bidg. 22

Date: 12/4/2018 12:57:26 PM
Parcel Name: BNDRY - PARCEL ONE
Description:
Process segment order counterclockwise: False
Enable mapcheck across chord: False
North: 1943446:2397 ${ }^{\circ}$ East: 6154158.1993'

Segment \#1: Line
Course: $587^{\circ} 38^{\prime} 14^{\prime \prime} \mathrm{W}$ Length; 289.41'
North: 1943434.3083' East: 6153869.0354 ${ }^{\text { }}$

Segment \#2: Line
Course: $\mathrm{N} 13^{\circ} 53^{\prime} 49^{\prime \prime} \mathrm{W}$ Length: $162.78^{\circ}$
North: 1943592.3236' East: 6153829.9395'

Segment \#3: Line
Course: ${ }^{N} 6^{\circ} 00^{\prime} 56^{\prime \prime} \mathrm{W}$ Length: $142.79^{\prime}$
North: 1943734.3274 ${ }^{\prime}$ East: 6153814.9753'
Segment \#4 : Line
Course: $\mathrm{N} 14^{\circ} 47^{\prime} 22^{\prime \prime} \mathrm{W}$ Length: $144.81^{\prime}$
North: 1943874.3399' East: 6153778.0100'


Segment \#5 : Line
Course: N24 $39^{\prime} 45^{\prime \prime} \mathrm{W}$ Length: $14.49^{\prime}$
North: 1943887.5081' East: 6153771.9637

Segment \#6: Line
Course: N49우'59"E Length: 37.34'
North: 1943911.6096' East: 6153800.4837

Segment $\ddagger 7$ : Line
Course: $140^{\circ} 08^{\prime} 42^{\prime \prime} \mathrm{W}$ Length: $195.34^{\prime}$
North: 1944060.9305' East: 6153674.5433'

Segment \#8: Line
Course: N34 $08^{\prime} 42^{\prime \prime} \mathrm{W}$ Length: 99,45'
North: 1944143.2373 East: 6153618.7231 ${ }^{\text { }}$

Segment \#9: Line
Course: N33 ${ }^{\circ} 36^{\prime} 47^{\prime \prime} \mathrm{W}$ Length: $90.81^{\prime}$
North: 1944218.8634' East: 6153568.4524'

Segment \#10 : Line
Course: N40 $10^{\prime} 46^{\prime \prime} \mathrm{W}$ Length: $60.03^{\text {t }}$
North: 1944264.7280' East: 6153529.7220

Segment \#11 : Line
Course: N34 ${ }^{\circ} 56^{\prime} 36^{\prime \prime} \mathrm{W}$ Length: $120.53^{\prime}$
North: 1944363.5287 ${ }^{\prime}$ East: 6153460.6865'

Segment \#12 : Line
Course: N49 ${ }^{\circ} 40^{\prime} 07^{\prime \prime} \mathrm{E}$ Length: 261.99'
North: 1944533.0906 ${ }^{\text {² }}$ East: 6153660.4051'

Segment \#13: Curve
Length: 63.92 ${ }^{\text { }}$ Radius: $240.00^{1}$
Delta: $15^{\circ} 15^{\prime} 37^{\prime \prime}$ Tangent: $32.15^{\prime}$
Chord: 63.73' Course; N57 ${ }^{\circ} 17^{\prime} 56^{\prime \prime} \mathrm{E}$

RP North: 1944350.1353' East: 6153815.7349'
End North: 1944567.5212' East: 6153714.0340'

Segment \#14 : Line
Course: N64 $55^{\prime} 44^{\prime \prime} \mathrm{E}$. Length: 66.94'
North: 1944595.8865' East: 6153774.6670'

Segment \#15 : Curve
Length: 39.22' Radius: 30.00'
Delta: 74 ${ }^{\circ} 54^{\prime} 30^{\prime \prime} \quad$ Tangent: 22.98'
Chord: $36.49^{\prime}$ Course: $\$ 77^{\circ} 37^{\prime} 01^{\prime \prime} \mathrm{E}$
Course In: $525^{\circ} 04^{\prime} 16^{\prime \prime} \mathrm{E} \quad$ Course Out: N49 ${ }^{\circ} 50^{\prime} 14^{\prime \prime} \mathrm{E}$
RP North: 1944568.7130' East: 6153787.3793'
End North: $1944588.0614^{\prime}$ East: 6153810.3081 ${ }^{1}$

Segment \#16 : Line
Course: $\$ 40^{\circ} 09^{\prime} 46^{\prime \prime} \mathrm{E}$ Length: $733.65^{1}$
North: 1944027.3949 $\quad$ East: $6154283.4840^{\prime}$

Segment \#17: Line
Course: $542^{\circ} 32^{\prime} 40^{\prime \prime} \mathrm{W}$ Length: $211.5^{\prime}$
North: 1943871.7558' East: 6154140.6448'

Segment \#18 : Line
Course: $52^{\circ} 21^{\prime} 46^{\prime \prime} \mathrm{E} \quad$ Length: $425.88^{\prime \prime}$
North: 1943446.2379' East: 61541S8.2024'
Perimeter: 3160.64 Area: $\mathbf{1 0 . 7 7 5}$ acres 469371 Sq. Ft.
Error Closure: $\quad 0.0036$ Caurse: $559^{\circ} 18^{\prime} 32^{\prime \prime} \mathrm{E}$
Error North: -0.00182 East: 0.00307

Precision 1: 877141.67

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

## STATE OF CALIFORNIA

## COUNTY OF

$\qquad$
On $\qquad$ before me, $\qquad$
Notary Public, personally appeared $\qquad$ , who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

## Signature of Notary Public

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

> A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

## STATE OF CALIFORNIA

## COUNTY OF

$\qquad$
On $\qquad$ before me, $\qquad$
Notary Public, personally appeared $\qquad$ , who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

## EXHIBIT "C"

## FORM OF GRANT DEED

# RECORDING REQUESTED BY, AND WHEN RECORDED MAIL TO AND MAIL TAX STATEMENTS TO: 

Google LLC

APNs:
This document is exempt from the payment of a recording fee pursuant to Government Code $\S 6103$.

City Documentary Transfer Tax: \$ $\qquad$ ; County Documentary Transfer Tax: \$ $\qquad$ Property is in the City of San Jose, County of Santa Clara. GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF SAN JOSE, a municipal corporation ("Grantor"), hereby GRANTS to GOOGLE LLC, a Delaware limited liability company ("Grantee"), that certain real property located in the City of San Jose, County of Santa Clara, State of California, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference including all improvements thereon.

SUBJECT TO, a lien to secure payment of general and special real property taxes and assessments, not delinquent; the lien of supplemental taxes assessed pursuant to Chapter 3.5 commencing with California Revenue and Taxation Code Section 75; and

FURTHER SUBJECT TO, any and all matters of record and all matters apparent from an inspection of the Property.

IN WITNESS WHEREOF, the Grantor has executed this Grant Deed as of the date set forth below.

## GRANTOR:

CITY OF SAN JOSE, a municipal corporation

By:
Toni J. Taber, CMC
City Clerk
APPROVED AS TO FORM:

Johnny V. Phan<br>Senior Deputy City Attorney

# EXHIBIT "A" <br> LEGAL DESCRIPTION 

## Parcel One

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being all of Parcels $\mathrm{A}, \mathrm{B}, \mathrm{X}$ and Y as described in that certain Grant Deed recorded on May 14, 1935 in Book 730, Page 255 of Official Records, Santa Clara County, a portion of the land as described in that certain Grant Deed recorded on April 10, 1974 in Book 0872, Page 77 of Official Records, Santa Clara County, all that land as described in that certain Grant Deed recorded on April 10, 1974 in Book 0872, Page 79 of Official Records, Santa Clara County, all that land as described in that certain Grant Deed recorded on April 10, 1974 in Book 0872, Page 81 of Official Records, Santa Clara County, all that land as described in that certain Grant Deed recorded on June 12, 1974 in Book 0939, Page 700 of Official Records, Santa Clara County, and a portion of the land as described in that certain Quitclaim Deed recorded on June 26, 2003 as Document No. 17140351 of Official Records, Santa Clara County, said above described property being shown on that certain Record of Survey filed for record on $\qquad$ , $\qquad$ in
Book $\qquad$ of Maps at Pages $\quad$, Santa Clara County Records, and being more particularly described as follows:

Commencing at the intersection of the westerly line of North Autumn Street with the northerly right of way line of West Santa Clara Street as shown on said Record of Survey;

Thence along said northerly right of way line South $87^{\circ} 38^{\prime} 14^{\prime \prime}$ West, 489.94 feet to the Point of Beginning;

Thence continuing along said northerly right of way line South $87^{\circ} 38^{\prime} 14^{\prime \prime}$ West, 289.41 feet to a point on the easterly line of the lands of Peninsula Corridor Joint Powers Board as shown on said Record of Survey;

Thence along said easterly line the following ten (10) courses and distances:

1. North $13^{\circ} 53^{\prime} 49^{\prime \prime}$ West, 162.78 feet;
2. North $6^{\circ} 00^{\circ} 56^{\prime \prime}$ West, 142.79 feet;
3. North $14^{\circ} 47^{\prime} 22^{\prime \prime}$ West, 144.81 feet;
4. North $24^{\circ} 39^{\prime} 45^{\prime \prime}$ West, 14.49 feet;
5. North $49^{\circ} 47^{\prime} 59^{\prime \prime}$ East, 37.34 feet;
6. North $40^{\circ} 08^{\prime} 42^{\prime \prime}$ West, 195.34 feet;
7. North $34^{\circ} 08^{\prime} 42^{\prime \prime}$ West, 99.45 feet;
8. North $33^{\circ} 36^{\prime} 47^{\prime \prime}$ West, 90.81 feet;
9. North $40^{\circ} 10^{\prime} 46^{\prime \prime}$ West, 60.03 feet;

10 . North $34^{\circ} 56^{\prime} 36^{\prime \prime}$ West, 120.53 feet to a point in the southeasterly right of way line of Julian Street as shown on said Record of Survey;

Thence along said southeasterly right of way line the following four (4) courses and distances:

1. North $49^{\circ} 40^{\circ} 07^{\prime \prime}$ East, 261.99 feet;
2. Along a curve to the right having a radius of 240.00 feet, through a central angle of $15^{\circ} 15^{\prime} 37^{\prime \prime}$ for an arc distance of 63.92 feet;
3. North $64^{\circ} 55^{\prime} 44^{\prime \prime}$ East, 66.94 feet;
4. Along a curve to the right having a radius of 30.00 feet, through a central angle of $74^{\circ} 54^{\prime \prime} 30^{\prime \prime}$ for an arc distance of 39.22 feet to a point on the southwestetly right of way line of Montgomery Street as shown on said Record of Survey;

Thence along said southwesterly right of way line South $40^{\circ} 09^{\prime} 46^{\prime \prime}$ East, 733.65 feet;
Thence leaving said southwesterly right of way line South $42^{\circ} 32^{\prime} 40$ " West, 211.25 feet;
Thence South $2^{\circ} 21^{\prime} 46^{\prime \prime}$ East, 425.88 feet to the Point of Beginning.
Containing $10.775 \pm$ acres.

As shown on Exhibit "B" attached hereto and by this reference made a part hereof.

Legal Description prepared by Kier \& Wright Civil Engineers and Surveyors, Inc.




## PLAT TO ACCOMPANY LEGAL DESCRIPTION

CALIFORNIA

## Parcel Map Check Report

## Client: Prepared by: <br> Kier \& Wright Civil Engineers \& Survyeyors, Inc. <br> 3350 Scott Boulevard, Bldg. 22

Date: 12/4/2018 12:57:26 PM

Parcel Name: BNDRY - PARCEL ONE
Description:
Process segment order counterclockwise: False
Enable mapcheck across chord: False
North: 1943446.2397' East: 6154158.1993

Segment \#1: Line
Course: $587^{\circ} 38^{\prime} 14^{\prime \prime} \mathrm{W}$ Length: $289.41^{\prime}$
North: 1943434.3083' East: 6153869.0354'

Segment \#2 : Line
Course: N13 ${ }^{\circ} 53^{\prime} 49^{\prime \prime} \mathrm{W}$ Length: $162.78^{\text { }}$
North: 1943592.3236 ${ }^{\prime}$ East: 6153829.9395 ${ }^{\dagger}$

Segment \#3 : Line
Course: $\mathbf{N 6}^{\circ} 00^{\prime} 56^{\prime \prime} \mathrm{W}$ Length: $142.79^{\prime}$
North: 1943734.3274! East: 6153814.9753'

Segment \#4 : Line
Course: N14 $47^{\prime} 22^{\prime \prime} \mathrm{W}$ Length: $144.81^{\prime}$
North: 1943874.3399' East: 6153778.0100


Segment \#5 : Line
Course: N24 ${ }^{\circ} 39^{\prime} 45^{\prime \prime} \mathrm{W}$ Length: $14.49^{\prime}$
North: 1943887.5081 ${ }^{\text { }}$ East: 6153771.9637'

Segment \#6: Line
Course: $\mathrm{N}^{2} 9^{\circ} 47^{\prime} 59^{\prime \prime} \mathrm{E}$ Length: $37,34^{\prime}$
North: 1943911,6096' East: 6153800,4837

Segment \#7: Line
Course: N40 $08^{\prime} 42^{\prime \prime} \mathrm{W}$ Length: $195.34^{\prime}$
North: 1944060.9305' East: 6153674.5433'

Segment \#8 : Line
Course: N34 $08^{\prime} 42^{\prime \prime} W$ Length: 99.45'
North: 1944143.2373' East: 6153618.7231'

## Segment \#9 : Line

Course: N33 ${ }^{\circ} 36^{\prime} 47^{\prime \prime} \mathrm{W}$ Length: $90.81^{\prime}$
North: 1944218.8634' East: 6153568.4524 ${ }^{\prime}$
Segment \#10 : Line
Course: N40 ${ }^{\circ} 10^{\prime} 46^{\prime \prime} \mathrm{W}$ Length: $60.03^{*}$
North: 1944264,7280' East: 6153529.7220'
Segment \#11: Line
Course: N3456'36"W Length: $120.53^{\prime}$
North; 1944363.5287' East: 6153460.6865'
Segment \#12 : Line
Course: N49 $40^{\prime} 07^{\prime \prime} \mathrm{E}$ Length: 261.99'
North: 1944533.0906 ${ }^{1}$ East: 6153660,4051 ${ }^{4}$
Segment \#13: Curve
Length: 63.92' Radius: 240.00'
Delta: $15^{\circ} 15^{\prime} 37^{\prime \prime}$ Tangent: 32.15'
Chord: 63.73' Course: N57 ${ }^{\circ} 17^{\prime} 56^{\prime \prime} \mathrm{E}$
Course In: $540^{\circ} 19^{\prime} 53^{\prime \prime} \mathrm{E} \quad$ Course Out; ${ }^{\mathrm{N}} 25^{\circ} 04^{\prime} 16^{\prime \prime} \mathrm{W}$
RP North: 1944350.1353' East: 6153815.7349'
End North: 1944567.5212' East: 6153714.0340'
Segment \#14 : Line
Course: N64 ${ }^{\circ} 55^{\text {² }} 44^{\prime \prime} \mathrm{E}$. Length: $66.94^{*}$
North: 1944595.8865' East: 6153774.6670'
Segment \#15 : Curve
Length: 39.22' Radius: 30.00'
Delta: 74 ${ }^{\circ} 54^{\prime} 30^{\prime \prime}$ Tangent: 22.98 ${ }^{\prime}$
Chord: 36.49' Course: $\$ 77^{\circ} 37^{\prime} 01^{\prime \prime} \mathrm{E}$

RP North: 1944568.7130' East: 6153787.3793'
End North: 1944588.0614' East: 6153810.3081'
Segment \#16 : Line
Course: $540^{\circ} 09^{\prime} 46^{\prime \prime} \mathrm{E}$ Length: 733.65'
North: 1944027.3949' East: 6154283.4840'
Segment \#17 : Line
Course: $542^{\circ} 32^{\prime} 40^{\prime \prime} \mathrm{W}$ Length: 211.25'
North: 1943871.7558' East: 6154140.6448 ${ }^{\text { }}$
Segment \#18 : Line
Course: $52^{\circ} 21^{\prime} 46^{\prime \prime} \mathrm{E} \quad$ Length: $425.88^{1}$
North: 1943446.2379' East: 6154158.2024
Perimeter: 3160.64' Area: 10.775acres 469371 Sq. Ft.
Error Closure: $\quad 0.0036$ Course: $559^{\circ} 18^{\prime} 32^{\prime \prime} \mathrm{E}$
Error North: - -0.00182 East: 0.00307
Precision 1: 877141.67

## EXHIBIT "D"

## PRO FORMA TITLE POLICY

(Attached.)

Policy Page 1
Policy Number: 898964

# OWNER'S POLICY OF TITLE INSURANCE 

## First American Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 18 of the Conditions.

## COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
(a) A defect in the Title caused by
(i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
(ii) failure of any person or Entity to have authorized a transfer or conveyance;
(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
(iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
(v) a document executed under a falsified, expired, or otherwise Invalid power of attorney;
(vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
(vii) a defective judicial or administrative proceeding.
(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
(a) the occupancy, use, or enjoyment of the Land;
(b) the character, dimensions, or location of any improvement erected on the Land;
(c) the subdivision of land; or
(d) environmental protection
if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental
police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge,
9. Title being vested other than as stated in Schedule A or being defective
(a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
(b) because the Instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
(i) to be timely, or
(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.

## First American Title Insurance Company



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## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this pollcy, and the Company will not pay loss or damage, costs, attorneys' fees, of expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
(i) the occupancy, use, or enjoyment of the Land;
(ii) the character, dimensions, or location of any Improvement erected on the Land;
(iii) the subdivision of land; or
(iv) environmental protection;
or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify of limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
(a) created, suffered, assumed, or agreed to by the Insured Claimant;
(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Clalmant and not disclosed in witing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
(c) resulting in no loss or damage to the Insured Claimant;
(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Titie.
4. Any ciaim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Titie as shown in Schedule $A$, is
(a) a fraudulent conveyance or fraudulent transfer; or
(b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Titte for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

## CONDITIONS

## 1. DEFINITION OF TERMS

The following terms when used in this policy mean:
(a) "Amount of Insurance"; The amount stated in Schedule $A_{1}$ as may be increased or decreased by endorsement to this policy, increased by Section $8(b)$, or decreased by Sections 10 and 11 of these Conditions.
(b) "Date of Policy": The date designated as "Date of Pollcy" in Schedule A.
(c) "Entity": A corporation, partnershlp, trust, limited liability company, or other similar legal entity.
(d) "Ynsured": The Insured named in Schedule A.
(I) The term "Insured" also includes
(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
(B) successors to an Insured by dissolution, merger, consolldation, distribution, or reorganization;
(C) successors to an Insured by its conversion to another kind of Entity;
(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideratlon conveying the Title
(1) If the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
(2) if the grantee wholly owns the named Insured,
(3) If the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
(4) If the grantee is a trustee or beneflciary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
(ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
(e) "Insured Claimant": An Insured claiming loss or damage.
(f) "Knowledge" or "Known": Actual knowiedge, not constructive knowiedge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
(g) "Land": The land described in Schedule A, and affixed improvements that by faw constitute real property, The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, titie, Interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, Including one evidenced by electronic means authorized by law.
(I) "Public Records": Records establlshed under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Pubilic Records" shall also Include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located,
(j) "Title": The estate or interest descflbed in Schedule A.
(k) "Unmarketable Titie"; Title affected by an aljeged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the deilivery of marketable title.

## 2. CONTINUATION OF INSURANCE

The coverage of thls policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or hoids an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have llability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obilgation secured by a purchase money Mortgage given to the Insured.

## 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly In writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or Interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) If the Titie, as insured, is rejected as Unmarketable Tite. If the Company is prejudiced by the fallure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

## 4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Clamant furnish a signed proof of loss, The proof of loss must describe the defect, lien, encumbrance, or other matter insured agalnst by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss of damage.

## 5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shail provide for the defense of an Insured in fitigation In which any third party asserts a ciaim covered by this policy adverse to the Insured. This obllgation is limited to only those stated causes of action aileging matters insured agalnst by this poilcy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shali not be fiable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this poilcy.
(b) The Company shall have the right, in addition to the options contained in

Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or deslrable to establish the Title, as Insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be llable to the Insured. The exercise of these rights shall not be an admission of liability or walver of any provislon of this policy. If the Company exerclses its rights under this subsection, it must do so diligently.
(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, In its sole discretion, to appeal any adverse judgment or order.

## 6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the rlght to use, at Its option, the name of the insured for thls purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (1) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as Insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obllgations to the Insured under the poilcy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, In whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, If requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, Inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to thls Section shail not be disclosed to others uniess, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or govemmental regulation, shall terminate any liabillty of the Company under thls policy as to that claim.
7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY
In case of a claim under this policy, the Company shall have the following additional options:
(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, altorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obllgated to pay. Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
(b) To Pay or Otherwise Settle With Partles Other Than the Insured or With the Insured Claimant.
(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs,
attorneys' fees, and expenses incurred by the Insured Clamant that were authorlzed by the Company up to the time of payment and that the Company is obligated to pay.
Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

## 8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.
(a) The extent of llabllity of the Company for loss or damage under this policy shall not exceed the lesser of
(i) the Amount of Insurance; or
(II) the difference between the value of the Title as insured and the value of the Titte subject to the risk insured against by thls policy.
(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
(i) the Amount of Insurance shall be Increased by 10\%, and
(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

## 9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, In a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a flnal determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

## 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

## 11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Titte, and the amount so paid shall be deemed a payment to the Insured under this policy.

## 12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shail be made within 30 days.

## 13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transactlon or litigation involving these rights and remedies.
If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

Policy Number: 898964
(b) The Company's tight of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.
14. ARBITRATION - NOT AVAILABLE IN LOUISIANA

Etther the Company or the Insured may demand that the claim or controversy shall be submitted to arbitratlon pursuant to the Title Insurance Arbitration Rules of the American Land Titte Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may Include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this pollcy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $\$ 2,000,000$ or less shall be arbitrated at the option of either the Company or the Insured, All arbitrable matters when the Amount of Insurance is in excess of $\$ 2,000,000$ shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.
15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT
(a) This poilicy together with all endorsements, If any, attached to it by the Company is the entire policy and contract between the Insured and the Company, In Interpreting any provision of this policy, this policy shall be construed as a whole.
(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to thls policy.
(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressiy states, it does not (i) modify any of the terms and provisions of the policy, (il) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

## 16. SEVERABILITY

In the event any provision of this pollcy, In whole or in part, is held invalid or unenforceable under applicable law, the pollcy shall be deemed not to include that provision or such part heid to be invalid, but all other provisions shall remain in full force and effect.

## 17, CHOICE OF LAW; FORUM

(a) Cholce of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located, Therefore, the cout or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Titte that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be flled only In a state or federal court within the United States of America or its territorles having appropriate jurisdiction.

## 18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 1 First American Way, Santa Ana, CA 92707, Attn: Claims Department.

## POLICY OF TITLE INSURANCE



Pr, ,
Pre policy page 5 PRAA
ALTA Owner's Policy (6-17-06)

## SCHEDULE A

## First American Title Insurance Company

Name and Address of the issuing Title Insurance Company:
First American Title Insurance Company
1737 North First Street, Suite 500
San Jose, CA 95112

File No.: NCS-898964-SC
Policy No.: 898964
Address Reference: 525 West Santa Clara Street, San Jose, CA
Amount of Insurance: $\$$
Date of Policy: $\qquad$ 2018 at $\qquad$

1. Name of Insured:

Google LLC, a Delaware limited liability company
2. The estate or interest in the Land that is insured by this policy is:

Fee simple
3. Title is vested in:

Google LLC, a Delaware limited liability company
4. The Land referred to in this policy is described as follows:

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being all of Parcels $A, B, X$ and $Y$ as described in that certain Grant Deed recorded on May 14, 1935 in Book 730, Page 255 of Official Records, Santa Clara County, a portion of the land as described in that certain Grant Deed recorded on April 10, 1974 in Book 0872, Page 77 of Official Records, Santa Clara County, all that land as described in that certain Grant Deed recorded on April 10, 1974 in Book 0872, Page 79 of Official Records, Santa Clara County, all that land as described in that certain Grant Deed recorded on April 10, 1974 in Book 0872, Page 81 of Official Records, Santa Clara County, all that land as described in that certain Grant Deed recorded on June 12, 1974 in Book 0939, Page 700 of Official Records, Santa Clara County, and a portion of the land as described in that certain Quitclaim Deed recorded on June 26, 2003 as Document No. 17140351 of Official Records, Santa Clara County, said above described property being shown on that certain Record of Survey filed for record on, in Book of Maps at Pages, Santa Clara County Records, and being more particularly described as follows:

Commencing at the intersection of the westerly line of North Autumn Street with the northerly right of way line of West Santa Clara Street as shown on said Record of Survey;

Thence along said northerly right of way line South $87^{\circ} 38^{\prime} 14^{\prime \prime}$ West, 489.94 feet to the Point of Beginning;

Thence continuing along said northerly right of way line South $87^{\circ} 38^{\prime} 14^{\prime \prime}$ West, 289.41 feet to a point on the easterly line of the lands of Peninsula Corridor Joint Powers Board as shown on said Record of Survey;

Thence along said easterly line the following ten (10) courses and distances:

1. North $13^{\circ} 53^{\prime} 49^{\prime \prime}$ West, 162.78 feet;
2. North $6^{\circ} 00^{\prime} 56^{\prime \prime}$ West, 142.79 feet;
3. North $14^{\circ} 47^{\prime} 22^{\prime \prime}$ West, 144.81 feet;
4. North $24^{\circ} 39^{\prime} 45^{\prime \prime}$ West, 14.49 feet;
5. North $49^{\circ} 47^{\prime} 59^{\prime \prime}$ East, 37.34 feet;
6. North $40^{\circ} 08^{\prime} 42^{\prime \prime}$ West, 195.34 feet;
7. North $34^{\circ} 08^{\prime} 42^{\prime \prime}$ West, 99.45 feet;
8. North $33^{\circ} 36^{\prime} 47^{\prime \prime}$ West, 90.81 feet;
9. North $40^{\circ} 10^{\prime} 46^{\prime \prime}$ West, 60.03 feet;
10. North $34^{\circ} 56^{\prime} 36^{\prime \prime}$ West, 120.53 feet to a point in the southeasterly right of way line of Julian

Street as shown on said Record of Survey;
Thence along said southeasterly right of way line the following four (4) courses and distances:

1. North $49^{\circ} 40^{\prime} 07^{\prime \prime}$ East, 261.99 feet;
2. Along a curve to the right having a radius of 240.00 feet, through a central angle of $15^{\circ} 15^{\prime} 37^{\prime \prime}$ for an arc distance of 63.92 feet;
3. North $64^{\circ} 55^{\prime} 44^{\prime \prime}$ East, 66.94 feet;
4. Along a curve to the right having a radius of 30.00 feet, through a central angle of $74^{\circ} 54^{\prime} 30^{\prime \prime}$ for an arc distance of 39.22 feet to a point on the southwesterly right of way line of Montgomery Street as shown on said Record of Survey;

Thence along said southwesterly right of way line South $40^{\circ} 09^{\prime} 46^{\prime \prime}$ East, 733.65 feet;
Thence leaving said southwesterly right of way line South $42^{\circ} 32^{\prime} 40^{\prime \prime}$ West, 211.25 feet;
Thence South $2^{\circ} 21^{\prime} 46^{\prime \prime}$ East, 425.88 feet to the Point of Beginning.

APN: 259-28-031 and 259-28-041 and 259-28-043 (Portion) and 259-28-044
NOTICE: This is a pro-forma policy furnished to or on behalf of the party to be insured. It neither reflects the present status of title, nor is it intended to be a commitment to insure. The inclusion of endorsements as part of the pro-forma policy in no way evidences the willingness of the Company to provide any affirmative coverage shown therein.

There are requirements which must be met before a final policy can be issued in the same form as this pro-forma policy. A commitment to insure setting forth these requirements should be obtained from the Company.

## SCHEDULE B

File No.: NCS-898964-SC
Policy No.: 898964

## EXCEPTIONS FROM COVERAGE

This Policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. General and special taxes and assessments for the fiscal year 2018-2019 are exempt. If the exempt status is terminated an additional tax may be levied. A.P. No.: 259-28-031 and 259-28041 and 259-28-043 and 259-28-044 .
2. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code, arising as a result of a change in ownership or new construction occurring on or after the Date of Policy.
3. An easement for existing sewer line and access to the existing sewer line and the right to connect thereto and incidental purposes, recorded January 10, 1975 in Book B239, Page 736 of Official Records.
In Favor of:
Donald W. Anderson and Evelyn Anderson, his wife, and Robert H. Geisler, a single man

Affects:
Refer to said document for full particulars.
4. The terms and provisions contained in the document entitled "Memorandum of Management Agreement" recorded April 07, 1992 as Instrument No. 11305489, in Book M129, Page 1451 of Official Records.

As amended by that certain Amendment to Memorandum of Management Agreement recorded August 16, 2018 as Instrument No. 24004426, Official Records.
5. A Deed of Trust to secure an original indebtedness of $\$ 35,000,000.00$ recorded February 22, 1993 as Instrument No. 11784104, in Book M635, Page 1650 of Official Records.
Dated: February 19, 1993
Trustor: San Jose Arena Management Corp., a California corporation Trustee: First American Title Insurance Company, a California corporation Beneficiary: Nationsbank of North Carolina, National Association, as agent for and on behalf of Nationsbank of North Carolina, National Association, Comerica Bank-California and the Fuji Bank, LTD., San Francisco Agency
6. The interest, if any, of Southern Pacific Transportation Co., by reason of a gap between Parcels 1 and 2 described in Final Order of Condemnation:
Recorded: June 27, 1995
Book: N898
Page: 567
Affects: Portion of APN 259-28-044

Policy Number: 898964
7. The terms and provisions contained in the document entitled "Covenant to Restrict Use of Property Environmental Restriction" recorded May 23, 2003 as Instrument No. 17062264 of Official Records.
8. The following matters disclosed by an ALTA/NSPS survey made by Kier \& Wright Civil Engineers \& Surveyors, Inc. on June 27, 2018, last revised $\qquad$ 2018, designated Job No. A18056:

NONE
9. The terms and provisions contained in the document entitled "Grant Deed" recorded May 14, 1935 as Book 730, Page 225 of Official Records.

End of Schedule B

## ENDORSEMENT

## Attached to Policy No. 898964

## Issued by

## First American Title Insurance Company

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

American Land Title Association
Endorsement 8.2-06 (Commercial Environmental Protection Lien)
Adopted 10/16/08

# COVENANTS, CONDITIONS AND RESTRICTIONS IMPROVED LAND - OWNER'S POLICY ENDORSEMENT <br> <br> Issued by <br> <br> Issued by <br> First American Title Insurance Company 

Attached to Policy No.: 898964

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only,
a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
b. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
3. The Company insures against loss or damage sustained by the Insured by reason of:
a. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
b. Enforced removal of an Improvement as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
a. any Covenant contained in an instrument creating a lease;
b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
c. except as provided in Section 3.c, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls.

Policy Number: 898964

Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

## ENDORSEMENT

## Attached to Policy No. 898964

## Issued by

## First American Title Insurance Company

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) Parcel One of the Land does not abut and have both actual vehicular and pedestrian access to and from $\mathbf{N}$. Montgomery Street, W. St. John Street, N. Autumn Street and W. Santa Clara Street (the "Street(s)"), (ii) the Street(s) is/are not physically open and publidy maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that/those portion(s) of the Street(s) abutting Parcel One of the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

## American Land Title Association

Endorsement 17-06 (Access and Entry)
Adopted 6/17/06

Form No 140206

## ENDORSEMENT

## Attached to Policy No. 898964

Issued by

## First American Title Insurance Company

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) Parcel Three of the Land does not abut and have both actual vehicular and pedestrian access to and from $\mathbf{N}$. Montgomery Street (the "Street(s)"), (ii) the Street(s) is/are not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that/those portion(s) of the Street(s) abutting Parcel Three of the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[^1]
## ENDORSEMENT

## Attached to Policy No. 898964

## Issued by

## First American Title Insurance Company

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be a portion of that land identified on the survey made by Kier \& Wright Civil Engineers \& Surveyors, Inc. dated June 27, 2018, last revised $\qquad$ 2018, and designated Job No. A18056.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[^2]
## ENDORSEMENT

## Attached to Policy No. 898964

## Issued by

## First American Title Insurance Company

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the subdivision statutes and local subdivision ordinances applicable to the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

American Land Title Association
Endorsement 26-06 (Subdivision)
Adapted 10/16/08

# POLICY AUTHENTICATION ENDORSEMENT 

## Issued by

## First American Title Insurance Company

Attached to Policy No.: 898964

When the policy is issued by the Company with a policy number and Date of Policy, the Company will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance with the Conditions.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Date: $\qquad$ 2018

First American Title Insurance Company

 50trobry

## ENDORSEMENT

## Attached to Policy No. 898964

Issued by

## First American Title Inṣurance Company

The policy is amended by deleting paragraph 14 of the Conditions.
This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

## First American Title

## Privacy Information

We Are Committed to Safeguarding Customer Information
In order to better serve your needs now and In the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such Information - partcularly any personal or financlal information. We agree that you have a right to know how we will utilize the personal information you provide to us, Therefore, together with our subsidiaries we have adopted this Privacy Pollcy to govern the use and handling of your personal information.

## Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity, First American has also adopted broader guldelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

## Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may coliect include:

- Information we receive from you on applications, forms and in other communicatlons to Us , whether in writing, In person, by telephone or any other means;
- Information about your transactions with us, our afiliated companles, or others; and

Information we receive from a consumer reporting agency.
Use of Informatlon
We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonafiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such Information indefinltely, Including the period after which any custorner relatlonship has ceased. Such Information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal informatlon isted above to one or more of our afflliated compantes. Such affiliated companiles include financlal service providers, such as title insurers, property and casualty nonpubic personal information issted above to one or more of our aifliated compantes. such affiliated companies include financial service providers, such as titie insurers, property and casualty
Insurers, and trust and Investment advisory companles, or companles involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as descibed above, to companies that perform marketing services on our behaif, on behalf of our affilated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

## Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

## Confidentiality and Security

We will use our best efforts to ensure that no unauthorized partles have access to any of your Information. We restrict access to nonpubilc personal information about you to those individuals and entitles who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and In accordance with thls Privacy Pollcy and First American's Falt Information Values, We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

## Information Obtained Through Our Web Slte

First American Financial Corporation is senstive to privacy lssues on the Internet, We believe it is important you know how we treat the information about you we recelve on the internet.
In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself, Our Web servers collect the domaln names, not the e-mali addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site,
There are times, however, when we may need Information from you, such as your name and emall address. When information is needed, we wlll use our best efforts to let you know at the time of coliection how we will use the personal Information. Usually, the personal information we collect is used only by us to respond to your Inquiry, process an order or aliow you to access specific account/profle Information. If you choose to share any personal information with us, we will only use it in accordance with the policies outined above.

## Business Relationships

First American Financia! Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies
Some of First American's Web sites may make use of "cookie" technofogy to measure site activity and to customize information to your personal tastes. A cookle is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.
FirstAm.com uses stored cookles. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

## Falr Information Values

Fairness We consider consumer expectations about their privacy in all our businesses, We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy,
Public Record We believe that an open pubilc record creates slgnificant value for society, enhances consumer choice and creates consumer opportunity, We actively support an open public record and emphasize its importance and contribution to our economy
Use We belleve we should behave responslbly when we use information about a consumer in our business. We will obey the laws governlng the collection use and dissemination of data.
Accuracy We will take reasonable steps to heip assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the pubjic record, we cannot correct inaccurate information, we will take all reasomable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.
Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our Industry to collect and use information in a responsible manner. Securlty We will maintain eppropriate facilitles and systems to protect against unauthorized access to and corruption of the data we maintain.

## EXHIBIT "E"

## DOCUMENTS DELIVERED / DISCLOSURES TO BUYER

1. Documents that are available at http://geotracker.waterboards.ca.gov
2. Site-Wide Management Plan for San Jose Arena Complex and Guadalupe Park Confluence West Site (NTP \#69) by Rust Environment and Infrastructure Inc. (Human Health Risk Assessment and Site-Wide Management Plan, including deed restrictions and "As-Built" Drawings) dated in 1997.
3. Ambient Air Monitoring Results, San Jose Multipurpose Arena, by RRM, Inc. dated in 2004.
4. Phase I Environmental Site Assessment (120 South Montgomery Street and 530 West San Fernando Street) by Lowney Associates dated in 1995 (Project No. 2184-1D).
5. Soil and Ground Water Quality Evaluation (105 South Montgomery Street) by TRC Lowney dated January 16, 2006 (Project No. 2814-1H).
6. Phase I Environmental Site Assessment (150 South Montgomery Street) by Lowney Associates dated in 2005 (Project No. 2184-1D).
7. Phase I Environmental Site Assessment (645 Park Avenue) by Lowney Associates dated in 2005 (Project No. 2184-1D).
8. Soil and Ground Water Quality Evaluation (510 West San Fernando Street and 115 South Autumn Street) by TRC Lowney dated May 18, 2006 (Project No. 2184-1H).
9. Case Closure Letter and Memorandum for Butcher Electric Facility, 510 West San Fernando Street, by Santa Clara Valley Water District dated March 30, 1992.
10. Underground Storage Tank Removal report by TRC ( 510 West San Fernando Street and 115 South Autumn Street) dated December 9, 2009 (Project No. 162160/2184-5).

## EXHIBIT "F"

## CONCEPTUAL DESCRIPTION AND DEPICTION OF STREET VACATIONS AND LOT LINE ADJUSTMENTS FOR LOTS A, B AND C

See Exhibit "A"; subject to modification in accordance with a Parking Agreement Amendment.

## EXHIBIT "G"

## FORM OF CITY ROFO PSA

(Attached.)

## PURCHASE AND SALE AGREEMENT <br> AND JOINT ESCROW INSTRUCTIONS <br> [INSERT PROPERTIES SUBJECT TO ROFO]

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (the "Agreement"), is dated as of __, 20_("Effective Date") and is entered into by and between GOOGLE LLC, a Delaware limited liability company ("Seller") and the CITY OF SAN JOSE, a California municipal corporation ("Buyer"). Buyer and Seller are sometimes collectively referred to herein at the "parties."

## RECITALS

A. Seller is the owner of the land described on Exhibit "A" attached hereto [INSERT PROPERTIES SUBJECT TO ROFO] (the "Property").
B. Buyer wishes to acquire the Property, and Seller is willing to sell the Property to Buyer, upon and subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

## ARTICLE 1. CERTAIN DEFINITIONS

The following capitalized terms as used in this Agreement shall have the respective meanings set forth below:

Section 1.1 Escrow Holder and Title Company shall mean First American Title Company located at 1737 North First Street, Suite 500, San Jose, California 95112.

Section 1.2 Grant Deed shall mean a grant deed in the form attached hereto as Exhibit "B".

Section 1.3 Hazardous Materials means any chemical, material or substance now or hereafter defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, extremely hazardous waste, restricted hazardous waste, toxic substances, pollutant or contaminant, imminently hazardous chemical substance or mixture, hazardous air pollutant, toxic pollutant, or words of similar import under any local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto applicable to the Property, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 1801, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.; and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 , et seq. ("RCRA"). The term "Hazardous Materials" shall also include any of the following: any and all toxic or hazardous substances, materials or wastes listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances ( 40 CFR Part 302) and in any and all amendments thereto in effect as of the Close of Escrow; oil, petroleum, petroleum products (including, without limitation, crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas or synthetic gas
usable for fuel, not otherwise designated as a hazardous substance under CERCLA; any substance which is toxic, explosive, corrosive, reactive, flammable, infectious or radioactive (including any source, special nuclear or by-product material as defined at 42 U.S.C. 2011, et seq.), carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; asbestos in any form; urea formaldehyde foam insulation; transformers or other equipment which contain dielectric fluid containing levels of polychlorinated byphenyls; radon gas; firefighting foams such as, but not limited to, sodium alkyl sulfate, fluorosurfactant, fluorotelomers, perfluorooctanoic acid, or perfluorooctanesulfonic acid or any other chemical, material or substance (i) which poses a hazard to the Property, to adjacent properties, or to persons on or about the Property, (ii) which causes the Property to be in violation of any of the aforementioned laws or regulations, or (iii) the presence of which on or in the Property requires investigation, reporting or remediation under any such laws or regulations.

## ARTICLE 2. PURCHASE AND SALE OF PROPERTY.

Section 2.1 Sale of the Property by Seller to Buyer; Purchase Price. Seller hereby agrees to sell the Property to Buyer, and Buyer hereby agrees to buy the Property, for the sum of . $\ldots \quad$ and $\mathrm{No} / 100$ Dollars (\$__.00) (the "Purchase Price").

Section 2.2 Escrow.
Section 2.2.1 Opening of Escrow. Within five (5) business days after the Effective Date, Buyer and Seller shall deliver a copy of this executed Agreenent to Escrow Holder and will open an escrow (the "Escrow") with the Escrow Holder for the conveyance of the Property to Buyer.

Section 2.2.2 Close of Escrow. "Close of Escrow" or "Closing" means the date Escrow Holder causes the Grant Deed to be recorded in the Official Records of the County of Santa Clara. Close of Escrow shall occur within thirty (30) days after the Effective Date (the "Outside Date"). If for any reason other than a default by Seller or Buyer the Closing does not occur on or before the Outside Date, this Agreement shall automatically terminate, unless extended in writing by both parties (the "Parties"), and all documents and monies previously deposited into the Escrow shall be promptly returned to the appropriate Party, and each Party shall pay one-half $(1 / 2)$ of any Escrow charges and fees in connection with such termination. If the Closing does not occur due to a default by a Party, the defaulting party shall pay all escrow and title cancellation changes.

Section 2.3 Conditions of Buyer's Obligations. The following are conditions precedent to Buyer's obligation to purchase the Property (collectively, "Buyer's Contingencies"), which may be waived in writing in whole or in part by Buyer:
(i) At the Closing, the issuance of the Title Policy (defined in Section 2.5 ) to Buyer, which will insure Buyer's fee simple interest in the Property in the amount of the Purchase Price.
(ii) As of the Closing, the absence of an Event of Default by Seller hereunder.
(iii) As of the Closing, the representations and warranties of Seller set forth in Section 3.1 below shall be true and correct in all material respects.

Section 2.4 Conditions of Seller's Obligations. The following are conditions precedent to Seller's obligation to sell the Property (collectively, "Seller's Contingencies"), which may be waived in writing in whole or in part by Seller:
(i) As of the closing, the absence of an Event of Default by Buyer hereunder;

Section 2.5 Title Policy. Escrow Holder shall, following the recording of the Grant Deed, provide Buyer with an ALTA extended coverage policy of title insurance in the amount of the Purchase Price, issued by the Title Company, showing the title to the Property vested in Buyer, subject only to the title exceptions that existed as of the Effective Date (the "Title Policy"). Seller shall on or before the Close of Escrow remove any liens encumbering the Property except for the lien of ad valorem real property taxes and general and special assessment not yet due and payable and any liens created by Buyer.

Section 2.6 Deposit of Documents and Funds In Escrow. Seller and Buyer, as applicable, hereby covenant and agree to deliver at least one (1) day prior to the Close of Escrow the following instruments, documents, and funds, the delivery of each of which shall be a condition to the Close of Escrow.

Section 2.6.1 Seller shall deliver to Escrow:
(i) an original of the Grant Deed, duly executed by Seller and acknowledged;
(ii) a FIRPTA affidavit and a California form 593-C (indicating that no withholding is required); and
(iii) such proof of Seller's authority and authorization to enter into this transaction as the Title Company may reasonably require in order to issue the Title Policy, including Title Company's standard owner's affidavit.

Section 2.6.2 Buyer shall deliver to Escrow:
(i) the Purchase Price;
(ii) any additional funds that are required to pay for costs and expenses payable by Buyer hereunder;
(iii) such proof of Buyer's authority and authorization to enter into this transaction as the Title Company may reasonably require to issue the Title Policy.

Section 2.7 Authorization to Record Documents and Disburse Funds. Escrow Holder shall record the Grant Deed, and disburse the funds and distribute the documents called for
hereunder upon the Close of Escrow (with the FIRPTA affidavit and California form 593-C) provided each of the following conditions has then been fulfilled:

Section 2.7.1 The Title Company is irrevocably committed to issue in favor of Buyer the Title Policy, with a liability amount equal to the Purchase Price, showing fee simple title to the Property vested in Buyer, subject only to the applicable title exceptions set forth in the Pro Forma Title Policy;

Section 2.7.2 Seller and Buyer shall have deposited in Escrow the documents and funds required to be deposited in Escrow pursuant to Section 2.6.1 and 2.6.2.

Unless otherwise instructed in writing, Escrow Holder is authorized to record at the Close of Escrow any instrument delivered to Escrow Holder if necessary or proper for the issuance of the Title Policy.

## Section 2.8 Escrow Charges and Prorations.

Section 2.8.1 Seller shall pay for fifty percent (50\%) of all local (City of San Jose) documentary transfer taxes, all County of Santa Clara transfer taxes, all recording fees (if any), fifty percent $(50 \%)$ of the escrow fees, and the premium for the standard coverage portion of the Title Policy. Buyer shall pay the premiums for all extended title insurance coverage and endorsements, fifty percent ( $50 \%$ ) of the local (City of San Jose) documentary transfer taxes, and fifty percent ( $50 \%$ ) of the escrow fees.

Section 2.8.2 Assessments shall be apportioned/prorated with respect to the Property as of I2:01 a.m., on the day on which the Close of Escrow occurs, as if Buyer were vested with title during the entire day upon which the Close of Escrow occurs. The parties acknowledge that Seller is exempt from property taxes and no property taxes shall be allocated to Seller.

Section 2.9 Brokers' Commissions. Buyer represents and warrants to Seller that Buyer has used no broker, agent, finder or other person in connection with the transaction contemplated hereby to whom a brokerage or other commission or fee may be payable. Seller represents and warrants to Buyer that Seller has used no broker, agent, finder or other person in connection with the transaction contemplated hereby to whom a brokerage or other commission or fee may be payable. Each party indemnifies and agrees to defend and hold the other harmless from any claims, liabilities, damages, losses, costs and expenses resulting from its breach of its representations and warranties in this Section.

## ARTICLE 3. PROPERTY CONDITION; HAZARDOUS MATERIALS

Section 3.1 AS-IS. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer, as of the date of this Agreement and as of the Close of Escrow:

Section 3.1.1 Authority. Seller has the full power and authority to execute, deliver and perform this Agreement and all documents to be executed at the Close of Escrow pursuant to this Agreement (the "Closing Documents"). The individual(s) executing this Agreement and the Closing Documents on behalf of Seller have the full power and authority to bind Seller thereto. Seller has taken all necessary actions and has obtained all necessary authorization actions to execute, deliver and perform this Agreement and the Closing Documents.

Section 3.1.2 Violations of Law. To Seller's actual knowledge without investigation or inquiry, neither the Property nor the use thereof is in violation of any applicable laws, except as set forth on Schedule $X$ attached hereto.

Section 3.1.3 Hazardous Materials. Except as disclosed in the environmental reports set forth on Schedule $X$ attached hereto, Seller has not received any written notice regarding Hazardous Materials existing in, on or under the Property.

Section 3.1.4 Litigation. There is no litigation, arbitration or other legal or administrative action or proceeding (including, without limitation, any condemnation proceeding) pending and served, against or involving Seller and related to the Property, except as set forth on Schedule X attached hereto.

Section 3.1.5 Leases. Except as set forth on Schedule $X$ attached hereto, Seller is not a party to any lease, license or other agreement for the occupancy or use of the Property or any portion thereof that would be binding upon the Property from and after the Close of Escrow.

Section 3.1.6 Contracts. Seller is not currently a party to any contracts or other agreements with respect to the operation or maintenance of or the provision of services to the Property or any portion thereof that would be binding upon the Property from and after the Close of Escrow, except as set forth on Schedule X attached hereto (the agreements disclosed on Schedule X being referred to herein as the "Existing Contracts"). With respect to the Existing Contracts, if any: (i) Seller has provided Buyer with complete copies of the Existing Contracts and all amendments thereto to the extent they are in Seller's possession or control; and (ii) to Seller's actual knowledge, there are no uncured defaults existing under the Existing Contracts, except as set forth on Schedule $X$ attached hereto.

Seller's representations and warranties shall survive the Closing for period of one (1) year. If an action is not commenced by Buyer agamst Seller within such period, then no such action on the express representation and warranty may be brought by Buyer.

Section 3.2 AS IS. Buyer is acquiring the Property in its "AS-IS" condition. Except for the express representations and warranties of Seller in this Agreement, Seller makes no representations or warranties, express or implied, whatsoever to Buyer as to the condition of the Property, including but not limited to whether the Property contains any Hazardous Materials, or the suitability of the Property for the purposes for which it is acquired by Buyer. If the Property is not in a condition suitable for the use or uses to which they shall be put, then it is the sole responsibility and obligation of Buyer to take such action (or cause another responsible or obligated party to take such action) as may be necessary to place the Property in a condition suitable to Buyer. Buyer acknowledges and agrees specifically that Seller shall have no responsibility or obligation with respect to the suitability of the Property for the purposes for which it is acquired by Buyer or the existence of any Hazardous Materials on, under, in or about the Property. Buyer is responsible for any claims brought by its invitees, occupants, lessees and/or persons or entities who acquire interests in the Property or airspace (such as condominium owners) during Buyer's period of ownership of the Property (or the period of ownership of any entity owned directly or indirectly in whole or in part by Buyer or any entity who owns directly or indirectly any interest in Buyer; each, an "Affiliate") regarding the condition of the Property as of the Closing
and shall install, to the extent required by law or governmental order, vapor barriers in any new buildings constructed on the Property by Buyer or any Affiliate.

Section 3.3 Disclosure. Buyer acknowledges that the Seller has delivered to Buyer the documents described on Exhibit "C". Seller intends that such delivery constitutes, among other things, written notice of the release of hazardous materials under California Health and Safety Code Section 25359.7.

Section 3.4 Buyer Indemnification. If the Closing occurs, then Buyer agrees to indemnify, protect, defend (with counsel selected and engaged by Buyer which counsel does not have a conflict of interest with Seller in undertaking such defense; if Seller elects to retain independent counsel, it shall do so at Seller's own cost and expense) and hold harmless the Seller, including, but not limited to, Seller's servants, employees, agents, representatives, successors; administrators, assigns, and attorneys (collectively, "Seller Parties"), and of each of them alone, from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, damage, or expense, resulting from, arising out of, or based upon a third-party claim based on the environmental condition of (i.e., Hazardous Materials on) the Property, except for (i) any Hazardous Materials first released onto the Property by a Seller Party after the Closing; or (ii) any Hazardous Materials which migrate to or under the Property after the Close of Escrow to the extent originating from any real property owned by Seller from and after the Closing. Notwithstanding anything to the contrary in this Agreement, in no event will Buyer's indemnification obligations include diminution in value claims of Seller.

Section 3.5 Release. Except as expressly provided herein, Buyer hereby waives, releases, acquits, and forever discharges Seller, and Seller's agents, directors, officers, and einployees to the maximum extent permitted by law, of and from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs, expenses, compensation, attorneys' fees, consultants' fees and costs and expert fees (collectively "Claims") whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that it now has or that may arise in the future because of or in any way growing out of or connected with the physical condition of the Property, including without limitation, the physical and (environmental condition of the Property or any law or regulation applicable thereto, including, without limitation, any Claim or matter (regardless of when it first appeared) relating to or arising from (i) the presence of any environmental problems, or the use, presence, storage, release, discharge, or migration of Hazardous Materials on, in, under or around the Property regardless of when such Hazardous Materials were first introduced in, on or about the Property, (ii) any patent or latent defects or deficiencies with respect to the Property, (iii) any and all matters related to the Property or any portion thereof, including without limitation, the condition and/or operation of the Property and each part thereof, and (iv) the presence, release and/or remediation of asbestos and asbestos containing materials in, on or about the Property regardless of when such asbestos and asbestos containing materials were first introduced in, on or about the Property. Buyer hereby waives and agrees not to commence any action, legal proceeding, cause of action or suit in law or equity, of whatever kind or nature, including, but not limited to, a private right of action under the federal superfund laws, 42 U.S.C. Section 9601 et seq. and California Health and Safety Code section 25300 et seq. (as such laws and statutes may be amended, supplemented or replaced from time to time), directly or indirectly, against Seller or Seller's agents, directors, officers, and employees in connection with the Property, except (i) matters arising from Seller's fraud, intentional misrepresentation, or concealment of a material
fact about Hazardous Materials on or under the Property not known to Buyer; (ii) any claims arising from a breach of Seller's express covenants, obligations, representations or warranties set forth in this Agreement, or in any documents delivered by Seller under Section 2.6 above; (iii) any claims for personal injury, death or damage to personal property based on events prior to Closing and not covered by Buyer's indemnity under Section 4.1(i); and (iv) any Hazardous Materials which migrate to or under the Property after the Close of Escrow to the extent originating from any real property owned by Seller from and after Closing (collectively, "Excluded Claims").

IT IS UNDERSTOOD AND AGREED THAT EXCEPT FOR ANY EXPRESS REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN THIS AGREEMENT, SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT UPON THE CLOSING DATE SELLER SHALL SELL AND CONVEY THE PROPERTY TO BUYER "IN ITS THEN EXISTING CONDITION AS IS, WHERE IS, WITH ALL FAULTS," BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO MADE OR FURNISHED BY SELLER OR ANY AGENT PURPORTING TO REPRESENT SELLER.

BUYER REPRESENTS TO SELLER THAT BUYER HAS CONDUCTED SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND, ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS MATERIALS ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS. UPON CLOSING, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS, AND BUYER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELĖASED SELLER (AND COUNCIL MEMBERS, BOARD MEMBERS, SELLER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY EXISTING AT OR OCCURRING PRIOR TO CLOSING EXCEPT FOR EXCLUDED CLAIMS. IN CONNECTION THEREWITH, BUYER EXPRESSLY WAIVES

ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES THAT:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BUYER'S INITIALS: $\qquad$
THE RELEASES SET FORTH IN THIS SECTION SHALL SURVIVE CLOSE OF ESCROW AND DELIVERY OF THE GRANT DEED.

## ARTICLE 4. INDEMNITY

Section 4.1 Non Hazardous Materials Indemnity. From and after the Effective Date with respect to claims covered by subsections (i) and (iii) below, and from and after the Closing with respect to claims covered by subsections (ii) and (iv) below, Buyer shall indemnify, defend, protect, and hold harmless Seller and any and all Seller's officers, directors, agents, employees and representatives ("Indemnitees"), from and against all losses, liabilities, claims, damages, penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) and demands of any nature whatsoever (but excluding punitive, consequential and speculative damages), related directly or indirectly to, or arising out of or in connection with
(i) Buyer's investigation of the Property under Article 5 below, excluding the mere discovery of any pre-existing adverse physical or environmental conditions impacting the Property;
(ii) any claims for personal injury or damage to personal property based on any acts, occurrences, omissions or other matters that take place on or with respect to the Property after the Close of Escrow and during Buyer's period of ownership or the period of ownership of any Affiliate (except for acts by Seller); and
(iii) third-party challenges to the validity of this Agreement.

This Section 4 shall not apply to any claims based on or arising out of Hazardous Materials, which are governed solely by Section 3.4. Notwithstanding anything to the contrary in this Agreement, in no event will Buyer's indemnification obligations include diminution in value claims of Seller. The provisions of this Section shall survive the Close of Escrow.
ARTICLE 5. DUE DILIGENCE
Buyer acknowledges that Buyer has had access to the Property under one or more right of entry agreements between Buyer and Seller and has thoroughly inspected the Property.

## ARTICLE 6. EVENTS OF DEFAULT AND REMEDIES

Section 6.1 Events of Default. Any breach of this Agreement by a party which is not cured within five (5) business days after written notice from the other party setting forth the nature of the default and the actions, if any, required to cure such default shall constitute an "Event of Default" by the breaching party.

Section 6.2 Remedies. If any Event of Default by a party occurs, then the other party shall be entitled to all remedies available at law or in equity, including, without limitation, specific performance, it being acknowledged by Seller with respect to a specific performance action that the Property is unique and that monetary damages will not adequately compensate Buyer for its loss of the Property. Nothing contained in this Paragraph shall be deemed to affect or limit defence or indemnity obligations, or rights to attorneys' fees and costs, which shall survive any termination of this Agreement.

Section 6.3 Inaction Not a Waiver of Default. Except as expressly provided in this Agreement to the contrary, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

## ARTICLE 7. GENERAL PROVISIONS

Section 7.1 Construction. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

Section 7.2 Governmental Powers. Nothing contained herein shall be deemed to limit, restrict, amend or modify, or to constitute a waiver or release of, any ordinances, notices, orders, rules, regulations or requirements (now or hereafter enacted or adopted and/or as amended from time to time) of Buyer, or its departments, commissions, agencies and boards and the officers thereof, including, without limitation, any governmental powers, rights, privileges and discretion of Buyer.

Section 7.3 Time of the Essence. Time is of the essence of this Agreement and all Parties' obligations hereunder.

Section 7.4 Notices. Notices, demands and communications between Seller and Buyer shall be deemed sufficiently given if addresses as set forth below and (i) sent by certified mail, postage prepaid, return receipt requested, or (ii) sent by nationally-recognized reputable overnight delivery service for overnight delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses or to such other address as any party may from time to time designate by mail as provided in this Section, and shall be deemed received upon delivery or refusal of delivery, as shown on the return receipt, if sent by certified mail, or one (1) business day after deposit of same with a nationally recognized reputable overnight delivery service for overnight delivery if sent by such a delivery service.

To Buyer: City of San Jose 200 E. Santa Clara Street, 16th Floor San Jose, California 95113<br>Attn:<br>$\qquad$<br>To Seller: Google LLC 1600 Amphitheatre Parkway<br>Mountain View, CA 94043<br>Attn: Vice President, Real Estate and Workplace Services<br>Google LLC<br>1600 Amphitheatre Parkway<br>Mountain View, CA 94043<br>Attn: Legal Department/RE Matters

Section 7.5 Authority of City Manager. The City Manager of Buyer is authorized to give all consents and approvals and sign all documents contemplated hereunder on behalf of Buyer provided they are in writing, and may extend deadlines, and enter into other, non-substantive amendments provided the extensions and amendments are express and in writing.

Section 7.6 Venue. In the event of any litigation hereunder, all such actions shall be instituted in the Superior Court of the County of Santa Clara, State of California, or in an appropriate municipal court in the County of Santa Clara, State of California or an appropriate District Court in the Northern District of California.

Section 7.7 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

Section 7.8 No Right to Assign. Neither party may assign this Agreement without the prior written consent of the other in its sole and absolute discretion.

Section 7.9 Successors and Assigns. Subject to the restrictions on transfers set forth in this Agreement, the provisions hereof shall be binding upon, and shall inure to the benefit of, Seller and Buyer and their successors and assigns.

Section 7.10 No Joint Venture. Nothing contained herein shall be construed to render the parties in any way or for any purpose a partner, joint venture, or associated in any relationship with the other party, nor shall this Agreement be construed to authorize either party to act as agent for the other.

Section 7.11 Waiver. The waiver by Seller or Buyer of any breach by the other party of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. Either party's acceptance of any performance by the other party after the due date of such performance shall not be deemed to be a waiver by either party of any preceding breach by the other party of any term, covenant, or condition of this Agreement, regardless of such party's knowledge of such preceding breach at the time of acceptance of such performance.

Section 7.12 Entire Agreement; Waivers and Amendments. This Agreement, together with all attachments and exhibits hereto and all documents to be executed and delivered pursuant to this Agreement, constitutes the entire understanding and agreement of the parties hereto. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. Any waiver, amendment, or modification of any provision of this Agreement must be in writing and signed by both parties.

Section 7.13 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

Section 7.14 Severability. Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected hereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first above written.

SELLER:
GOOGLE LLC

By: $\qquad$
Print Name:
Title: $\qquad$

BUYER:
CITY OF SAN JOSE

By: $\qquad$
Print Name: $\qquad$
Title: $\qquad$

## ATTEST:

Print Name: $\qquad$
Title: $\qquad$

## APPROVED AS TO FORM:

By:
Print Name:
Title:

## List of Exhibits

Exhibit "A" Legal Description of Land
Exhibit "B" Form of Grant Deed
Exhibit "C" Documents Delivered/Disclosures to Buyer
Schedule X Disclosures

## EXHIBIT "A" <br> LEGAL DESCRIPTION OF THE LAND

The land described herein is situated in the State of California, County of Santa Clara, City of San Jose, described as follows:
[INSERT PROPERTIES SUBJECT TO ROFO]

## EXHIBIT "B"

## FORM OF GRANT DEED

(Attached.)

# RECORDING REQUESTED BY, AND WHEN RECORDED MAIL TO AND MAIL TAX STATEMENTS TO: 

Google LLC

APNs:
This document is exempt from the payment of a recording fee pursuant to Government Code §6103.

City Documentary Transfer Tax: \$ $\qquad$ ; County Documentary Transfer Tax:
\$
Property is in the City of San Jose, County of Santa Clara.
GRANT DEED
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, GOOGLE LLC, a Delaware limited liability company ("Grantor"), hereby GRANTS to the CITY OF SAN JOSE, a municipal corporation ("Grantee"), that certain real property located in the City of San Jose, County of Santa Clara, State of California, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference including all improvements thereon.

SUBJECT TO, a lien to secure payment of general and special real property taxes and assessments, not delinquent; the lien of supplemental taxes assessed pursuant to Chapter 3.5 commencing with California Revenue and Taxation Code Section 75; and

FURTHER SUBJECT TO, any and all matters of record and all matters apparent from an inspection of the Property.

IN WITNESS WHEREOF, the Grantor has executed this Grant Deed as of the date set forth below.

GRANTOR:
GOOGLE LLC, a Delaware limited liability company

By:
Print Name:
Title:

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

## State of California County of Santa Clara

On $\qquad$ before me, $\qquad$
Notary Public, personally appeared
(insert name and title of the officer)
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Exhibit A To Grant Deed
Legal Description

## EXHIBIT "C"

PRO FORMA OWNER'S TITLE POLICY WITH ENDORSEMENTS
(Attached.)

## EXHIBIT "D"

DOCUMENTS DELIVERED/DISCLOSURES TO BUYER

SCHEDULE X (TO ROFO PSA FORM)
DISCLOSURES AND EXCEPTIONS TO SELLER REPRESENTATIONS AND WARRANTIES

## SCHEDULE X

## (Option)

| 3.3 .2 | None |
| :--- | :--- |
| 3.3 .3 | See Exhibit "E" |
| 3.3 .4 | None |
| 3.3 .5 | The Replacement Parking Agreement (and First Amendment thereto) |
| 3.3 .6 | None |
| 3.3 .7 | None |

# FIRST AMENDMENT TO THE SECOND AMENDED AND RESTATED ARENA MANAGEMENT AGREEMENT 

THIS FIRST AMENDMENT TO THE SECOND AMENDED AND RESTATED ARENA MANAGEMENT AGREEMENT ("First Amendment") is executed as of December 4, 2018 ("Execution Date"), by and between CITY OF SAN JOSE, a municipal corporation ("City"), and SAN JOSE ARENA MANAGEMENT, LLC, a Delaware limited liability company ("Manager").

## RECITALS

A. City and Manager (collectively, the "Parties" and individually, a "Party") are parties to that certain Second Amended and Restated San Jose Arena Management Agreement dated as of August 15, 2018 (the "AMA") for the management and operation of a regional multi-purpose sports and entertainment arena and related facilities ("Arena Facilities") owned by City and located in downtown San Jose, California.
B. The Arena Facilities include certain On-Site Parking Facilities, including approximately 228 parking spaces situated at 8 S . Montgomery Street across W. Santa Clara Street from the Arena. This property, also known as "Lot $\mathbf{D}$," is used for public parking, with priority for Arena Event-related parking.
C. City and Google LLC ("Google") are parties to a Purchase and Sale Agreement dated concurrently herewith, for the sale by City to Google of several properties formerly owned by the Successor Agency to the Redevelopment Agency of the City of San Jose, including Lot D.
D. Effective as of the close of escrow under the Purchase and Sale Agreement, and as a condition to such closing, Manager and Google are entering into a Parking Lease (the "Lot D Lease") as described in Section 18.2.2 of the AMA. Pursuant to the Lot D Lease, Manager will continue to use Lot D for parking until construction work on Lot D (for either BART or another project) is ready to commence.
E. As a condition of the Lot D Lease, and in order to complete the sale of Lot D to Google, City must provide a minimum of 228 new parking spaces within close proximity to the Arena, in order to replace the parking spaces that will be eliminated for the development of Lot D. Such replacement parking will help ensure the continued vitality of the City-owned Arena, recognizing that the Arena is a major anchor for both downtown San Jose and the Diridon Station Area.
F. The Parties now wish to enter into this First Amendment in order to set forth the terms and conditions under which City has agreed to provide such public parking.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, and in further consideration of the terms, covenants and conditions herein contained, the Parties mutually agree as follows:

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T-2844/1575883
First Amendment to Second Amended and
Restated Arena Management Agreement

## SECTION 1. GENERAL EFFECT OF FIRST AMENDMENT.

1.1 Recitals. The foregoing Recitals are hereby restated by reference and incorporated herein as terms and conditions of this First Amendment.
1.2 Closing Date. This First Amendment shall be valid and binding as of the Execution Date set forth above, but the terms and conditions hereof shall not become effective or commence until the date that City conveys Lot D to Google and the Lot D Lease becomes effective (the "Closing Date").

### 1.3 Defined Terms.

1.3.1 Definitions. In the AMA, as amended by this First Amendment, the following terms shall have the meanings given below:
(a) "Delmas East" means the parcels designated as APN 259-38-128 and -142, located on the east side of Delmas Avenue in San Jose, California, and depicted on the map attached hereto as Exhibit A. Currently, the use of Delmas East is controlled by Google, and Google has the right to acquire title to Delmas East.
(b) "Delmas West" means the parcels designated as APN 259-38-036, -039, -040, 041, -042, -109, $-110,-145,-146$, and -148 , located on the west side of Delmas Avenue, and depicted on Exhibit A. Currently, the use of Delmas West is controlled by Google, and Google has the right to acquire title to Delmas West.
(c) "Delmas West Parking" means all parking spaces located on Delmas West as of the Closing Date. Currently there are approximately 324 parking spaces on Delmas West.
(d) "Force Majeure Event" shall have the meaning given in Section 37.1 of the AMA. In addition, for purposes of this First Amendment only, the term "Force Majeure Event" shall include any Project Challenge.
(e) "Lot E" means the parcels designated as APN 259-29-001, -002, -003, -004, -005, $-026,-027,-028,-029$, and -091 , located on the west side of N. Autumn Street in San Jose, California, and depicted on the map attached hereto as Exhibit B. Title to the parcels comprising Lot E is held by a number of parties, including City, Manager, and others. Lot E is the subject of the Settlement Agreement described below.
(f) "Milligan" means the parcels designated as APN 259-29-032, -033, -071, -072, and -102, and a portion of APN 259-29-101, located on the east side of N. Autumn Street, and depicted on Exhibit B. Title to substantially all of the parcels comprising Milligan is currently held by the City.
(g) "Project Challenge" means any effort by a third party to hinder, impede, delay, or otherwise challenge City's right to perform its obligations described in Section 3 below, which challenge is exerted through litigation, arbitration or other process of law.
(g) "Settlement Agreement" means the Settlement Agreement and Release made by and between City, Sharks Sports \& Entertainment LLC, and two Trammell Crow entities, dated December 1, 2016.
1.3.2 Other Capitalized Terms. Capitalized terms used in this First Amendment that are not defined herein shall have the definitions given in the AMA.

## SECTION 2. REPLACEMENT PARKING ON DELMAS WEST.

### 2.1 Additional Approved Location for Replacement Parking.

2.1.1 Manager's Consent. Manager agrees that, pursuant to Section 18.2.2(c) of the AMA, Manager will allow Google to locate Replacement Parking on Delmas West, subject to the satisfaction of the condition precedent described in Section 2.2.1 below.

### 2.1.2 Amendments to Replacement Parking Requirements.

(a) Manager acknowledges that the parking spaces on Delmas West are currently existing (not new), and therefore the provisions of subsection 18.2.2(c)(iii) of the AMA shall not apply to Replacement Parking on Delmas West.
(b) Further, Manager agrees that the parking lot improvements currently existing on Delmas West are adequate to satisfy the specific requirements set forth in subsection 18.2 .2 (c)(ii) of the AMA regarding paving, striping, lighting and other features.
2.2 Covenant to Keep Delmas West Parking Open. Currently, Google causes the Delmas West Parking to be operated as a public parking lot, including for Arena Events. As of the Closing Date, there is no legal requirement for Google to keep Delmas West Parking open for public parking.
> 2.2.1 Operating Covenant in Lot D Lease. As a condition precedent to Manager's agreement to allow Google to locate Replacement Parking on Delmas West, the Lot D Lease must include a covenant from Google that Google will keep all of the Delmas West Parking open (not just the 228 Replacement Parking spaces) for public parking, commencing on the Closing Date and continuing until Google obtains a grading permit for its development project on Delmas West; provided, however, that notwithstanding the issuance of any such grading permit, Google will, at a minimum, keep the Delmas West Parking open until the earlier of the following:
(a) City's completion of its obligation to build-out new parking lots containing at least 408 Available Parking Spaces ( 180 spaces required under the Settlement Agreement and 228 incremental spaces required under this First Amendment) pursuant to the terms and conditions of Section 3 below; OR
(b) Provided that the City is otherwise in compliance with its off-site parking obligations under Section 19 of the AMA, when:
(i) BART service to the Diridon Station area is operational; OR
(ii) Google has constructed at least 500 Available Parking Spaces as part of its development project on Delmas East; provided, however, that if the 500 spaces are shared spaces (i.e., not exclusively reserved for Arena customers) they must be designed such that all 500 vehicles can safely exit from the parking structure onto the public streets within a period of 30 minutes.

### 2.2.2 Amendments to Lot $D$ Lease Requirements.

(a) With respect to the lease or operating agreement for the Delmas West Parking, the provisions of subsections 18.2.2 (d) and (e) of the AMA shall be superseded by the provisions described in Section 2.2.1 above.
(b) Except as expressly set forth in this First Amendment, all other provisions of Section 18.2.2 of the AMA relating to the Lot D Lease or Replacement Parking shall remain unchanged and in full force and effect.

## SECTION 3. CONSTRUCTION OF NEW PARKING SPACES BY CITY

3.1 Acquisition and Improvement of Surface Parking. City hereby covenants, promises and agrees that it will, at its sole cost and expense, acquire ownership or control over all parcels comprising Lot E and Milligan, and complete construction of surface parking lots on those properties, in accordance with the following provisions:

### 3.1.1 Best Efforts; Eminent Domain. City will use best efforts to purchase and/or ground lease all parcels within Lot E or Milligan that it does not currently own or control, as soon as is reasonably possible following the Closing Date.

(a) To the extent is has not already done so, City shall promptly obtain appraisals, make purchase offers, and diligently pursue completion of purchase negotiations with the owners of the applicable parcels. If City is unable to acquire the parcels through such efforts, City staff will promptly seek to obtain the City Council's approval to use the power of eminent domain to complete such acquisitions, and to diligently prosecute such actions to completion.
(b) Nothing herein shall be construed to mean that City will agree or has agreed to exercise its power of eminent domain, which shall remain in the sole discretion of the City Council and may be exercised only after the City has adopted a Resolution of Necessity and complied with all other legal requirements.
3.1.2 Number of Parking Spaces. Each parking lot will contain the maximum number of parking spaces that can reasonably be constructed on each parcel, which the Parties estimate to be approximately 267 parking spaces on Lot E and approximately 297 parking spaces on Milligan, including accessible parking spaces as required by Applicable Construction Codes. Unless otherwise mutually agreed by the Parties, the parking lot layout for Lot E shall conform to the conceptual plan attached hereto as Exhibit C, and the parking lot layout for Milligan shall conform to the conceptual plan attached hereto as Exhibit D.
(a) The parking spaces described above include the 180 parking spaces that City agreed to construct pursuant to the Settlement Agreement.
(b) City will ensure a minimum of 408 new parking spaces will be available, which is the sum of the 180 parking spaces required under the Settlement Agreement, and the 228 parking spaces now located on Lot D.
3.1.3 Level of Improvements. City shall improve each parking lot with asphalt paving, striping, lighting and other features as mutually approved by City and Manager based on the Applicable Parking Standard, and shall provide access and circulation as reasonably approved by Manager. City shall also include Accessible Parking Spaces and related signage as required by Applicable Construction Codes.
3.2 Time for Performance. City covenants, promises and agrees that it shall complete the acquisition and improvement of the new parking lots on Lot E and Milligan as described above within no later than 30 months following the Closing Date, subject only to Force Majeure Events that result in delays that City cannot reasonably avoid, as described below.
3.2.1 Schedule of Performance. Attached to this First Amendment as Exhibit E is a Schedule of Performance, which describes the actions that City shall take in order to complete its obligations under this Section 3. City shall take all actions, pay all sums of money (subject to City Council appropriation of funds), and exert all efforts necessary to accomplish each task by the applicable date set forth in the Schedule of Performance.
(a) City shall keep Manager appraised as to the status of all work to be undertaken by or on behalf of City as described in the Schedule of Performance. At Manager's request, City shall promptly give Manager a progress update advising Manager of the status of all work being undertaken pursuant to this provision.
(b) If City falls behind (or is projected to fall behind) in meeting the Schedule of Performance deadlines, City shall meet and confer with Manager at Manager's request, to discuss ways that City may be able to make up time through commercially reasonable measures.
3.3 Force Majeure Event. Consistent with Section 37.2 of the AMA, the deadlines under the Schedule of Performance shall be extended to the extent that any Force Majeure Event causes a delay that City cannot overcome by taking commercially reasonable measures.
3.3.1 Notice of Delay. City shall notify Manager within ten days of the occurrence of any Force Majeure Event that causes a delay in City's performance. Such notice shall specify the nature of the Force Majeure Event, and the actions that City plans to take, if any, to make up time lost as a result thereof.
(a) The extension of City's performance obligations shall not exceed the length of any delay caused by the Force Majeure Event, which delay cannot be overcome through commercially reasonable measures.
(b) Notwithstanding the foregoing, in the case of a Project Challenge (including without limitation under CEQA), City shall not be required to agree to settle the case based on any mitigation measures or other settlement terms that City deems to be extraordinary.
3.3.2 Alternative Locations. If, as a result of any Project Challenge or inability to remove or relocate historic structure(s), City reasonably determines that it is not feasible to acquire
and/or construct new parking lots on Lot E and Milligan containing at least 408 new parking spaces, City shall notify Manager of the situation and its reasons for such determination.
(a) The Parties shall meet and confer to discuss whether City could fulfill its obligations under this Section 3 by constructing new parking spaces in one or more alternate locations; provided, however, that any alternate location shall be subject to Manager's approval in its sole discretion unless the alternate location has already been approved by Manager pursuant to Attachment No. 12 to the AMA.
(b) If Manager agrees with City to an alternate location for the new parking spaces, the applicable provisions of this Section 3 shall apply to the alternate location.
3.3.3 Minimum Off-Site Parking Requirements. Nothing in this First Amendment shall modify City's Minimum Off-Site Parking Requirements under Section 19 of the AMA. However, all parking spaces that constitute Available Parking Spaces within the new parking lots constructed by City shall count toward the Minimum Off-Site Parking Requirements.
3.3.4 Settlement Agreement. Except as expressly provided in this First Amendment, the Settlement Agreement shall remain unmodified and in full force and effect.

### 3.4 Operation of New Parking Spaces by Manager.

3.4.1 Operating Agreement with Manager. Pursuant to a separate operating agreement, Manager shall operate each of the new parking lots constructed by City as an Off-Site Parking Facility.
(a) Operating revenues will first be applied to pay for Manager's operating expenses for the parking lot, including a reasonable share of management and overhead. Manager shall submit operating budget to City annually for review and approval, which approval will not be unreasonably withheld. The net revenues from such operation shall be paid to City.
3.4.2 Priority for Arena Parking. Each of the new parking lots will be used exclusively for parking, with priority for Arena Event-related parking.
3.4.3 Termination of Operating Agreement. City may terminate the operating agreement with Manager as to any or all parking spaces constructed by City, or cease use of the same for public parking (with priority for Arena Event-related parking), only upon the occurrence of either of the following, and only so long as the City is then in compliance with the Minimum Off-Site Parking Requirements pursuant to Section 19 of the AMA:
(a) BART Service to the Diridon Station area is operational; OR
(b) There are at least 500 new Available Parking Spaces located on Delmas East, provided that if such 500 new spaces are shared spaces (i.e., not exclusively reserved for Arena customers) they must be designed such that all 500 vehicles can safely exit from the parking lot(s) onto the public streets within a period of 30 minutes;
provided, however, that notwithstanding the satisfaction of the above conditions, the development and use of Lot $E$ shall continue to be subject to the Settlement Agreement.

## SECTION 4. MISCELLANEOUS PROVISIONS

4.1 Authority. The persons who have executed this First Amendment represent and warrant that they are duly authorized to execute this First Amendment in their individual or representative capacity.
4.2 Joint Drafting. This First Amendment is the result of the joint efforts and negotiations of the Parties hereto, and no single Party is the author or drafter hereof. The Parties assume joint responsibility for the form and position of each and all of the contents of this First Amendment and they agree that this First Amendment shall be interpreted as though each of the Parties participated in the composition of this First Amendment and each and every part thereof.
4.3 References to "this Agreement." All references in the AMA to "this Agreement" shall hereafter mean and refer to the AMA, as amended by this First Amendment.
4.4 Interpretation. In the event of any conflict or inconsistency between the terms of this First Amendment and the terms of the AMA, the terms of this First Amendment shall control. Except as expressly provided in this First Amendment, the AMA, and each provision thereof, shall remain unmodified and in full force and effect, and constitute a legally valid and binding contract enforceable in accordance with its terms.
[Signatures on following page.]

## SIGNATURES TO FIRST AMENDMENT TO

## SECOND AMENDED AND RESTATED ARENA MANAGEMENT AGREEMENT

IN WITNESS WHEREOF, the Parties have entered into this First Amendment as of the day and year inserted on the first page of this Amendment as the "Execution Date."
"City"

APPROVED AS TO FORM:


ELIZABETH KLOTZ
Sr. Deputy City Attorney

CITY OF SAN JOSE, a California municipal corporation


## "Manager"

SAN JOSE ARENA MANAGEMENT, LLC a Delaware limited liability company

By




## Exhibit C to First Amendment




SAP MILLIGAN LOT LAYOUT
WATRY DESIGN, INC. $\mid$ 2005-0508

## Exhibit E

## Schedule of Performance

|  | Task | Estimated Time and <br> Commencement/Completion Dates |
| :--- | :--- | :--- |
| 1. | Acquisition or Control of Properties. City shall <br> acquire ownership or control over all parcels <br> comprising Lot E and Milligan. | 15 months <br> Commence: December 31, 2018 <br> Complete: March 31, 2020 |
| 2. | Schematic Design. City shall prepare schematic <br> design documents for improvements to <br> parking lots, and confer with Manager as <br> needed to obtain approval. | 2 months <br> Commence: December 31, 2018 <br> Complete: February 28, 2019 |
| 3. | Construction Documents. City shall prepare <br> plans for demolition and parking lot <br> construction, and confer with Manager as <br> needed to obtain approval. | 4 months <br> Commence: February 28, 2019 <br> $65 \%$ Complete: May 31, 2019 <br> 100\% Complete: June 30, 2019 |
| 4. | Environmental Review; Plan Review and | 10 months following 65\% completion of plans <br> (includes time for scoping, writing and <br> circulation) |
|  | Permitting. City shall complete CEQA review, <br> and concurrently complete plan review and <br> permitting (can't go to bid until the CEQA is <br> completed). | Commence: May 31, 2019 <br> Complete: March 31, 2020 |
| 5. | Construction Bid and Award. If required, City <br> shall issue Request for Proposals and Award <br> project. | 3 months <br> Commence: March 31, 2020 <br> Complete: June 30, 2020 |
| 6. | Demolition and Site Preparation. City shall <br> move or demolish existing structures and prep <br> the site for construction. | 2 months <br> Commence: June 30, 2020 <br> Complete: August 31, 2020 |
| 7. | Construction of Parking Lot. City shall <br> construct the parking lots. | 6 months <br> Commence: August 31, 2020 <br> Complete: February 28, 2021 |
| 8. | Contingency Time. Contingency for unknown <br> conditions. | 4 months <br> Final Project Complete: June 30, 2021 |

NOTES:

1. This Schedule of Performance is subject to the provisions of the First Amendment to which it is attached; in the event of any inconsistency, the provisions of the First Amendment shall control.
2. The scheduled tasks will apply independently for Lot E and Milligan; City will complete each task as quickly as reasonably possible on each parking lot independent of the other parking lot.

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and between Sharks Sports \& Entertainment LLC ("Petitioner" or "SSE"), the City of San José and San José City Council ("Respondents" or "City") and Trammell Crow Company, LLC, a Delaware limited liability company and Diridon Station Joint Venture LLC, a Delaware limited liability company (Trammell Crow Company, LLC and Diridon Station Joint Venture LLC shall collectively be referred to herein as "DSJV"), all three parties collectively referred to as the "Parties."

WHEREAS, SSE and the City agree that SSE manages and operates the SAP Center at San José (the "Arena") pursuant to an Arena Management Agreement (as amended from time to time by mutual agreement of SSE and City, the "AMA"); and

WHEREAS, SSE and the City agree that certain property immediately north of the Arena ("Lot E") has been considered an option for additional public parking supply in the City's Diridon Station Area Plan, as shown on the Diridon Station Area Final Land Use Plan attached hereto as Exhibit A and depicted on the Assessor's Parcel Map attached hereto as Exhibit B; and

WHEREAS, DSJV is the owner and/or developer of (i) a project in the City of San José known as the Delmas Avenue Mixed-Use Development Project as described in that certain Planned Development Permit No. PD15-061 ("PD Permit") approved by the City pursuant to Resolution No. 77746 adopted by the San José City Council on May 24, 2016; and (ii) an adjacent historic San Jose Water Company building for which additional development entitlements may be required (collectively, the "Project"); and

WHEREAS, the City analyzed the Project under California's Environmental Quality Act pursuant to that certain Addendum ("Addendum") to the 2004 San José Water Land Company Planned Development Rezoning Final EIR, the 2005 Downtown Strategy 2000 Final Program EIR, the 2011 Envision San José 2040 General Plan Final Program EIR, the 2015 Envision San José General Plan 2040 Supplemental EIR (which Addendum together with the PD Permit and anticipated Water Company building entitlements are collectively referred to as the "Project Approvals"); and

WHEREAS, SSE filed an action against the City and DSJV on June 23, 2016 in the Superior Court of California, County of Santa Clara, case number 16CV296834, entitled Sharks Sports \& Entertainment LLC v. City of San José, et al. ("Action"); and

WHEREAS, SSE is willing to dismiss the Action with prejudice on the basis of the terms and conditions set forth below;

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

Page 1 of 13

1. Incorporation of Recitals. The foregoing Recitals contained in this Agreement are incorporated into this Agreement as if fully set forth herein.
2. Settlement Funds. Subject to and expressly conditioned upon execution by DSVJ and the City of that certain Project Completion Agreement in the form attached hereto as Exhibit C, and SSE's dismissal with prejudice of the Action as set forth in Section 12 below, DSJV will deposit with the City $\$ 4$ million ("Settlement Funds") by January 31, 2017.
(a) City shall restrict the Settlement Funds exclusively for the purchase of the parcels identified as APN 259-29-001, APN 259-29-002, and APN 259-29-091 ("Initial Parcels"), as shown on Exhibit B, or other adjacent parcels located within Lot E. The Initial Parcels and any other parcels acquired by the City as described in this Section are collectively referred to as the "City Parcels."
(b) After the purchase of the Initial Parcels, City may use the remaining Settlement Funds (if any) for (i) site preparation, including environmental clean-up if necessary, on the Initial Parcels; or (ii) the construction of parking lot improvements on the Initial Parcels. City agrees that it will use all the Settlement Funds towards the purposes described in this Settlement Agreement.
(c) Upon the payment of the Settlement Funds, and subject to DSJV's obligations under Section 12 (regarding the entry of this Settlement Agreement into the court record) and Section 17 (regarding payment of costs), DSJV shall have no further obligations, liabilities or duties of any kind under this Agreement. DSJV shall have no responsibility with respect to the use of the Settlement Funds, and accordingly shall not be subject to any claim of breach of this Settlement Agreement nor any other claim of liability in law or equity arising from, relating to or connected in any way with the City's use of the Settlement Funds, or with the City's performance of its obligations under this Agreement.
3. Lot E Property Acquisition. City will make good faith efforts to purchase the Initial Parcels as soon as is reasonably possible, including making purchase offers based on the appraised value of each property. City shall also consider using the City's condemnation powers if necessary, but nothing herein shall be construed to mean the City is agreeing or has agreed to exercise the right of eminent domain, which rights shall be exercised only in the sole discretion of the City Council and only after the City has adopted a Resolution of Necessity and complied with all other legal requirements.
4. Lease of SSE Parcels. City shall lease from SSE, and SSE agrees to lease to City, the parcels identified as APN 259-29-027, APN 259-29-028, and APN 259-29-029 ("SSE Parcels") on an "AS IS" basis for $\$ 1.00$ per month. Within 90 days

Page 2 of 13
after mutual execution of this Settlement Agreement, City and SSE shall enter into a lease agreement for the SSE Parcels containing the terms set forth herein and such other terms and conditions mutually acceptable to the parties ("SSE Parcels Lease"). Prior to commencement of the SSE Parcels Lease and, at SSE's own cost and expense, SSE will demolish and remove all structures, save building foundations and surface paving, and clear all debris on the SSE Parcels. The SSE Parcels Lease will commence when the City is ready to begin construction of the surface parking lot, and will terminate when the AMA terminates, subject to earlier termination if the City purchases the SSE Parcels as provided in this Settlement Agreement. The SSE Parcels Lease will provide for use of the SSE Parcels for surface parking with priority for Arena event-related parking.
5. Construction of Lot E Parking. City agrees to construct an asphalt surface parking lot on the City Parcels and the SSE Parcels (collectively, "Lot E Parcels") within eighteen (18) months after acquiring the Initial Parcels. The parking lot is estimated to contain approximately 180 parking spaces, or more if the City Parcels include parcels in addition to the Initial Parcels. The parking lot layout shall conform to the conceptual plan attached as Exhibit D, or other design mutually approved by City and SSE. The parking lot shall also include reasonable lighting and other features as mutually approved by City and SSE based on required standards for construction and improvement under applicable laws.
6. Use of Lot E Parcels. The Lot E Parcels will be used exclusively for parking, with priority for Arena event-related parking, through at least June 30, 2025.
7. SSE's Option to Purchase. City hereby grants to SSE an option to purchase the City Parcels if the City decides to sell, lease, or otherwise transfer the City Parcels to an unrelated third party. The purchase price for the City Parcels shall be the then fair market value, as determined by an independent appraiser approved by the City and SSE. SSE's option to purchase shall commence on June 30, 2025 and shall terminate when the AMA terminates. Any development after June 30, 2025 (and prior to termination of the AMA) will include shared use parking with a minimum number of available parking spaces (as more specifically defined in, and subject to the terms of, the AMA) equal to the number of surface parking spaces that were provided on the Lot E Parcels, but not less than 180 available parking spaces.
8. City's Option to Purchase. SSE hereby grants to City an option to purchase the SSE Parcels, as well as the parcel identified as APN 259-29-026 ("Parcel 26"), for the Adjusted Price (defined below) upon (i) the City's agreement to construct a parking garage on the Lot E Parcels and Parcel 26 with priority for Arena event-related parking; or (ii) termination of the AMA. Adjusted Price means net cash to SSE in the amount of $\$ 1,335,000.00$ increased by an inflation factor, compounded annually, based on the percentage change in the California Consumer Price Index for all items, as published by the California Department of Industrial Relations, from December 2016 through the date of purchase.
9. Off-Site Parking Requirement. City's commitment under the AMA to use best efforts to secure 3,175 available parking spaces within $1 / 3$ mile of the Arena will be reduced by the estimated number of spaces to be included in the surface lot on the Lot E Parcels, which reduction shall be in effect for twenty-four months after the Effective Date of this Settlement Agreement so long as the City is making good faith efforts to acquire the Lot E Parcels and construct a surface lot as described in this Settlement Agreement. Once constructed, the parking spaces shall be recognized as available parking spaces to the extent provided by, and subject to the terms and conditions of, the AMA.
10. Parking Spaces for Arena Employees. Sharks and City agree that for the entire 2017-2018 fiscal year, the SSE employee parking requirement, in accordance with the AMA, may be provided at the County property located at 333 W . Julian ("County Lot"), subject to the following conditions:
(a) City obtains County approval for all event employees to park at the County Lot for events during the entire 2017-2018 fiscal year; and
(b) SSE event employees may park at the County Lot on the days and at the times needed before, during and after events; and
(c) City makes lighting and safety improvements along a mutually approved pedestrian pathway to the employee entrance at the Arena subject to SSE's reasonable approval.

City acknowledges that its obligation under the AMA to pay all costs related to the use of the County Lot includes parking fees, security personnel, and parking personnel as reasonably required.
11. SSE Operation of Lot E Surface Parking Lot. Sharks will enter into a Parking Operations Agreement with City to operate the completed Lot E surface parking lot. Operating revenues will first be applied to pay for SSE's operating expenses for the Lot E surface parking lot, including a reasonable share of management and overhead. The remaining net revenues will be paid to the City.
12. Dismissal of Action. The Parties agree to enter this Settlement Agreement into the court record following the Effective Date (defined in Section 24), and SSE shall dismiss the Action with prejudice within five days after the Effective Date. The Court may enter judgment pursuant to the terms of this Settlement Agreement and shall retain jurisdiction until performance in full of the terms of the Settlement Agreement pursuant to Code of Civil Procedure §664.6.
13. Further Documents; Delegation to City Manager. The Parties shall cooperate in executing all further documents, certificates, and instruments necessary to effectuate or evidence this Settlement Agreement (including the conveyance or acceptance of leases and other real property interests as provided herein), and to
effectuate the dismissal with prejudice. By its approval of this Settlement Agreement, the City Council hereby authorizes the City Manager, with the approval of the City Attorney, to enter into and execute for and on behalf of the City, without further approval of the City Council, such further documents and instruments as the City Manager may determine to be necessary or appropriate in accordance with this section.
14. No Opposition to Project. Subject to Sections 14(b), 14(c) and 14(d) below, SSE on behalf of itself and its Affiliates, and their respective past, present and future assigns, successors, heirs, executors, and administrators (collectively, the "SSE Parties") will not directly or indirectly initiate, support, fund or otherwise carry out any Opposition or Litigation against (i) the planning, development, construction or leasing of the Project or any component of it, including tenant improvements, infrastructure, services or facilities needed for any portion of the Project, or (ii) any modifications, changes or amendments to the Project or Project Approvals in whole or in part, so long as no uses other than residential and/or office/commercial or retail are proposed.
(a) As used above, the following capitalized terms shall have the meanings given below:
(i) "Affiliate" means any association or other entity that is controlled by, is under the control of, or has the same owners or members as SSE.
(ii) "Litigation" means the prosecution of any petition, lawsuit, action, claim or other grievance through any public or private legal, administrative or regulatory proceeding before any forum or venue, including any court of law or other tribunal.
(iii) "Opposition" means written or oral communications intended to persuade any governmental agency, including any governmental agency staff, employees and/or other officials, to change, amend, modify, deny or disapprove any application or request for any entitlement, permit or other approval.
(b) The prohibition in this Section 14 shall not apply in part, in that SSE shall retain all rights of Opposition, but not Litigation, with respect to any modification, change or amendment to the Project or Project Approvals requested by DSVJ (rather than initiated by the City) that includes modification, change or amendment of any of the traffic conditions listed on Exhibit E hereto. However, any such Opposition authorized by this subsection (b) shall be limited in scope to the traffic conditions at issue.
(c) The prohibition in this Section 14 also shall not apply to any Opposition or Litigation with respect to any reduction in on-site parking below either of the following requirements: (i) for all residential uses within the Project,
an overall average of at least 1.0 parking space per unit; or (ii) for all commercial uses within the Project, an overall average of at least 2.0 spaces per 1,000 net square feet of space. Consistent with the City's methodology, net square feet for purposes of this section is defined as total gross square feet reduced by $15 \%$. SSE retains all rights of Opposition and Litigation to any proposed modification, change or amendment to the Project or Project Approvals that includes modification, change or amendment of the on-site parking such that it would not satisfy the foregoing minimum requirements. However, any such Opposition or Litigation authorized by this subsection (c) shall be limited in scope to the parking requirements at issue.
(d) The prohibition in this Section 14 also shall not apply, following the planning, development and construction of the Project, to any activities that constitute a Nuisance. Nuisance as used in this section shall mean noncompliance with an objective legal requirement of the City's Municipal Code. As a condition precedent to pursuing Litigation based on Nuisance, SSE must provide DSJV with written notice of the alleged Nuisance and a 30 calendar day opportunity to cure.
15. Release and Waiver. As of the Effective Date of this Settlement Agreement (defined below), SSE on behalf of itself and the other SSE Parties and their respective officers, directors, members, insurers and agents, hereby releases and forever discharges the City and DSJV and their past, present and future employees, partners, officers, directors, members, insurers, agents, predecessors, successors, consultants, attorneys, and assigns, all of whom expressly deny any liability, from any and all claims, demands, damages, actions, or suits, known and unknown, suspected or claimed, which the SSE Parties ever had, now have, claim to have had, or may have had relating to, arising out of, or in any way connected with the Project, the Project Approvals, or the Action. Nothing in this Settlement Agreement in general, or in this section in particular, is intended to release the Parties or any other person from any claim that is not related, directly or indirectly, to the Project, the Project Approvals, or the Action. In making this release, SSE acknowledges that Section 1542 of the Civil Code of the State of California provides as follows:
> "A General Release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the Release, which if known by him or her must have materially affected his or her settlement with the debtor."

SSE represents that it has read, understood and reviewed Civil Code Section 1542 with counsel, and that it hereby waives any and all present and future rights and benefits under Section 1542 to the extent it would permit claims based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.
16. No Admission of Liability. The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims relating to, arising out of or any way connected with the Project, the Project Approvals, or the Action. No act taken by the Parties, either previously or in connection with this Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims heretofore made or an acknowledgment or admission by any Party of any fault or liability whatsoever to the other Party.
17. Costs. Each of the Parties shall bear its own costs, including attorneys' fees, and any other fees incurred in connection with the Action, this Settlement Agreement, and the events underlying this Settlement Agreement; provided, however, that SSE shall reimburse the City for the cost of the preparation of the Administrative Record.
18. Legal Review. The Parties represent that they have had the opportunity to consult with legal counsel and have carefully read and understand the terms of this Settlement Agreement. The terms of this Settlement Agreement are voluntarily accepted for the express purpose of making a full and final compromise and settlement of the Action.
19. Integrated Agreement. This Settlement Agreement represents the entire agreement and understanding between the Parties regarding settlement of the Action and supersedes any and all prior and contemporaneous agreements, representations, and negotiations. This Settlement Agreement may be modified or amended only by a written instrument signed by all Parties hereto. Nothing in this Settlement Agreement shall modify or amend the (i) AMA or the respective rights and obligations of the City and SSE under the AMA, or (ii) the Project Completion Agreement or the respective rights and obligations of the City and DSVJ under the Project Completion Agreement.
20. Interpretation; Severability. This Settlement Agreement shall be construed as a whole in accordance with its fair meaning, without regard to any presumption based on the drafting party. The word "including" means "including without limitation." If any provision of this Settlement Agreement is determined to be unenforceable, such provision shall be severed, and the remaining provisions shall continue to be enforced to the maximum extent possible.
21. Successors and Assigns. This Settlement Agreement and each condition, right and obligation hereunder shall inure to the benefit of, and be binding upon, the respective successors and assigns of the Parties. Without limiting the foregoing, the provisions of Section 4 (Lease of SSE Parcels), Section 6 (Use of Lot E Parcels), Section 7 (SSE's Option to Purchase) and Section 8 (City's Option to Purchase) shall run with the land.

## 22. Enforcement; Attorneys' Fees.

(a) The Parties agree that damages may be an inadequate remedy in the event of a breach of this Settlement Agreement. Accordingly, the Parties agree, without waiving any additional rights or remedies otherwise available at law or in equity or by statute, that each may seek specific performance and/or any injunctive or equitable relief in the event of any justiciable threat or actual breach of this Agreement.
(b) The Parties agree that the City's obligations under this Settlement Agreement are subject to compliance with all applicable laws and regulatory requirements, including the California Environmental Quality Act.
(c) SSE and DSJV agree that as between them, in any action or proceeding to enforce or interpret this Settlement Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs from the losing party, in addition to any other relief awarded by the court. This provision shall not apply to the City.
23. Authority to Execute. The Parties acknowledge that execution of this Settlement Agreement by the City is subject to approval by the San José City Council in open session. Subject to the foregoing, each person executing this Settlement Agreement on behalf of any other person or persons hereby warrants that they have full authority to do so.
24. Effective Date. This Settlement Agreement shall become effective upon the date (the "Effective Date") that all Parties and their counsel shall have executed this Settlement Agreement.
25. Notices. All notices, correspondence and communications between the Parties contemplated or required under this Settlement Agreement shall be in writing and delivered in person or sent via certified mail, postage prepaid and return receipt requested to the offices of City, DSJV or SSE, as appropriate, as set forth below and shall be deemed provided, received, made and/or communicated on the date personal delivery is made or, if mailed, on the delivery date shown upon the return receipt. The Parties hereto agree that the addresses for such notices shall be as follows:

CITY:
Director of Planning, Building and Code Enforcement City of San Jose
200 East Santa Clara Street, $3^{\text {rd }}$ Floor
San Jose, CA 95113
with copies to:
City Attorney
City of San Jose
200 East Santa Clara Street, $16^{\text {th }}$ Floor
San Jose, CA 95113
and
Office of Economic Development
City of San Jose
200 East Santa Clara Street, $17^{\text {th }}$ Floor
San Jose, CA 95113
DSJV:
Diridon Station Joint Venture LLC
c/o Trammell Crow Co.
101 California Street, 22 ${ }^{\text {nd }}$ Floor
San Francisco, CA 94111
Diridon Station Joint Venture LLC
c/o New Tower Trust Company
Attn: President
3 Bethesda Metro Center, Suite 1600
Bethesda, MD 20814
Telephone: 240-235-9960
Facsimile: 240-235-9961
with copies to:
Bentall Kennedy (U.S.) Limited Partnership
Attn: Senior Vice President - Asset Management
1215 Fourth Avenue, Suite 2400
Seattle, WA 98161-1085
Telephone: 206-623-4739
Facsimile: 206-682-4769
and
Bentall Kennedy (U.S.) Limited Partnership
Attn: Senior Vice President - Development
600 California Street, Suite 560
San Francisco, CA 94108
Telephone: 415-375-4014
Facsimile: 415-772-5607
and
McNaul Ebel Nawrot \& Helgren, P.L.L.C.
Attn: Marc O. Winters
600 University Street, Suite 2700
Seattle, WA 98101-3143
Telephone: 206-467-1816
Facsimile: 206-624-5128
and
Sheppard Mullin Richter Hampton LLP
Attn: Arthur J. Friedman
4 Embarcadero Center
San Francisco, CA 94111
Telephone: 415-434-9100
Facsimile: 415-434-3947

## SSE:

Sharks Sports \& Entertainment LLC
Attn: John Tortora, Chief Operating Officer 525 W. Santa Clara Street
San Jose, CA 95113
Telephone: 408-287-7070
Facsimile: 408-999-5797
with copies to:
Sharks Sports \& Entertainment LLC
Attn: Mary Grace Miller, Legal Coordinator 525 W. Santa Clara Street
San Jose, CA 95113
Telephone: 408-999-5716
Facsimile: 408-999-5797
LMA Law, LLP
Attn: Lucy Lofrumento
60 S. Market Street, Suite 1400
San Jose, CA 95113
Telephone: 408-560-3660
Facsimile: 408-560-3661

Any Party may change the recipient and/or address for notices stated herein by giving notice in writing to the other Parties pursuant to the provisions of this section and thereafter notices to that Party shall be addressed and transmitted to that Party's new recipient/address.
26. Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same instrument.
[Signatures follow on next pages.]

IN WITNESS WHEREOF, this Agreement has been entered into by and between the Parties as of the last day and year set forth below.

## Petitioner/SSE:

SHARKS SPORTS \& ENTERTAINMENT LLC, a Delaware limited liability company

Dated: $11 / 28 / 16$

Dated: $\qquad$

Dated: $\qquad$

Dated: $\qquad$ By:
MARGO LASKOWSKA
Senior Deputy City Attorney
Attorney for Respondents

IN WITNESS WHEREOF, this Agreement has been entered into by and between the Parties as of the last day and year set forth below.

## Petitioner/SSE:

SHARKS SPORTS \& ENTERTAINMENT LLC, a Delaware limited liability company

Dated: $\qquad$

Dated: $\qquad$

Dated:


Dated: $11 / 22 / 16$

By: $\qquad$

APPROVED AS TO FORM:
SILICON VALLEY LAW GROUP
By: $\qquad$

## Respondent/City of San José:

CITY OF SAN JOSÉ/SAN JOSÉ CITY COUNCIL
By:
RICHARD DOYLE City Attorney as Aythorized Agent

APPROVED AS TO FORM:
By: $\frac{\text { laves Lasluemle }}{\text { MARGOLASKOWSKA }}$ Senior Deputy City Attorney Attorney for Respondents

Real Parties in Interest/DSJV:
TRAMMELL CROW COMPANY, LLC,
$B y:$


DIRIDON STATION JOINT VENTURE LLC,
a Delaware limited liability company
By: MEPT Diridon Station Member LLC, a Delaware limited liability company, its Managing Member

By: MEPT Edgemoor REIT LLC, a Delaware limited liability company, its Manager

By: New Tower Management LLC, a a Maryland State trust company its Sole Member

By: $\qquad$
Title: $\qquad$
Its: $\qquad$
APPROVED AS TO FORM:
SHEPPARD, MULLIN, RICHTER \& HAMPTON LLP
By:


## Real Parties in Interest/DSJV:

TRAMMELL CROW COMPANY, LLC, a Delaware limited liability company

Dated: $\qquad$

Dated: $12 / 1 / 16$

Dated: $\qquad$
By:

> Scott A. Dyche

Executive Vice President

DIRIDON STATION JOINT VENTURE LLC, a Delaware limited liability company

By: MEPT Diridon Station Member LLC, a Delaware limited liability company, its Managing Member

By: MEPT Edgemoor REIT LLC, a Delaware limited liability company, its Manager

By: New Tower Management LLC, a a Maryland State trust company its Sole Member

By: $\qquad$
Title: $\qquad$ President

Its: $\qquad$
APPROVED AS TO FORM:
SHEPPARD, MULLIN, RICHTER \& HAMPTON LLP
$B y:$

ARTHUR J. FRIEDMAN
Attorney for Real Parties in Interest

## Exhibit A

Diridon Station Area Final Land Use Plan

FIGURE 2-1-1: DIRIDON STATION AREA - FINAL LAND USE PLAN


## Exhibit B

## Assessor's Parcel Map Depicting Lot E



## Exhibit C

## Project Completion Agreement

[Intentionally omitted from this copy]

## Exhibit D

Conceptual Parking Lot Layout Plan for Lot E


## Exhibit E

Traffic Conditions for Diridon TOD Development

## Exhibit E

## TRAFFIC CONDITIONS FOR DIRIDON TOD DEVELOPMENT

a) Construct a new traffic signal at the Santa Clara Street and Delmas Avenue intersection. This will include the extension of the westbound left turn pocket on Santa Clara Street to Delmas Avenue from 150 feet to 300 feet.
b) Install a 6-inch high channelized median curb from its current terminus near the Guadalupe River Bridge to Delmas Avenue through the entire length of the turn pocket on Santa Clara Street.
c) Construct a new traffic signal at Delmas Avenue and the main project driveway intersection (coordinated with the existing signal at Delmas Avenue/San Fernando Street intersection) with railroad preemption.
d) Widen Delmas Avenue to provide left-turn lanes at the main project driveway and at Santa Clara Street and a second through lane on southbound Delmas Avenue at San Fernando Street. This widening will require a permit from the Santa Clara Valley Transportation Authority (VTA) and approval from the California Public Utilities Commission (CPUC).
e) Restripe westbound San Fernando at Delmas to add a left turn lane and modify the traffic signal at this intersection to add a protected left turn phase for the westbound approach (in addition to the existing permissive left turn). A permit from the VTA will be required for any construction within their right-of-way. This signal must be coordinated with the new signal on Delmas Avenue and the project main entry driveway.
f) Restripe Delmas Avenue south of San Fernando Street to provide two through lanes from San Fernando Street to Park Avenue.
g) Remove on-street parking (approximately 6 spaces on each side of the street) and restripe southbound Delmas Avenue to add a dedicated left-turn pocket with two through lanes at Park Avenue, along with signal modifications to provide a separate left-turn phase that will allow southbound through traffic to proceed during a light rail crossing. A Caltrans permit will be required.

## PARKING LEASE

THIS PARKING LEASE (this "Lease"), dated as of December $\angle, 2018$ (the "Effective Date"), is made and entered into by and between GOOGLE LLC, a Delaware limited liability company ("Landlord"), and SAN JOSE ARENA MANAGEMENT, LLC, a Delaware limited liability company ("Tenant"), who agree as follows:

1. Recitals: This Lease is made with reference to the following facts and objectives:
a. City of San Jose, a municipal corporation ("City"), as the seller, and Landlord, as the buyer, are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions (SARA Properties) dated as of December 4, 2018 (as may be amended, the "Purchase Agreement"), with respect to that certain real property commonly known as 8 South Montgomery Street, San Jose, California, as more particularly described on Exhibit A attached hereto (the "Premises"), together with other real property which is not the subject of this Lease.
b. Pursuant to the Purchase Agreement, as of the Effective Date, City conveyed fee simple title to the Premises to Landlord.
c. City and Tenant, as "Manager", are parties to that certain Second Amended and Restated Arena Management Agreement ("AMA") dated as of August 15, 2018, as amended by a First Amendment ("First Amendment") dated as of December 4, 2018 (collectively, the "Arena Management Agreement"), with respect to the management and operation of that certain building containing an approximately eighteen thousand $(18,000)$ seat arena (and other related improvements), which building is located at 525 West Santa Clara Street, San Jose, California (the "Arena"), and related facilities located in downtown San Jose, California, including, without limitation, the Premises.
d. As of the Effective Date, the Premises (also referred to as "Lot D") is improved with a surface parking lot containing approximately two hundred twenty-eight (228) surface parking spaces, as depicted on Exhibit B attached hereto. Lot D is considered an on-site Arena parking facility with priority for Arena customers. However, such parking spaces will be eliminated once Lot $D$ is developed.
e. Pursuant to Section 18.2.2 of the AMA, as amended by the First Amendment, City was permitted to transfer the Premises to Landlord on the condition that Landlord and Tenant enter into this Lease in order to ensure that the Premises will continue to be available to tenant for its business purposes (including for Arena customers) until construction on the Premises is ready to commence, and that other parking areas near the Arena will be provided by Landlord until certain conditions have been satisfied.
f. Additionally, in order to ensure that the parking supply in the vicinity of the Arena will not be diminished by the City's sale of the Premises to Landlord, the City has agreed to provide a minimum of 228 new parking spaces within close proximity to the Arena, thereby replacing the supply of parking spaces that will be eliminated for the development of the Premises.
g. Tenant is willing to lease the Premises pursuant to the provisions stated in this Lease.
2. Arena Management Agreement: Tenant acknowledges and agrees that this Lease satisfies the condition precedent to the transfer of the Premises to Landlord as set forth in Section 18.2.2 of the AMA, as modified by the First Amendment, and this Lease shall constitute the "Lot D Lease" for all purposes of the Arena Management Agreement. Notwithstanding the foregoing or anything in the Arena Management Agreement to the contrary, as between Landlord and Tenant, this Lease (including the exhibits hereto) constitutes the entire agreement with respect to the leasing of the Premises.
a. Incorporation of Exhibit C. Exhibit C to this Lease (Replacement Parking and Operating Covenant) is hereby incorporated into this Lease as though fully set forth herein. Exhibit C contains several key provisions regarding Landlord's obligation to provide Replacement Parking once Tenant's right to occupy the Premises is terminated.
b. Covenant to Operate Delmas West. Currently, the use of the Delmas West Parking (as defined in Exhibit C) is controlled by Landlord, but there is no legal requirement for Landlord to keep the Delmas West Parking open for public parking. As a material part of the consideration for this Lease, Landlord hereby agrees to continue to operate the Delmas West Parking until certain conditions have been satisfied, as set forth in Exhibit C.
c. Interpretation. In the event of any conflict or inconsistency between the terms of Exhibit C and the other terms of this Lease, the terms of Exhibit $\mathbf{C}$ shall control.
3. Premises: Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises being more particularly described in Paragraph (1)(a) above.
4. Term: The term of this Lease (the "Term") shall commence on the Effective Date (sometimes referred to herein as the "Commencement Date"), and shall terminate on the date (the "Termination Date") that is the earliest of (a) June 30, 2040, (b) the date that the Arena Management Agreement is terminated, or (c) the Construction Termination Date (as defined in Paragraph 4(a) below), subject to earlier termination in accordance with the applicable provisions of this Lease.
a. Landlord Termination Right: Notwithstanding anything in this Lease to the contrary, if construction work is Ready to Commence (as defined in Paragraph 4(b) below) on the Premises for BART or another project to be developed by Landlord or its affiliate, Landlord shall have the right to terminate this Lease on the terms and conditions set forth in this Paragraph. Landlord shall give Tenant at least one hundred twenty (120) days prior written notice of such termination (the "Construction Termination Notice"), which Construction Termination Notice shall specify (i) the Construction Termination Date (as defined below), and (ii) the proposed location(s) of the Replacement Parking Lot (as defined in Exhibit C attached hereto). The term "Construction Termination Date" shall mean the date that is planned for the commencement of grading in connection with such construction work, subject to all of the following:
i. In no event shall the Construction Termination Date be less than one hundred twenty (120) days after the date of the Construction Termination Notice; and
ii. If the Construction Termination Date would occur during a Hockey Season (as defined below), then the Construction Termination Date shall be automatically extended to the date immediately following the termination of the applicable Hockey Season. For purposes of this provision, the term "Hockey Season" shall mean that period of time commencing with the initial pre-season game of the San Jose Sharks hockey team for a particular National Hockey League season, and terminating fifteen (15) days following the final regularly scheduled game for post-season game, if applicable) of the San Jose Sharks hockey team for such season; and
iii. If, as of the noticed Construction Termination Date, the Replacement Parking identified by Landlord in the Construction Termination Notice has not been delivered to Tenant in accordance with the Replacement Parking Agreement (as defined in Paragraph 4(c) below) (with completed improvements as described in Exhibit $C$ attached hereto), then the Construction Termination Date shall be automatically extended to the date that is thirty (30) days after the Replacement Parking is so delivered to Tenant, and in no event shall the blackout period described in Paragraph 4(a)(ii) above apply to or affect such extended Construction Termination Date.
b. Construction Ready to Commence: As used above, construction on the Premises shall be deemed "Ready to Commence" when Landlord presents Tenant with reasonable evidence that grading on the Premises is planned to commence in the near future. For example, such evidence may include documents showing that (i) Landlord has submitted the first set of construction drawings to the City as part of an application for a building permit for improvements on the Premises; or (ii) the VTA or another Governmental Authority (defined below) has appraised the Premises and made a pre-condemnation offer to Landlord pursuant to Government Code Section 7267.1, with the expectation of commencing grading on the Premises in the near future.
c. Replacement Parking Agreement: If Landlord elects to terminate this Lease pursuant to Paragraph 4(a) above, then provided that the Replacement Parking Termination Date (as defined below) has not previously occurred, Landlord shall deliver to Tenant the Replacement Parking (as defined in Exhibit C attached hereto) prior to the Construction Termination Date, on the terms and conditions set forth herein. Within thirty (30) days after Landlord's delivery of the Construction Termination Notice, Tenant shall elect, in writing, to operate the Replacement Parking under either (i) a license agreement for Tenant's use of the Replacement Parking only on Event Days (as defined in Exhibit C attached hereto) substantially in the form attached hereto as Exhibit E (the "Replacement Parking License"), or (ii) a lease for full-time use and occupancy of the Replacement Parking substantially in the form of Exhibit F attached hereto (the "Replacement Parking Lease"). If Tenant does not give notice of its election within said thirty (30) day period, then Tenant shall be deemed to have elected to enter into a Replacement Parking License.

The Replacement Parking License and the Replacement Parking Lease, as applicable, are individually referred to herein as the "Replocement Parking Agreement". In the event of any conflict or inconsistency between the terms of Exhibit E or Exhibit F and the main body of this Lease, the latter shall control.

If Landlord elects to locate Replacement Parking on Delmas West (as defined in Exhibit C attached hereto) or any other parking lot that contains a greater number of spaces than Landlord is required to deliver as Replacement Parking, then unless otherwise mutually agreed by the parties, the Replacement Parking Agreement shall be limited to only a portion of the parking lot containing the required number of parking spaces, in a location reasonably designated by Landlord. In such event, Landlord and Tenant shall coordinate parking operations with respect to ingress and egress, internal circulation, traffic control, collection of parking fees, signage, and so forth, with priority for Event-related parking such that Arena customers shall have unimpeded access to and from the licensed or leased (as applicable) parking area.

The "License Fee" under the Replacement Parking License shall be equal to the Net Operating Revenue as defined in and determined in accordance with Paragraph 4(e) below. The "Base Rent" under the Replacement Parking Lease shall be equal to the Fair Market Rate as defined in and determined in accordance with Paragraph $4(\mathrm{f})$ below.
d. Termination of Replacement Parking Obligation: Notwithstanding the foregoing, the obligation to enter into the Replacement Parking Agreement pursuant to Paragraph 4(c) or Paragraph 16 below shall terminate upon the occurrence of either of the following, so long as City is then in compliance with the then-current "Minimum Off-Site Parking Requirements" (as determined in accordance with the Arena Management Agreement) (such date of termination being the "Replacement Parking Termination Date"):
i. BART service to the Diridon station area (i.e., the geographic area covered by the Diridon Station Area Plan adopted by the City Council of June 17, 2014) is operational; or
ii. There are at least five hundred (500) new (i.e., not currently existing or planned as part of Lot $E$, as described in the Arena Management Agreement) structured Available Parking Spaces (as defined in Exhibit C attached hereto) within one thousand two hundred $(1,200)$ feet of the main entrance to the Arena located on Santa Clara Street; provided that if such five hundred (SOO) new spaces are shared spaces (i.e., not exclusively reserved for Arena customers) they must be designed such that all five hundred (500) vehicles can safely exit from the parking lot(s) onto the public streets within a period of thirty (30) minutes.
e. Net Operating Revenue: The term "Net Operating Revenue" under a Replacement Parking License shall mean all parking fees and other revenues collected by Tenant in connection with the operation of the Replacement Parking Lot, less all direct expenses incurred by Tenant in connection with such operation, including costs for staffing, site supervision, taxes, insurance, maintenance, cleaning, litter removal, supplies, equipment, and informational signage. Any of such expenses that Tenant incurs for more than one facility or enterprise shall be equitably allocated such that the direct expenses charged against revenues shall not exceed the fair share for the Replacement Parking Lot. Within thirty (30) days following the end of each calendar quarter during the term of the Replacement Parking License, Tenant shall remit the Net Operating Revenue to Landlord, and shall provide an accounting of such amount in accordance with customary accounting practices. Landlord shall have the right to inspect

Tenant's books and records relating to Tenant's revenues and expenses for the Replacement Parking Lot, at a time and place and in a manner reasonably acceptable to both parties.
f. Fair Market Rate: The term "Fair Market Rate" under a Replacement Parking Lease shall mean the monthly rent for parking lots comparable in size, condition, type and location to the Replacement Parking Lot, which parties in an arm's length transaction are paying for parking lots located in the Diridon Station area or Downtown San Jose, taking into account all relevant market factors and the annual escalation based on the California Consumer Price Index for all items ("CCPI"), as determined by the California Department of Industrial Relations. Unless otherwise agreed by the parties, the Fair Market Rate shall be based on the assumption that the lease terms will (a) require the landlord to cover the cost of the following, without reimbursement from the tenant: real property taxes and assessments on the landlord's property, premiums for any casualty insurance on the landlord's property, premiums for liability insurance covering the landlord's activities, and capital repair costs (subject to the lease terms regarding casualty); and (b) require the tenant to cover the costs of the following: taxes on the tenant's personal property (if any), premiums for any casualty insurance on the tenant's property, premiums for liability insurance covering the tenant's activities, and the cost of ordinary repairs, normal maintenance, and other operating expenses. The Fair Market Rate shall be determined as of the commencement of the term of the Replacement Parking Lease, and shall be increased on the anniversary of the commencement date based on the corresponding increase in the CCPI.

Within thirty (30) days following Tenant's election to enter into a Replacement Parking Lease pursuant to Paragraph 4(c) above or Paragraph 16 below, Landlord and Tenant shall attempt to agree upon the Fair Market Rate using reasonable, good-faith efforts. If Landlord and Tenant fail to reach agreement prior to the expiration of such thirty (30) day period (the "Outside Agreement Date"), then the Fair Market Rate shall be determined by a single appraiser as follows:
i. Within fifteen (15) business days after the Outside Agreement Date, Landlord and Tenant shall jointly appoint one MAI real estate appraiser who shall have been active over the five (5) year period ending on the date of such appointment in the appraisal of commercial properties in the San Jose area. If the parties cannot agree on the appraiser, they shall apply to JAMS in San Jose for the appointment of an appraiser by a neutral arbitrator. The costs of the appraiser (and if necessary the arbitrator) shall be shared equally by Landlord and Tenant.
ii. Within thirty (30) days after being appointed, the appraiser shall determine the Fair Market Rate for the Replacement Parking Lot, and shall provide the parties with an appraisal report explaining how the determination was made. The decision of the appraiser shall be binding upon Landlord and Tenant.
iii. Notwithstanding the foregoing, if for any reason Tenant objects to the appraiser's determination, Tenant may, within fifteen (15) days after receiving the appraisal report, change Tenant's election to lease the Replacement Parking Lot, and instead elect to operate the Replacement Parking Lot under a Replacement Parking License; provided, however, that in such case Tenant shall reimburse Landlord for Landlord's share of the costs of the appraiser (and arbitrator).

If the Fair Market Rate has not been determined by the commencement date of the Replacement Parking Lease, then the Base Rent under the Replacement Parking Lease shall be deemed to be equal to $\$ 100.00$ per parking space per month pending the final determination of the Fair Market Rate as set forth above. Upon the final determination of the Fair Market Rate, the Fair Market Rate (as so determined) shall commence retroactively as of the commencement date of the Replacement Parking Lease, and if such amount differs from the Base Rent actually paid by Tenant for the same period under the Replacement Parking Lease, the parties shall reconcile such amounts, with such reconciliation to be paid in cash to the party entitled thereto within thirty (30) days after the final determination of the Fair Market Rate.
g. Survival: Notwithstanding any termination of this Lease with respect to the Premises described herein, the applicable provisions of this Paragraph 4 shall continue to apply with respect to any Replacement Parking Agreement (and any subsequent relocation of parking spaces thereunder) until the Replacement Parking Termination Date shall have occurred.
5. Rent: Tenant agrees to pay, as rent for the use and occupancy of the Premises, at the times and in the manner provided herein, the following sums of money:
a. Base Rent: Tenant shall pay to Landlord, as base rent, without deduction, setoff, prior notice or demand, the amount of $\$ 280,000$ per year (the "Base Rent"), payable in advance. The parties acknowledge that under the Arena Management Agreement, Tenant has prepaid Base Rent through June 30, 2019, and therefore the first installment of Base Rent shall not be due until July 1, 2019. During the Term, Tenant may elect to pay Base Rent monthly in advance, on or before the $1^{\text {st }}$ day of each calendar month, in which case Tenant shall pay to Landlord the amount of $\$ 23,333.33$ per month, and otherwise in accordance with the terms of this Paragraph 5(a). Upon termination of this Lease, any Base Rent paid by Tenant for the period in which such termination occurs shall be prorated, and any prepaid Base Rent that is attributable to the period of time after such termination date shall be reimbursed to Tenant within thirty (30) days after such termination date.
b. Additional Rent: Tenant shall pay, as additional rent, all sums of money (other than the Base Rent) required to be paid pursuant to the terms of this Lease (the "Additional Rent").
c. Rent: The Base Rent and the Additional Rent are collectively referred to herein as the "rent". All rent shall be paid to Landlord at the address to which notices to Landlord are given, or via wire transfer or ACH transfer pursuant to transfer instructions provided by Landlord.
6. Premises Provided As-ls: Tenant acknowledges that Tenant was the user of the Premises prior to the Effective Date, and further acknowledges and agrees that except as otherwise provided in this Lease: (a) Tenant is accepting the Premises on an "AS-IS" basis, with all faults, and without any agreements, representations, understandings or obligations on the part of Landlord to perform or to fund any alterations, repairs or improvements thereto; and (b) Landlord hereby disclaims, and Tenant hereby waives, any and all representations or warranties of any kind, express or implied, concerning the Premises or any portion thereof, as to its condition, value, compliance with laws, status of permits or approvals, existence or absence of Hazardous Substances (as defined in Paragraph 17(c) below) on site, occupancy rate or any other matter of similar nature relating in any way to the Premises, including the warranties of fitness of a particular purpose,
tenantability and use. Except as otherwise provided in this Lease, Tenant waives any right to claim against Landlord for any patent or latent cause, directly or indirectly, arising out of the condition of the Premises, appurtenances thereto, the improvements thereon and the equipment thereof.

## 7. Taxes; Assessments:

a. Real Property Taxes: Landlord shall be solely responsible, without reimbursement by Tenant, for the payment of all Taxes (as defined below) attributable to any period during the Term. The term "Taxes" shall mean all federal, state, county, or local governmental or municipal taxes, fees, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary (including real estate taxes, general and special assessments, transit taxes, leasehold taxes or taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent, and unless required to be paid by Tenant pursuant to Paragraph 7(b) below, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances and other personal property installed or located in or on the Premises), which shall be paid or accrued during the Term because of or in connection with the ownership, leasing and operation of the Premises, or any portion thereof.
b. Personal Property Taxes: Tenant shall be liable for and shall pay at least ten (10) days before delinquency, taxes levied against the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances and other personal property installed or located in or on the Premises, if any. If any such taxes are levied against Landlord or Landlord's property or if the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon such items and if Landlord pays the taxes based upon such increased assessment, which Landlord shall have the right to do regardless of the validity thereof but only under proper protest if requested by Tenant, Tenant shall reimburse Landlord, within ten (10) days after demand, for the sum of the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in the assessment, as the case may be.
8. Use: Tenant shall have the exclusive right to use the Premises for parking, signage (subject to the terms and conditions set forth in Exhibit D attached hereto), and for all lawful purposes consistent with the use of the Arena as a major public assembly facility (including temporary staging of event trailers and equipment, fan festivals, special merchandise sales, press events and other special events consistent with Tenant's historical practices), subject to Tenant's obligation to provide parking for City purposes and public parking as set forth in Paragraphs 18.4 and 18.5 of the Arena Management Agreement, and further subject to compliance with all other applicable provisions of this Lease (the "Permitted Use"), and for no other use.
a. Compliance With Laws: Except as otherwise provided in this Lease, Tenant shall comply with all applicable statutes, ordinances, laws, rules, regulations, orders and requirements of any Governmental Authority (as defined below) (the "Applicable Laws") concerning Tenant's use or manner of use of the Premises during the Term or the construction, maintenance and operation of the Premises during the Term. The term "Governmental Authority" shall mean any federal, state, regional or local governmental entity, political subdivision, agency, district, department, board, bureau, commission, authority or other administrative or regulatory body having jurisdiction; such term includes the following agencies and their respective predecessors and successors: Department of Toxic Substances Control, the Regional Water

Quality Control Board, Santa Clara County Department of Environmental Health and the Santa Clara Valley Water District.
b. Physical Alterations: Notwithstanding the foregoing, if any Applicable Laws require that the physical condition of the Premises be improved, altered or restored, then notwithstanding anything in this Lease to the contrary, the following shall apply:
i. Tenant shall be responsible, at its sole cost, to perform all such compliance work that involves re-sealing the asphalt, re-striping, and signage.
ii. Landlord shall be responsible, at its sole cost, to perform all such compliance work that involves structural alterations, or any penetrations in or removal, replacement or breaking of the asphalt surface (including all repaving necessary to repair any penetration); provided that Tenant shall pay for all costs of compliance work necessitated by acts of Tenant or Tenant Invitees (as defined in Paragraph 17(c) below).
c. Deed Restriction. This Lease is subject and subordinate to that certain Notice of Restriction of Use of San Jose Arena Block 5A Parking Lot, 5an Jose, California, recorded on August 2, 2001, as Document No. 15805175 in the Official Records of Santa Clara County, as may be modified by any Amended and Restated Notice of Environmental Restriction or similar document (the "Deed Restriction"). Landlord and Tenant shall comply with the Deed Restriction during the Term.

## 9. Maintenance and Repairs:

a. Tenant's Obligations: Subject to Paragraph 9(b) below, Tenant, at its sole cost and expense, shall perform all Ordinary Maintenance and Repairs (as defined below) needed to be made to the Premises (including any improvements thereto) as shall meet or exceed the Applicable Performance Standard (as defined below). The term "Ordinary Maintenance and Repairs" shall mean work that is reasonably necessary to keep elements of the Premises in good working order (without materially improving or extending their useful life), consistent with Tenant's historical practices, including general maintenance and care of the surface, resurfacing (including adding oil or aggregate on top of the asphalt), striping and signage and day to day sweeping and litter removal. The term "Applicable Performance Standard" shall mean a standard of performance, operation and maintenance that is equal to or exceeding those generally applicable to comparable major arenas in the United States constructed contemporaneously with the Arena, at which NBA and/or NHL games are played.
b. Landlord's Obligations: Except as otherwise provided below in 5ection 15 (Destruction), Landlord, at its sole cost and expense, shall perform all Capital Repairs and Replacements (as defined below) necessary to keep the Premises (including any improvements thereto) in good working order. The term "Capital Repairs and Replacements" shall mean renovation, repair, construction, acquisition or replacement of capital items included in the Premises which are subject to wearing out after a useful life. Without limiting the foregoing, Landlord shall perform all repairs and replacements to the Premises that involve penetrations in or removal, replacement or breaking of the asphalt surface (including all repaving necessary to repair any penetration), without reimbursement from Tenant; provided that Tenant shall pay for all
costs of repaving or repairs necessitated by acts of Tenant or Tenant Invitees (as defined in Paragraph 17(c) below). Except as expressly set forth in this Lease, Landlord shall have no obligation to perform any maintenance or repairs of any kind to the Premises.
10. Alterations: Tenant shall not make any additions, improvements or alterations to the Premises without first obtaining Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed.
11. Mechanics' Liens: Tenant shall pay all costs for construction done by it or caused to be done by it on the Premises as permitted by this Lease. Tenant shall keep the Premises free and clear of all mechanics' and other liens resulting from construction done by or for Tenant. If any such liens are filed, Tenant shall, at its sole cost, immediately cause such lien to be released of record or bonded in accordance with Applicable Laws. If Tenant fails to cause such lien to be so released or bonded within twenty (20) days after receipt by Tenant of notice that such lien has been filed, Landlord may, without waiving its rights and remedies based on such breach, and without releasing Tenant from any of its obligations, cause such lien to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. Tenant shall pay to Landlord within five (5) days after receipt of invoice from Landlord, any sum paid by Landlord to remove such liens. NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT, OR TO ANYONE HOLDING THE PREMISES THROUGH OR UNDER TENANT, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN THE PREMISES.
12. Utilities and Services: Tenant shall make all arrangements for and pay for all utilities services furnished to or used by it, and for all connection charges to the Premises. Landlord has no obligation to provide any utilities or services to Tenant or the Premises. Tenant acknowledges and agrees that Landlord has made no representation whatsoever regarding the availability or quality of any such utilities or services. Tenant agrees that Landlord shall not be liable in any manner whatsoever for any failure or interruption of any such utilities or services, whether such failure or interruption occurs due to acts or omissions of the service provider or any other third party. Any utility charges which are sent to or paid by Landlord shall be reimbursed to Landlord by Tenant upon demand by Landlord. Prior to the expiration or sooner termination of this Lease, at Tenant's sole cost and expense, Tenant shall terminate all contracts to which Tenant is a party affecting the Premises.
13. Indemnity: Subject to Paragraph 17 (b) below, the parties agree to indemnify each other as follows:
a. Indemnity by Tenant: Tenant will indemnify, defend and save harmless Landlord Indemnitees (as defined in Paragraph 13 (c) below) from all claims for damages or injuries of any kind, demands, liens, liabilities, fines, penalties, charges, causes of action or enforcement actions of any kind, judgments, losses, and all costs and expenses incurred in connection therewith, including actual attorneys' fees, costs of defense and consultants' fees (collectively, "Claims"), on account of (a) the use of the Premises and its facilities by Tenant or other Tenant Invitees (as defined in Paragraph 17(c) below); (b) any repairs or alterations which Tenant may make upon the Premises; (c) any act, omission, or negligence of Tenant or other Tenant Invitees; (d) any occurrence at the Premises during the Term; and/or (e) any breach by Tenant of any
covenant, agreement, representation or warranty made by Tenant pursuant to this Lease, but Tenant shall not be liable for damage or injury occasioned by the matters covered by Landlord's indemnity under Paragraph 13(b) below.
b. Indemnity by Landlord: Landlord will indemnify, defend and save harmless Tenant Indemnitees (as defined in Paragraph 13(c) below) from all Claims on account of (a) any act, omission or negligence of Landlord or other Landlord Invitees (as defined in Paragraph 17(c) below); and/or (b) any breach by Landlord of any covenant, agreement, representation or warranty made by Landlord pursuant to this Lease, but Landlord shall not be liable for damage or injury occasioned by the matters covered by Tenant's indemnity under Paragraph 13(a) above.
c. Defined Terms:
i. The term "Affiliate" shall mean any person or entity that, directly or indirectly, controls, is controlled by, or is under common control with the entity in question, excluding the NHL or any member clubs of the NHL (other than San Jose Sharks, LLC, a Delaware limited liability company, or the San Jose Sharks).
ii. The term "Landlord Indemnitees" shall mean Landlord and its Affiliates, their successors and assigns, and all of their respective lenders, directors, officers, employees, members, managers, representatives and agents.
iii. The term "Tenant Indemnitees" shall mean Tenant and its Affiliates (including SJS LLC), their successors and assigns, and all of their respective lenders, directors, officers, employees, members, managers, representatives and agents.
d. Survival: The provisions of this Paragraph 13 shall survive the expiration or earlier termination of this Lease.
14. Insurance: Tenant covenants and agrees that it will carry and maintain, during the Term, at Tenant's sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for:
a. Commercial General Liability: During the Term, Tenant shall procure and maintain in full force and effect, at its sole cost, a policy or policies of commercial general liability insurance, including bodily injury liability insurance, with limits of not less than Two Million Dollars ( $\$ 2,000,000.00$ ) per occurrence ensuring against any and all liability of Tenant with respect to the Premises or arising out of the maintenance, use or occupancy thereof. Tenant agrees also to procure and maintain property damage liability insurance with a limit of not less than One Million Dollars ( $\$ 1,000,000.00$ ) per accident. All such bodily injury liability insurance and property damage liability insurance shall specifically ensure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons or injury or damage to property contained in this Paragraph.
b. Policy Form: All policies of insurance provided for herein shall be issued by good, responsible and standard companies, reasonably acceptable to Landlord, and shall name Landlord and any other Landlord Indemnitee identified by Landlord in writing as additional insureds.

Executed copies of such policies of insurance or certificates thereof shall be delivered to Landlord. All commercial general liability and property damage policies shall contain a provision that Landlord and any other Landlord Indemnitee, although named as an additional insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent.

All commercial general liability policies shall be written as primary policies and not contributing with or be in excess of the coverage which Landlord may carry.

Notwithstanding anything to the contrary within this Paragraph, Tenant's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant; provided, however, that Landlord and any other Landlord Indemnitee identified by Landlord in writing shall be named as additional insureds thereunder, and that the coverage afforded Landlord and any other Landlord Indemnitee will not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further that all of the requirements of this Paragraph are otherwise satisfied. Certificates of said policies shall be furnished to Landlord.
c. Waiver of Subrogation: Tenant and Landlord hereby mutually waive their respective rights of recovery against each other of any loss of or damage to the property of either party, to the extent such loss or damage is covered by any insurance policy required to be maintained by this Lease or otherwise in force at the time of such loss or damage. Each party shall obtain any special endorsements, if required by the insurer, whereby the insurer waives its right of subrogation against the other party hereto. The provisions of this Paragraph shall not apply in those instances in which the waiver of subrogation would cause either party's insurance coverage to be voided or otherwise made uncollectible; or, if any such insurance policy cannot be obtained with such a waiver of subrogation, then the party obtaining such insurance shall notify the other party of that fact and thereon shall be relieved of the obligation to obtain such a waiver of subrogation rights from the insurer with respect to the particular insurance involved.
15. Destruction: If all or any material portion of the Premises shall be damaged or destroyed by Casualty (as defined below), Tenant shall have one hundred fifty (150) days after the date of such Casualty to elect to either (a) terminate this Lease (effective within thirty ( 30 ) days after the date of Tenant's notice), or (b) repair or reconstruct the Premises, at Tenant's sole cost and expense, or (c) cordon off the portion of the Premises that is damaged in compliance with Applicable Laws, and continue to use the undamaged portion of the Premises. If Tenant does not give notice of its election within said one hundred fifty (150) day period, then Tenant shall be deemed to have elected the alternative in (c). In the case of an election (or deemed election) under (c), the Base Rent shall be abated based on the number of parking spaces lost as a result of the Casualty, commencing as of the date of the Casualty. Landlord shall have no obligation to repair or reconstruct any portion of the Premises following a Casualty. However, if Tenant has not terminated this Lease pursuant to this Section 15, then nothing herein shall modify Landlord's obligation to provide Replacement Parking for all 228 parking spaces currently included in the Premises, as and when so required pursuant to Paragraph 4 of this Lease. The term "Casualty"
shall mean a fire, storm, flood, earthquake, civil commotion or other active physical peril that causes damage or destruction to the Premises.

## 16. Eminent Domain:

a. Total Taking: If there is a Total Taking (as defined in Paragraph 16(e) below), other than a Temporary Taking (as defined in Paragraph 16(e) below), this Lease shall automatically terminate as of the date on which such Total Taking shall be effective. If this Lease terminates pursuant to this Paragraph 16(a) prior to the Replacement Parking Termination Date, then Landlord shall provide to Tenant the Replacement Parking on the terms and conditions set forth in Paragraph 4(c) above, in which case Tenant's election to operate the Replacement Parking under either the Replacement Parking License or the Replacement Parking Lease shall be made within thirty (30) days after such Total Taking.
b. Partial Taking: If there is a Partial Taking (as defined in Paragraph 16(e) below), other than a Temporary Taking, this Lease shall continue in full force and effect, in which case the Base Rent shall be abated based on the number of parking spaces lost as a result of the Partial Taking. If such Partial Taking occurs prior to the Replacement Parking Termination Date, then Landlord shall replace the number of parking spaces lost with the same number of parking spaces, which replacement parking spaces shall meet the requirements for the Replacement Parking set forth on Exhibit C attached hereto (provided that in no event shall Landlord be obligated to provide more replacement parking spaces than the number of parking spaces lost), on the terms and conditions set forth in Paragraph 4(c) above. In such case (i) Tenant's election to operate the Replacement Parking under either the Replacement Parking License or the Replacement Parking Lease shall be made within thirty (30) days after such Partial Taking, and (ii) the Base Rent or License Fee payable under the applicable Replacement Parking Agreement shall be based on the replacement parking spaces, and shall be separate from, and in addition to, the rent payable under this Lease (as abated as set forth above). Landlord shall be responsible for performing and paying for any repair and restoration work to the Premises necessitated by the Partial Taking (not to exceed the amount of the Award (as defined in Paragraph 16(e) below) received by Landlord therefor).
c. Temporary Taking: If there is a Temporary Taking, this Lease shall continue in full force and effect, in which case the Base Rent shall be abated during the term of such Temporary Taking only based on the number of parking spaces lost as a result of the Temporary Taking. If such Temporary Taking occurs prior to the Replacement Parking Termination Date, then Landlord shall replace the number of parking spaces lost with the same number of parking spaces, which replacement parking spaces shall meet the requirements for the Replacement Parking set forth on Exhibit C attached hereto (provided that in no event shall Landlord be obligated to provide more replacement parking spaces than the number of parking spaces lost), on the terms and conditions set forth in Paragraph 4(c) above, provided that (i) Tenant shall operate such replacement parking spaces under a Replacement Parking License, (ii) the License Fee payable thereunder shall be separate from, and in addition to, the rent payable under this Lease (as abated as set forth above), and (iii) in no event shall the Replacement Parking License extend beyond the termination of such Temporary Taking. Landlord shall have no obligation to repair or restore any portion of the Premises following a Temporary Taking.
d. Application of Awards: Awards on account of a Taking (as defined in Paragraph 16(e) below) shall be applied in accordance with this Paragraph:
i. Generally: Awards received on account of a Total Taking, a Partial Taking or a Temporary Taking shall be paid to Landlord, subject to Tenant's rights set forth in Paragraph 16(d)(ii) below.
ii. Separate Award to Tenant: Nothing in this Lease shall preclude Tenant from obtaining a separate award from the loss of business, loss of goodwill, relocation expenses and/or for the Taking of Tenant's personal property, and Landlord shall have no right to such award.
e. Proceedings/Negotiations: To the fullest extent permitted by Applicable Laws, Landlord and Tenant each shall have the right, at its own expense, to appear in any action related to a Taking that arises prior to the Termination Date, and to participate in all proceedings and negotiations relating thereto.
i. Any party who becomes aware of any contemplated Taking or negotiations that might result in a Taking of any portion of the Premises or interests under this Lease shall promptly give notice thereof to the other party.
ii. Neither party shall settle or compromise any right of the other party to receive an award, or any other rights under Applicable Laws.
iii. In any negotiated settlement with a condemning authority, Landlord agrees to preserve the provisions of Paragraph 4(a)(i) above regarding the minimum 120 days' prior notice of termination, and the provisions of Paragraph 4(a)(ii) above regarding the blackout on termination during a Hockey Season.

## f. Defined Terms:

i. The term "Award" shall mean all compensation, damages, income, rent, awards or any interest therein whatsoever which may be paid or made in connection with a Taking, excluding any separate payments made for litigation costs, attorneys' fees and related expenses pursuant to a court order or settlement agreement.
ii. The term "Partial Taking" shall mean a permanent Taking that is not a Total Taking.
iii. The term "Taking" shall mean the exercise by any Governmental Authority of the power of eminent domain or condemnation, and any purchase or other acquisition in lieu of condemnation, including a voluntary sale or conveyance in lieu of condemnation and acts constituting inverse condemnation, pursuant to which any interest in the Premises (including a fee, leasehold or easement interest) is conveyed to the Governmental Authority.
iv. The term "Temporary Taking" shall mean a Taking of any interest in the Premises, on a temporary basis, for a period not extending beyond the then-current
scheduled Termination Date (and any such temporary Taking extending beyond such date shall be deemed to be a permanent Taking for purposes of this Lease).
v. The term "Total Taking" shall mean a permanent Taking of the entire fee interest in the Premises.
g. Survival: The provisions of this Paragraph 16 shall survive the termination of this Lease with respect to any claim arising prior to such termination.

## 17. Hazardous Substances:

a. Tenant's Responsibilities for Hazardous Substances:
i. Tenant's Investigation and Remediation Obligations: Tenant agrees not to cause or permit any Hazardous Substances to be brought upon, stored, used, handled, generated or Released onto, in, under, over, from or about the Premises by Tenant or other Tenant Invitees without the prior written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. Tenant shall be responsible for Investigation (as defined in Paragraph 17(c) below) and Remediation (as defined in Paragraph 17(c) below) of any Hazardous Substance Released (as defined in Paragraph 17(c) below) onto, in, under, over, from or about the Premises by Tenant or other Tenant Invitees, from and after August 20, 1993 (i.e., the date that Tenant initially took possession of the Premises) and continuing throughout the Term, including all costs associated with any such Investigation and/or Remediation. Notwithstanding anything in this Lease to the contrary, Landlord shall perform all such Investigation and/or Remediation work that involves penetrations in or removal, replacement or breaking of the asphalt surface (including all repaving necessary to repair any penetration), and Tenant shall reimburse Landlord for all costs related thereto upon demand by Landlord.
ii. Tenant's Obligations upon Release or Notice of Governmental Action: Tenant shall promptly notify Landlord in writing of any Release of Hazardous Substances which are known by Tenant to be its responsibility hereunder and of any governmental action taken (or threatened) relating thereto.

1. Tenant, at its sole cost and expense, may contest any such governmental action, but shall use reasonable good faith efforts to respond to any such governmental action.
2. Subject to Paragraph 17 (a)(i) above, Tenant, using reasonable good faith efforts, shall promptly undertake and diligently prosecute to completion any Investigation or Remediation required of Tenant hereunder (whether through repair, replacement or otherwise).
3. Tenant has no duty with respect to any Investigation or Remediation of Hazardous Substances except as provided herein.
iii. Conformance with Applicable Environmental Laws: Subject to Paragraph 17(a)(i) above, Tenant shall use reasonable good faith efforts to implement and complete any Investigation and Remediation for which Tenant is responsible hereunder in conformance with Environmental Laws (as defined in Paragraph 17(c) below) or as required by any Governmental Authority, or as necessary to abate an immediate risk to human health or safety.
4. Tenant shall comply with permits and licenses currently or hereafter issued to Tenant in connection with any Investigation or Remediation of Hazardous Substances for which Tenant is responsible under Paragraph 17(a)(i) above.
iv. Indemnification by Tenant: Tenant shall defend, hold harmless and indemnify Landlord Indemnitees (as defined in Paragraph 17(c) below) from any and all Environmental Claims (as defined in Paragraph 17(c) below) arising from or related to the following:
5. The presence of, the Release of, costs of Investigation of, and/or the Remediation of Hazardous Substances that are Tenant's responsibility under Paragraph 17(a)(i) above; and
6. The costs of repairs, replacements and any capital modifications or improvements to the Premises caused by or required as a result of any such Investigation and/or Remediation activities.
7. The provisions of this Paragraph 17(a)(iv) shall survive the expiration or earlier termination of this Lease.
b. Landlord's Responsibilities for Hazardous Substances:
i. Landlord's Investigation and Remediation Obligations: Subject to Tenant's obligations under Paragraph 17(a) above, Landlord shall be responsible for Investigation and Remediation of any Hazardous Substances on or under the Premises (including Pre-Existing Hazardous Substances, as defined in Paragraph 17(c) below), and any Release of Hazardous Substances onto, in, under, over, from or about the Premises, including all costs associated with any such Investigation and/or Remediation.
ii. Landlord's Obligations upon Release or Notice of Governmental Action: Landlord shall promptly notify Tenant in writing of any Release of Hazardous Substances which are known by Landlord to be its responsibility hereunder and of any governmental action taken (or threatened) relating thereto.
8. Landlord, at its sole cost and expense, may contest any such governmental action, but shall use reasonable good faith efforts to respond to any such governmental action so as to cause the least possible interference reasonably practical with Tenant's use and operation of the Premises.
9. Landlord, using reasonable good faith efforts, shall promptly undertake and diligently prosecute to completion any Investigation or Remediation required of Landlord hereunder (whether through repair, replacement or otherwise) in such manner as to cause the least possible interference reasonably practical with Tenant's use and operation of the Premises.
iii. Conformance with Applicable Environmental Laws: Landlord shall use reasonable good faith efforts to implement and complete any Investigation and Remediation for which Landlord is responsible hereunder in conformance with Environmental Laws or as required by any Governmental Authority, or as necessary to abate an immediate risk to human health or safety.
10. Landlord shall comply with permits and licenses currently or hereafter issued to Landlord in connection with any Investigation or Remediation of Hazardous Substances for which Landlord is responsible under Paragraph 17(b)(i) above.
iv. Indemnification by Landlord: Landlord shall defend, hold harmless and indemnify Tenant Indemnitees from any and all Environmental Claims arising from or relating to the following:
11. The presence of, the Release of, costs of Investigation of, and/or the Remediation of Hazardous Substances that are Landlord's responsibility under Paragraph 17(b)(i) above; and
12. The costs of repairs, replacements and any capital modifications or improvements to the Premises caused by or required as a result of any such Investigation and/or Remediation activities.
13. The provisions of this Paragraph 17 (b)(iv) shall survive the expiration or earlier termination of this Lease.
c. Defined Terms:
i. The term "Environmental Claim" shall mean any and all Claims, and shall also include administrative and judicial proceedings and orders and any required Investigation or Remediation.
ii. The term "Environmental Law" shall mean any California or federal law, or any court order or judgment, that regulates or directs activities regarding the generation, possession, storage, use, transportation or disposal of a Hazardous Substance, or the Investigation or Remediation of a Hazardous Substance Release, including the laws described in the definition of "Hazardous Substance" as set forth below. The term "Environmental Law" shall also mean the enforceable provisions of the Deed Restriction recorded against the Premises.
iii. The term "Hazardous Substance" shall mean any substance, material, condition, mixture or waste that is:
14. Defined as a "hazardous waste", "hazardous material", "hazardous substance", "extremely hazardous waste", or "restricted hazardous waste" under any provision of California or federal law;
15. Radioactive;
16. Designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 12S1 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317);
17. Defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act; 42 U.S.C. Section 6901 et seq. ( 42 U.S.C. Section 6903);
18. Defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ( 42 U.S.C. Section 9601);
19. Determined to be a "hazardous chemical, substance or mixture" pursuant to the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. (15 U.S.C. Section 2605); or
20. Identified for remediation, storage, containment, removal, disposal or treatment in any Remediation plan for the Premises as mandated or approved by any Governmental Authority.
iv. The term "Investigation" shall mean to observe, inquire, examine, monitor, analyze, explore, research, inspect, canvass, question, poll, and/or survey the soil, ground water, above and below ground structures and appurtenances of the Premises or adjacent or neighboring properties or any of them, to reasonably determine the present or suspected presence, nature or extend of Hazardous Substances in, on, under or abate the area of the Premises or adjacent or neighboring properties.
v. The term "Landlord Invitees" shall mean (A) Landlord Indemnitees, and (B) all other persons who enter the Premises under Landlord's control or supervision or with Landlord's authority or permission (including Landlord's contractors), but excluding Tenant Invitees.
vi. The term "Pre-Existing Hazardous Substance" shall mean Hazardous Substances existing on or under the Premises prior to August 20, 1993.
vii. The term "Release" shall mean any spilling, leaking, migration (including migration below the surface from other properties to the Premises or from the Premises to other properties), pumping, pouring, emitting, emptying, discharging, injecting, escaping (including into the air), leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Substances.
viii. The term "Remediation" shall mean any of those actions defined as removal and/or remedial actions under Section 101(23) and (24) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) and similar actions as defined under comparable state and local laws, and/or cleanup, removal, containment, monitoring, treatment, storage, disposal, or other mitigation or remediation of Hazardous Substances undertaken on, in, under or about the Premises or adjacent or neighboring properties.
ix. The term "Tenant Invitees" shall mean (A) Tenant Indemnitees, and (B) all other persons who enter the Premises under Tenant's control or supervision or with Tenant's authority or permission (including customers and contractors), but excluding Landlord Invitees.
d. Representation and Warranty as to Hazardous Substances: Landlord and Tenant hereby represent and warrant to each other that as of the Effective Date, they have no actual knowledge of any Hazardous Substances located on, under or about the Premises other than the Hazardous Substances described in the following reports:
i. Phase I Environmental Site Assessment dated September 25, 2018, prepared by Engeo Incorporated, Project No. 14121.000.000.
ii. Phase II Environmental Site Assessment dated May 14, 2018, prepared by Engeo Incorporated, Project No. 14121.000.000.
21. Default:
a. Tenant's Default: The occurrence of any of the following shall constitute a default by Tenant:
i. Failure to pay rent, or any other payment required to be made by Tenant hereunder, when due, if the failure continues for twenty (20) days after written notice has been given to Tenant.
ii. Failure to perform any other provision of this Lease if the failure to perform is not cured within sixty ( 60 ) days after notice has been given to Tenant. If the default cannot reasonably be cured within sixty (60) days, Tenant shall not be in default of this Lease if Tenant commences to cure the default within the sixty (60) day period and diligently and in good faith continues to cure the default.
iii. The insolvency of Tenant as evidenced by an assignment by Tenant for the benefit of creditors, a petition in bankruptcy being filed by the Tenant, the adjudication of Tenant as a bankrupt or the filing against Tenant of a petition for the appointment of a receiver, provided that with respect to an involuntary petition of bankruptcy or insolvency, Tenant shall have a period of sixty $(60)$ days after the filing to have such petition dismissed.

Notices given under this Paragraph shall specify the alleged default and the applicable Lease provisions, and shall demand that Tenant perform the provisions of this Lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the

Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord so elects in the notice.
b. Landlord's Remedies: Landlord shall have the following remedies if Tenant commits a default beyond the applicable notices and cure periods set forth in this Lease, which remedies are cumulative and not exclusive, and are in addition to any remedies now or later allowed by Applicable Laws:
(1) Landlord can terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving notice to Tenant shall terminate this Lease. Acts of maintenance or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant all unpaid Rent as of the date of termination, plus any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.
(2) Landlord can cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid. The sum shall be Additional Rent.
c. Landlord's Default: Landlord shall not be in default, unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than sixty (60) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than sixty (60) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such sixty (60) day period, and thereafter diligently prosecutes the same to completion. In no event shall Tenant have the right to terminate this Lease as a result of Landlord's default, and Tenant's remedies shall be limited as follows:
i. Limitation on Liability: Landlord, or its agents, shall not be liable for loss or damage to any property by theft or otherwise, nor for any injury to or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water or rain from the street or subsurface, or from any other place, resulting from dampness or any other cause whatsoever, except as otherwise provided in Paragraph 13(b) above. Landlord, or its agents, shall not be liable for interference with the light or other incorporeal hereditaments, loss of business by Tenant. Tenant shall give prompt notice to Landlord in case of fire or accidents on the Premises or of defects therein, or in the fixtures or equipment.
ii. Landlord's Exculpation: In the event of default, breach or violation by Landlord, which term includes Landlord's officers, directors, employees, agents or representatives, of any of Landlord's obligations under this Lease, Landlord's liability to Tenant shall be limited to its ownership interest in the Premises. Should Tenant recover a money judgment against Landlord, the judgment shall be satisfied only out of the proceeds of sale received on execution of the
judgment and levy against the right, title and interest of Landlord in the Premises and out of rent or other income derived therefrom. Landlord shall not be personally liable for any deficiency beyond its interest in the Premises.
d. No Indirect Damages: Notwithstanding anything in this Lease to the contrary, neither Landlord nor Tenant shall be liable under any circumstances for injury or damage to, or interference with, the other party's business, including loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring; provided, however, that the foregoing limitation will not apply to Tenant's liability for any holding over after the expiration of the Term as set forth in Paragraph 24(b) below.
19. Landlord's Entry on Premises: Landlord and its authorized representatives shall have the right to enter the Premises during all reasonable times, for any of the following purposes, provided that Landlord shall give Tenant reasonable advance notice of Landlord's entry, and shall use commercially reasonable efforts to schedule Landlord's activities in coordination with Tenant so as to cause the least possible interference reasonably practical with Tenant's use and operation of the Premises:
a. To determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease;
b. To do any necessary maintenance and to make any restoration to the Premises that Landlord has the right or obligation to perform;
c. To serve, post or keep posted any notices required or allowed under the provisions of this Lease;
d. To show the Premises to prospective brokers, agents, buyers, tenants or persons interested in an exchange, at any time during the Term with prior appointment;
e. To do any act or thing necessary for the safety or preservation of the Premises if any excavation or other construction is undertaken or is about to be undertaken on any adjacent property or nearby street. Landlord's right under this Paragraph extends to the owner of the adjacent property on which excavation or construction is to take place and the adjacent property owner's authorized representatives;
f. To monitor and maintain equipment used for continuing Landlord's Investigation and/or Remediation responsibilities pursuant to Paragraph 17(b); and
g. To do geotechnical, environmental and any other investigations desired by Landlord in connection with its proposed development of the Premises, and to do any other reasonable pre-construction activities.

Landlord shall conduct its activities on the Premises as allowed in this Paragraph in a reasonable manner, so that it will cause the least possible inconvenience, annoyance, or disturbance to Tenant.

## 20. Subordination; Estoppel:

a. Subordination: This Lease is and shall be subordinate to any encumbrance now of record or recorded after the date of this Lease affecting the building, other improvements, and land of which the Premises are a part; provided, however, that (i) so long as Tenant is not in default hereunder after the expiration of all applicable notice and cure periods, neither this Lease nor any of Tenant's rights hereunder shall be terminated or modified, nor shall Tenant's possession of the Premises be disturbed, by any action or proceeding to foreclose said encumbrance; and (ii) any successor owner shall be bound by the terms of this Lease. Such subordination is effective without any further act of Tenant. Tenant shall from time to time on request from Landlord execute and deliver any documents or instruments that may be required by a lender to confirm such subordination.
b. Estoppel Certificates: Tenant and Landlord, within ten (10) days after notice from the other party, shall execute and deliver to such requesting party a certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate also shall state the amount of Base Rent, the dates to which the rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the ten (10) days shall be conclusive upon the parties that this Lease is in full force and effect and has not been modified except as may be represented by the requesting party.
21. Notices: All notices and demands which may or are to be required or permitted to be given by either party to the other hereunder shall be in writing and sent by reputable overnight delivery service or United States Mail, postage prepaid, addressed to the other party at the address(es) set forth below, or to such other address(es) as such party may, from time to time, designate in a notice to the other party.

| Tenant: | San Jose Arena Management, LLC |
| :---: | :---: |
|  | 525 W. Santa Clara Street |
|  | San Jose, CA 95113 |
|  | Attn: Legal Department |
| With a copy to: | LMA Law, LLP |
|  | One Almaden Blvd., Suite 700 |
|  | San Jose, CA 95113 |
|  | Attn: Lucy Lofrumento, Esq. |
| Landlord: | Google LLC |
|  | 1600 Amphitheatre Parkway |
|  | Mountain View, CA 94043 |
|  | Attn: Vice President, Real Estate and Workplace Services |
| With a copy to: | Google LLC |
|  | 1600 Amphitheatre Parkway |
|  | Mountain View, CA 94043 |
|  | Attn: Legal Department/RE Matters |

With a copy to: Allen Matkins Leck Gamble Mallory \& Natsis LLP<br>1900 Main Street, 5th Floor<br>Irvine, CA 92614<br>Attention: Richard E. Stinehart, Esq.

22. Waiver: No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. No act or conduct of Landlord shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Lease.

## 23. Recordation; Quitclaim Deed:

a. Recordation: Neither this Lease nor a memorandum thereof shall be recorded.
b. Quitclaim Deed: Tenant shall execute and deliver to Landlord on the expiration or termination of this Lease, immediately upon Landlord's request, a quitclaim deed to the Premises, in recordable form, designating Landlord as transferee.

## 24. Assignment:

a. Sale or Transfer of Premises: If Landlord sells or transfers all or any portion of the Premises, Landlord, on consummation of the sale or transfer, shall be released from any liability thereafter accruing under this Lease if Landlord's successor has assumed in writing, for the benefit of Tenant, Landlord's obligations under this Lease; provided, however, that if Landlord sells or transfers all of any portion of the Premises to a party that is not an Affiliate of Landlord prior to the Replacement Parking Termination Date, then the release of liability set forth above shall be conditioned on Landlord's successor providing Tenant with commercially reasonable evidence of its ability to provide Replacement Parking pursuant to the Replacement Parking Agreement in accordance with Paragraph 4(c) above. If any prepaid rent or security deposit has been paid by Tenant, Landlord can transfer the prepaid rent and security deposit to Landlord's successor and on such transfer Landlord shall be discharged from any further liability in reference to the same.
b. Transfer by Tenant: Tenant shall not voluntarily or involuntarily assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, without first obtaining Landlord's consent, which consent and approval shall not be unreasonably withheld, conditioned or delayed. Any assignment, encumbrance, or sublease without Landlord's consent shall be voidable, and, at Landlord's election, shall constitute a default. No consent to any assignment, encumbrance or sublease shall constitute a further waiver of the provisions of this Paragraph. Notwithstanding the foregoing, Tenant may, without the
consent and approval of Landlord, assign this Lease or sublease all or any part of the Premises to an Affiliate of Tenant, provided that Tenant gives Landlord thirty (30) days prior written notice of such assignment or sublease. Further, Tenant may, without the consent and approval of Landlord, enter into one (1) or more license agreements for the use of the Premises, provided that such license agreements are consistent with the Permitted Use. In no event shall Tenant be released from any of its obligations under this Lease as a result of any assignment, sublease, license or other transfer or encumbrance of Tenant's interest in this Lease or the Premises.
25. Attorneys' Fees: If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party all costs incurred by such prevailing party in such action, in any appeal thereof, or in any enforcement of any judgment rendered therein including reasonable attorneys' fees, experts' fees and costs of suit.

## 26. Surrender of Premises; Holding Over:

a. Surrender of Premises: Upon the expiration or earlier termination of this Lease, Tenant shall surrender to Landlord the Premises and all Tenant's improvements and alterations in good condition (except for ordinary wear and tear and destruction to the Premises covered by Paragraph 14 above). On or before the expiration or earlier termination of this Lease, Tenant shall (i) remove all of its personal property, including equipment, trade fixtures and furnishings, and repair any damage caused by such removal, (ii) remove all Hazardous Materials used or stored by Tenant at the Premises, if any, and (iii) close out all open permits, if any, with respect to Tenant's use or operation of the Premises. Landlord can elect to retain or dispose of in any manner any of Tenant's personal property that Tenant does not remove from the Premises upon the expiration or earlier termination of this Lease, at Tenant's sole cost and expense. Tenant waives all claims against Landlord for any damage to Tenant resulting from Landlord's retention or disposition of any of Tenant's personal property. Tenant shall be liable to Landlord for Landlord's costs for storing, removing and disposing of Tenant's personal property.
b. Holding Over: Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. Any holding over after the expiration of the Term with or without the consent of Landlord shall be construed to be a tenancy from month-to-month at a Base Rent equal to one hundred fifty percent (150\%) of the Base Rent payable at the time of such expiration or earlier termination, plus all Additional Rent. All provisions of this Lease (except those pertaining to Term) shall apply to such month-to-month tenancy. If Tenant fails to surrender the Premises upon the expiration or earlier termination of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord Indemnitees harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any increased costs Landlord may incur in connection with its proposed development of the Premises.
27. California Accessibility Disclosure: For purposes of Section 1938(a) of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises has not undergone inspection by a Certified Access Specialist (CASp). In addition, the following notice is
hereby provided pursuant to Section 1938(e) of the California Civil Code: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." In furtherance of the foregoing clause, if Tenant elects to obtain a CASp inspection of the Premises, it must be performed during the Term, at Tenant's sole cost and expense, and Tenant shall be responsible for making any repairs necessary to correct violations of construction-related accessibility standards within the Premises identified by such CASp inspection, at Tenant's sole cost and expense.
28. Brokers: Tenant and Landlord each warrant that it has had no dealings with any real estate broker or agents in connection with the negotiation of this Lease, and it knows of no other real estate broker or agent who is entitled to a commission in connection with this Lease.
29. Non-Discrimination. Tenant covenants, for itself and its successors and assigns, and all persons claiming under or through Tenant, that this Lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of, any person or group or persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the leasing, subleasing, transferring, use, or enjoyment of the land herein leased nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein leased.

Notwithstanding the immediately preceding paragraph, with respect to familial status, said paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in said paragraph shall be construed to affect Sections 51.2,51.3,51.4,51.10,51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions ( $n$ ), (o) and (p) of Section 12955 of the California Government Code shall apply to said paragraph.

## 30. Miscellaneous Provisions:

a. Time of Essence: Time is of the essence of each provision of this Lease.
b. Successors and Assigns: Subject to Paragraph 24 above, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.
c. Venue: Venue for suit on this Lease shall be Santa Clara County, California, and all parties hereto agree and consent to venue being proper in such county.
d. Rent Payable in U.S. Money: Rent and all other sums payable under this Lease must be paid in lawful money of the United States of America.
e. Governing Law: This Agreement shall be construed and interpreted in accordance with the laws of the State of California.
f. Integrated Agreement; Modification: This Lease contains the entire agreement of Landlord and Tenant and cannot be amended or modified except by a written agreement, executed by each of the parties hereto.
g. Severability: The unenforceability, invalidity, illegality of any provision shall not render the other provisions unenforceable, invalid, or illegal.
h. Waiver: No consent or waiver, express or implied by either party to this Lease of any breach or default by the other in the performance of any obligation hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default by such party hereunder. Failure on the part any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such part hereunder.
i. Execution of Documents: The parties hereto hereby agree to execute and deliver such further instruments, agreements, contracts and documents as may be reasonably required to effectuate the stated and intended purposes of this Lease.
j. Counterparts: This Lease may be executed simultaneously in one (1) or more electronic or original counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
k. Neutral Construction: The parties hereto agree that this Lease will be interpreted neutrally, and that it should not be construed for or against any party deemed to be the drafter thereof.
I. Construction: The words "include," "includes" and "including" when used herein is used in a non-exclusive sense and shall be deemed in each case to be followed by the words "without limitation."
m. No Third Party Beneficiaries: The provisions of this Lease are intended solely for the benefit of the parties hereto and are not to be construed for the benefit of any other person or entity. No creditor, customer, government agency or other person or entity who is not a party hereto shall obtain any rights under the provisions of this Lease, and no such person shall have the right to make any claim with respect to any debt, liability or obligation against any party hereto on the basis of this Lease.
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IN WITNESS WHEREOF, Landlord and Tenant have executed this Parking Lease as of the Effective Date.


TENANT:
SAN JOSE ARENA MANAGEMENT, LLC,
a Delaware limited liability company

By:
Name: $\qquad$

IN WITNESS WHEREOF, Landlord and Tenant have executed this Parking Lease as of the Effective Date.

## LANDLORD:

GOOGLE LLC,
a Delaware limited liability company

By:
Name:
Title:

TENANT:

SAN JOSE ARENA MANAGEMENT, LLC,
a Delaware limited liability company

By:
Name:
Title:


## EXHIBIT A TO PARKING LEASE

## LEGAL DESCRIPTION OF PREMISES

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

## PARCEL ONE:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF SANTA CLARA STREET, FORMERLY THE ALAMEDA, WITH THE WESTERLY LINE OF AUTUMN STREET, FORMERLY ST. MARY'S STREET; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID SANTA CLARA STREET, 60 FEET; THENCE SOUTHERLY AND PARALLEL WITH THE WESTERLY LINE OF AUTUMN STREET 120 FEET; THENCE EASTERLY AND PARALLEL WITH SANTA CLARA STREET, 60 FEET TO THE WESTERLY LINE OF AUTUMN STREET; THENCE NORTHERLY AND ALONG THE WESTERLY LINE OF AUTUMN STREET 120 FEET TO THE POINT OF BEGINNING AND BEING A PORTION OF LOT 20 OF LOS COCHES RANCHO.

PARCEL TWO:
BEGINNING AT A POINT ON THE WESTERLY LINE OF AUTUMN STREET, FORMERLY ST. MARY'S STREET, DISTANT THEREON SOUTHERLY 120 FEET FROM THE POINT OF INTERSECTION OF THE SOUTHERLY LNE OF SANTA CLARA STREET, FORMERLY THE ALAMEDA, WITH THE WESTERLY LINE OF AUTUMN STREET; THENCE WESTERLY AND PARALLEL WITH SAID SANTA CLARA STREET, 88 FEET AND 11 INCHES TO THE EASTERLY LINE OF LAND DESCRIBED IN THE DEED FROM JOS. H. RUCKER, ADMINISTRATOR TO A. D. GUIDOTII, RECORDED ON JUNE 21, 1909 IN BOOK 340 OF DEEDS, PAGE 574; THENCE SOUTHERLY AND ALONG SAID EASTERLY LINE, 45 FEET TO THE NORTHWESTERLY CORNER OF LAND DESCRIBED IN THE DEED FROM JOS. H. RUCKER, ADMINISTRATOR TO HUGH MACDONALD, BY DEED RECORDED ON SEPTEMBER 07, 1898 IN BOOK 210 OF DEEDS, PAGE 522, SANTA CLARA COUNTY RECORDS; THENCE EASTERLY AND ALONG THE NORTHERLY LINE OF LAND DESCRIBED IN THE DEED TO SAID MACDONALD, 88 FEET AND 11 INCHES TO THE WESTERLY LINE OF AUTUMN STREET; THENCE NORTHERLY 45 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF LOT 20 LOS COCHES RANCHO.

PARCEL THREE:
COMMENCING AT THE POINT ON THE EASTERLY LINE OF SOUTH MONTGOMERY STREET (FORMERLY EAST STREET) DISTANT THEREON SOUTHERLY 120 FEET FROM THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF SANTA CLARA STREET, FORMERLY THE ALAMEDA, WITH THE EASTERLY LINE OF SOUTH MONTGOMERY STREET, SAID POINT OF COMMENCEMENT BEING THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY PATRICK KELLY AND WIFE TO CHARLES MCDONALD, BY DEED DATED AND RECORDED FEBRUARY 25,1868 IN BOOK I OF DEEDS, PAGE 368; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF SOUTH MONTGOMERY STREET, 80, FEET TO THE NORTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY PATRICK KELLY AND WIFE TO FRANK M, MCKENNA, BY DEED RECORDED FEBRUARY 16, 1862 IN BOOK Q OF DEEDS, PAGE 293; THENCE EASTERLY AND PARALLEL WITH THE SOUTHERLY LINE OF THE ALAMEDA AND ALONE THE NORTHERLY LINE OF THE LAND SO CONVEYED TO SAID MCKENNA, 113 FEET; THENCE SOUTHERLY AND PARALLEL WITH SOUTH MONTGOMERY STREET, 10 FEET; THENCE EASTERLY AND PARALLEL WITH SANTA CLARA STREET; 24 FEET 1 INCH TO THE WESTERLY LINE OF LAND CONVEYED BY JOE H. RUCKER, ADMINISTRATOR OF THE ESTATE OF SUSAN RUCKER, DECEASED, TO HUGH MACDONALD BY DEED RECORDED ON SEPTEMBER 07, 1898 IN BOOK 210 OF DEEDS, PAGE 522; THENCE NORTHERLY AND PARALLEL WITH THE WESTERLY

LINE OF AUTUMN STREET, FORMERLY ST. MARY'S STREET AND ALONG THE WESTERLY LINE OF PROPERTY CONVEYED TO HUGH MACDONALD AND ALONG THE WESTERLY LINE OF LAND CONVEYED BY JOE H. RUCKER, ADMINISTRATOR OF THE ESTATE OF SUSAN RUCKER, DECEASED TO H. H. KOOSER, BY DEED RECORDED MARCH 02, 1901 IN BOOK 240 OF DEEDS, PAGE 52, 90 FEET; THENCE WESTERLY AND PARALLEL WITH THE SOUTHERLY LINE OF SANTA CLARA STREET, 137 FEET AND 1 INCH TO THE EASTERLY LNE OF SOUTH MONTGOMERY STREET AND POINT OF COMMENCEMENT, BEING A PORTION OF LOT 20 OF THE LOS COCHES RANCHO ACCORDING TO THE MAP RECORDED IN BOOK A OF MAPS, PAGE 47.

## PARCEL FOUR:

COMMENCING AT A POINT ON THE SOUTHERLY LINE OF SANTA CLARA STREET, FORMERLY THE ALAMEDA, DISTANT THEREON 50 FEET EASTERLY FROM THE POINT OF INTERSECTION OF THE EASTERLY LINE OF SOUTH MONTGOMERY STREET, FORMERLY CALLED EAST STREET WITH THE SOUTHERLY LINE OF SANTA CLARA STREET, FORMERLY THE ALAMEDA; RUNNING THENCE SOUTHERLY ALONG THE LINE OF LAND NOW OR FORMERLY OF CHARLOTTE H. SMITH, 100 FEET TO A POST; THENCE WESTERLY AT RIGHT ANGLES AND ALONG THE SOUTHERLY LINE OF THE LANDS NOW OR FORMERLY OF CHARLOTTE H. SMITH, 50 FEET TO A POINT ON THE EASTERLY LINE OF SOUTH MONTGOMERY STREET; THENCE SOUTHERLY ALONG SAID LINE OF SOUTH MONTGOMERY STREET, 20 FEET; THENCE AT RIGHT ANGLES, EASTERLY 108 FEET TO A POINT; THENCE AT RIGHT ANGLES NORTHERLY 120 FEET TO A POINT ON THE SOUTHERLY LINE OF SANTA CLARA STREET; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SANTA CLARA STREET, 58 FEET TO THE POINT OF COMMENCEMENT, BEING A PORTION OF LOT 20 OF THE RANCHO DE LOS COCHES, ACCORDING TO A MAP OF THE SAME OF RECORD IN BOOK "A" OF MAPS, PAGE 47.

PARCEL FIVE:
PORTION OF LOT 20 OF THE LOS COCHES RANCHO, ACCORDING TO A MAP IN BOOK "A" OF MAPS, PAGE 47, RECORDS OF SANTA CLARA COUNTY, WHICH MAP IS ENTITLED, "MAP SHOWING THE SUBDIVISION OF THE RANCHO DE LOS COCHES, ADJOINING THE CITY OF SAN JOSE, SANTA CLARA COUNTY", AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE WESTERLY LINE OF AUTUMN STREET, FORMERLY ST. MARY'S STREET, DISTANT THEREON 210 FEET SOUTHERLY FROM THE POINT OF INTERSECTION THEREOF, WITH THE SOUTHERLY LINE OF SANTA CLARA STREET, FORMERLY THE ALAMEDA, SAID POINT OF COMMENCEMENT BEING THE SOUTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY PATRICK KELLY AND WIFE TO S. W. EASTERDAY, BY DEED RECORDED ON NOVEMBER 07, 1866 IN VOLUME "V" OF DEEDS, PAGE 555; THENCE AT RIGHT ANGLES WESTERLY ON AND ALONG THE SOUTHERLY LINE OF THE LAND SO CONVEYED TO SAID EASTERDAY, 113 FEET TO THE EASTERLY LINE OF THAT CERTAIN PARCEL OF LAND CONVEYED BY PATRICK KELLY AND WIFE TO FRANK M. MCKENNA, BY DEED RECORDED ON DECEMBER 16, 1862 IN VOLUME "Q" OF DEEDS, PAGE 293; THENCE SOUTHERLY ON AND ALONG THE EASTERLY LINE OF THE LAND SO CONVEYED TO SAID MCKENNA AND THE EASTERLY LNE OF THAT CERTAIN PARCEL OF LAND CONVEYED BY PATRICK KELLY AND WIFE TO, JAMES B. MARTIN, BY DEED RECORDED MARCH 09, 1863 IN VOLUME "Q" OF DEEDS, PAGE 556, 40 FEET TO A POINT DISTANT ON SAID LINE 10 FEET NORTHERLY FROM THE NORTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY PATRICK KELLY AND WIFE TO MICHAEL CORBIT, BY DEED RECORDED ON OCTOBER 06, 1864 IN VOLUME "S" OF DEEDS, PAGE 781; THENCE EASTERLY AND PARALLEL WITH AND DISTANT 10 FEET, NORTHERLY OF THE LAND SO CONVEYED TO SAID MICHAEL CORBIT, 113 FEET TO THE WESTERLY LINE OF AUTUMN STREET; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID AUTUMN STREET, 40 FEET TO THE POINT OF COMMENCEMENT.

PARCEL SIX:
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EXHIBIT A

COMMENCING AT A POINT ON THE EASTERLY LINE OF EAST STREET (NOW MONTGOMERY STREET) 200 FEET SOUTHERLY FROM THE INTERSECTION OF SAID EASTERLY LINE OF MONTGOMERY STREET, WITH THE SOUTHERLY LINE OF THE ALAMEDA, AND RUNNING THENCE SOUTHERLY ALONG THE SAID EAST LINE OF MONTGOMERY STREET, 50 FEET TO A POST; THENCE AT RIGHT ANGLES EASTERLY 113 FEET; THENCE AT RIGHT ANGLES NORTHERLY 50 FEET; THENCE AT RIGHT ANGLES WESTERLY 113 FEET TO THE POINT OF COMMENCEMENT.

PARCEL SEVEN:
COMMENCING AT THE INTERSECTION OF THE SOUTHERLY LINE OF THE ALAMEDA ROAD WITH THE EASTERLY LINE OF MONTGOMERY STREET, FORMERLY EAST STREET (AS THE SAME EXISTED ON MARCH 03, 1866) AND RUNNING THENCE SOUTHERLY AND ALONG THE EASTERLY LINE OF MONTGOMERY STREET (FORMERLY EAST STREET) 100 FEET TO A STAKE; THENCE AT RIGHT ANGLES EASTERLY 50 FEET; THENCE AT RIGHT ANGLES NORTHERLY PARALLEL WITH MONTGOMERY (FORMERLY EAST) STREET, 100 FEET TO THE SOUTHERLY LINE OF THE ALAMEDA ROAD AND THENCE WESTERLY AND ALONG THE SOUTHERLY LINE OF SAID ALAMEDA ROAD, 50 FEET TO THE POINT OF COMMENCEMENT, BEING A PART OF KELLY'S SUBDIVISION OF LOT 20 OF THE SUBDIVISION OF THE LOS COCHES RANCHO.

PARCEL EIGHT:
BEGINNING AT A POINT ON THE WESTERLY LINE OF AUTUMN STREET, FORMERLY ST. MARY'S STREET, DISTANT THEREON 210 FEET SOUTHERLY FROM THE INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF SANTA CLARA STREET, ALSO CALLED THE ALAMEDA; THENCE RUNNING AT RIGHT ANGLES TO AUTUMN STREET, WESTERLY 88 FEET AND 11 INCHES; THENCE AT RIGHT ANGLES NORTHERLY 45 FEET; THENCE AT RIGHT ANGLES EASTERLY 88 FEET AND 11 INCHES TO THE WESTERLY LINE OF AUTUMN STREET; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF AUTUMN, STREET, 45 FEET TO THE POINT OF BEGINNING AND BEING A PORTION OF THE LOS COCHES RANCHO.

PARCEL NINE:
COMMENCING AT A POINT ON THE EASTERLY LINE OF SOUTH MONTGOMERY STREET, FORMERLY EAST STREET, DISTANT THEREON 250 FEET SOUTHERLY FROM THE POINT OF INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF SANTA CLARA STREET, FORMERLY CALLED THE ALAMEDA; SAID POINT OF COMMENCEMENT BEING THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN THE DEED FROM PATRICK KELLY AND WIFE TO FRANK M. MCKENNA, RECORDED DECEMBER 16, 1862 IN BOOK "Q" OF DEEDS, PAGE 293; THENCE AT A RIGHT ANGLE EASTERLY ON AND ALONG THE SOUTHERLY LINE OF THE LAND SO DESCRIBED IN THE DEED TO MCKENNA, 113 FEET TO THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN THE DEED FROM PATRICK KELLY AND WIFE TO MICHAEL QUIGLEY, RECORDED FEBRUARY 08, 1968 IN BOOK 8 OF DEEDS, PAGE 284; THENCE SOUTHERLY ON AND ALONG THE WESTERLY LINE OF LANDS SO DESCRIBED IN THE DEED TO SAID QUIGLEY AND THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND SO DESCRIBED IN THE DEED FROM PATRICK KELLY AND WIFE TO MICHAEL CORBIT, RECORDED OCTOBER 06, 1864 IN BOOK "S" OF DEEDS, PAGE 781, 60 FEET; THENCE AT RIGHT ANGLES WESTERLY 113 FEET TO THE EASTERLY LINE OF SOUTH MONTGOMERY STREET; THENCE NORTHERLY ON AND ALONG SAID EASTERLY LINE OF SAID SOUTH MONTGOMERY STREET, 60 FEET TO THE POINT OF COMMENCEMENT, BEING A PORTION OF LOT 20 OF THE LOS COCHES RANCHO, ACCORDING TO A MAP OF SAME RECORDED IN BOOK "A" OF MAPS, PAGE 47 IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

PARCEL TEN:

COMMENCING AT A POINT ON THE WESTERLY LINE OF AUTUMN STREET (FORMERLY ST. MARY'S STREET) DISTANT THEREON 250 FEET SOUTHERLY FROM THE POINT OF INTERSECTION THEREOF WITH THE SOUTHERLY LINE 'OF SANTA CLARA STREET (FORMERLY THE ALAMEDA), SAID POINT OF COMMENCEMENT BEING THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN THE DEED FROM WESTERN WELL WORKS, INC., A CORPORATION TO GEORGE E. WOODS AND WIFE, DATED APRIL 01, 1927, RECORDED APRIL 16, 1927 IN BOOK 316 OF OFFICIAL RECORDS, PAGE 114; THENCE AT RIGHT ANGLES WESTERLY ON AND ALONG THE SOUTHERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID WOODS, 113 FEET; THENCE AT RIGHT ANGLES SOUTHERLY 60 FEET; THENCE AT RIGHT ANGLES EASTERLY 113 FEET TO THE WESTERLY LINE OF AUTUMN STREET; THENCE NORTHERLY ON AND ALONG THE WESTERLY LINE OF AUTUMN STREET, 60 FEET TO THE POINT OF COMMENCEMENT.

PARCEL ELEVEN:
BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SANTA CLARA STREET, FORMERLY THE ALAMEDA ROAD, 60 FEET WESTERLY FROM THE SOUTHWESTERLY CORNER OF SAID SANTA CLARA STREET, FORMERLY ALAMEDA ROAD, AND THE STREET KNOWN AS AUTUMN STREET, FORMERLY ST. MARY'S STREET; THENCE SOUTHERLY AND PARALLEL WITH AUTUMN STREET, FORMERLY ST. MARY'S STREET 120 FEET; THENCE WESTERLY AND PARALLEL WITH SAID SANTA CLARA STREET, FORMERLY ALAMEDA ROAD, 58 FEET; THENCE NORTHERLY AND PARALLEL WITH AUTUMN STREET, FORMERLY ST. MARY'S STREET, 120 FEET TO THE SOUTHERLY LINE OF SANTA CLARA STREET, FORMERLY ALAMEDA ROAD; AND THENCE EASTERLY AND ALONG SAID SOUTHERLY LINE OF SAID SANTA CLARA STREET, FORMERLY ALAMEDA ROAD, 58 FEET TO THE PLACE OF BEGINNING. THE SAME BEING A PART OF KELLY'S SUBDIVISION OF LOS COCHES RANCHO.

APN: 259-38-130

EXHIBIT A

## EXHIBIT B TO PARKING LEASE

## DEPICTION OF PREMISES



## EXHIBIT C TO PARKING LEASE

## REPLACEMENT PARKING AND OPERATING COVENANT

1. Replacement Parking: The term "Replacement Parking" shall mean a combined minimum of two hundred twenty-eight (228) parking spaces that satisfy all of the following conditions:
a. Each parking space must meet the requirements for an Available Parking Space (as defined below);
b. The parking spaces must be located either in the parking lot on Delmas West, or in one (1) or more of the lots shown on Schedule 1 attached hereto or as otherwise agreed by Tenant in its sole discretion (each, a "Replacement Parking Lot"); provided, however, that (i) any of the 228 parking spaces that are not located on Delmas West must be new, and not currently existing or planned as part of Lot $E$, as described in the fourth column of Schedule 1 (entitled "NEW SPACES"); and (ii) in no event may the parking spaces be located in more than two (2) Replacement Parking Lots, unless approved by Tenant;
c. The Replacement Parking Lot must allow for public parking, with priority for Arena Eventrelated parking (i.e., exclusive use for Arena customers for Events (as defined below)); and
d. The Replacement Parking Lot must be improved with paving, striping, lighting and other features in accordance with the Applicable Parking Standard (as defined below) at no cost to Tenant, and have access and circulation as reasonably approved by Tenant. Tenant agrees that the parking lot improvements currently existing on Delmas West are adequate to satisfy these specific requirements.

## 2. Defined Terms:

a. The term "Accessible Parking Space" shall mean a parking space that is intended for use by individuals with disabilities and meets the applicable design requirements of Applicable Construction Codes (as defined below).
b. The term "Applicable Construction Codes" shall mean all Applicable Laws governing physical design or condition of construction or requiring access and seating for individuals with disabilities.
c. The term "Applicable Parking Standard" shall mean a standard of design, operation and maintenance that is equal to or exceeds the standard generally applicable to public parking lots and garages permitted under Applicable Laws.
d. The term "Available Parking Space" shall mean a Qualified Parking Space (as defined below) that is unoccupied and available for Arena customers to park in upon their arrival on weekends and after 6:30 p.m. on weekdays.
e. The term "Delmas East" means the parcels designated as APN 259-38-128 and -142, located on the east side of Delmas Avenue in San Jose. Currently, the use of Delmas East is controlled by Landlord, and Landlord has the right to acquire title to Delmas East.
f. The term "Delmas West" means the parcels designated as APN 259-38-036, -039, -040, -$041,-042,-109,-110,-145,-146$, and -148 , located on the west side of Delmas Avenue. Currently, Delmas West is owned by a third party, but the use of Delmas West is controlled by Landlord, and Landlord has the right to acquire title to Delmas West.
g. The term "Delmas West Parking" means all parking spaces located on Delmas West as of the Effective Date. Currently there are approximately 324 parking spaces on Delmas West.
h. The term "Event" means any sports, entertainment, educational, recreational, cultural, civic or other activity, gathering, performance, production, show or event conducted at the Arena for which admission is controlled via a pass, ticket or other means.
i. The term "Event Day" means a calendar day on which one or more Events occurs.
j. The term "Lot $E$ " means the parcels designated as APN 259-29-001, -002, -003, -004, -005, $-026,-027,-028,-029$, and -091 , located on the west side of $N$. Autumn Street in San Jose, California. Lot E is the subject of the Settlement Agreement described below.
k. The term "Qualified Parking Space" shall mean a parking space that meets all of the following requirements, unless Landlord and Tenant mutually agree otherwise:
i. The space is a marked space intended for use by passenger vehicles;
ii. The space is not chained off, blocked, reserved or restricted; provided that (A) an Accessible Parking Space shall be a Qualified Parking Space unless it is otherwise reserved or restricted; and ( B ) a space that is normally reserved or restricted shall be a Qualified Parking Space if there is reasonably clear signage notifying customers that such space is available for public parking; and
iii. The space complies with Applicable Construction Codes and the Applicable Parking Standard.

1. The term "Settlement Agreement" means the Settlement Agreement and Release made by and between City, Sharks Sports \& Entertainment LLC, and two Trammell Crow entities, dated December 1, 2016.
2. Covenant to Operate Delmas West: As a material part of the consideration for Tenant's agreement to enter into this Lease, Landlord hereby covenants, promises and agrees to continue to keep all of the Delmas West Parking (not just the 228 Replacement Parking spaces) open for public parking, commencing on the Effective Date of this Lease and continuing until Landlord obtains a grading permit for its development project on Delmas West; provided, however, that
notwithstanding the issuance of any such grading permit, Landlord shall, at a minimum, keep the Delmas West Parking open until the earlier of the following:
a. City's completion of its obligation to build-out new parking lots containing at least 408 Available Parking Spaces (180 spaces required under the Settlement Agreement and 228 incremental spaces required under the First Amendment to the AMA) pursuant to the terms and conditions of Section 3 of the First Amendment; OR
b. Provided that the City is otherwise in compliance with its off-site parking obligations under Section 19 of the Arena Management Agreement, when:
i. BART service to the Diridon Station area is operational; OR
ii. Landlord has constructed at least 500 Available Parking Spaces as part of its development project on Delmas East; provided, however, that if the 500 spaces are shared spaces (i.e., not exclusively reserved for Arena customers) they must be designed such that all 500 vehicles can safely exit from the parking structure onto the public streets within a period of 30 minutes.

Landlord hereby represents and warrants to Tenant that:
(1) Landlord has full power and authority to control the use of Delmas West for the entire duration of the foregoing covenant (the "Operating Covenant"); and
(2) Such power and authority is derived from one or more legally binding agreements enforceable against all parties who hold legal or beneficial title to Delmas West or any interest therein (collectively, the "Delmas Owners"); and
(3) Such agreements are not subject to any right on the part of the Delmas Owners to modify, terminate or revoke the agreements; or if such rights exist then Landlord shall take all actions and pay all sums necessary to ensure that such agreements remain in full force and effect with respect to Landlord's right to control the use of Delmas West for the entire duration of the Operating Covenant; and
(4) If necessary under the agreements with the Delmas Owners, Landlord has given written notice to all Delmas Owners of the existence and terms of the Operating Covenant, and none of such parties has expressed any legal objection to such Operating Covenant; and
(5) Landlord shall give written notice to all other parties who intend to acquire any title to or interest in Delmas West, prior to the date of such acquisition; and
(6) The Operating Covenant does not and will not create, cause or lead to any breach of any lease, loan, covenant, obligation or other agreement to which Landlord or the Delmas Owners are a party.

The provisions of this Paragraph 3 shall survive the expiration or earlier termination of this Lease.

## SCHEDULE 1 TO EXHIBIT C

## REPLACEMENT PARKING LOTS

| PARCEL BOOK REFERENCE | $G$ - property now owned by Google; $P$-- parking site | TOTAL <br> NO. OF <br> SPACES | NEW <br> SPACES total-existing |
| :---: | :---: | :---: | :---: |
| $\begin{aligned} & \text { Book } 259 \\ & \text { Page } 38 \end{aligned}$ | Parcels on Auturm S. of Santa Clara with N. Stution Option | 274 | 214 |
| Book 259 <br> Page 38 | Parcels on Autumas Wema Clara whe Sthton Option | 172 | 172 |
| $\begin{aligned} & \text { Book } 259 \\ & \text { Page } 38 \end{aligned}$ | Parcels blwa. Aulumin and Mongomery S. of Santa Clara if less area is needed for BART constrmbn stasing | 230 | 216 |
| Book 261 <br> Page 35 | Expansion of Stepher | 262 | 127 |

## SCHEDULE 1 TO

## EXHIBIT C

| PARCEL BOOK REPERENCE | STE G - property now owned by Google; P - parking site | TOTAL <br> NO. OF <br> SPACES | NEW <br> SPACES <br> total-existing |
| :---: | :---: | :---: | :---: |
| Book 259 <br> Page 48 | Full block now occupied by San Femmand and Navet's lots | 354 | 152 (after: subtracting 140 for existing dirt lot and 62 for existing Naviet's lot) |

## EXHIBIT C

## EXHIBIT D

## SIGNAGE

1. Permitted Signs: Tenant shall have the exclusive right to install and maintain (or to permit the installation and maintenance of) permanent or temporary Signage (as defined in Paragraph 4 below) on or about the Premises, subject to the following:
a. Signage shall be limited to the following:
i. Directional/wayfinding signs;
ii. Code-required signs including for accessible parking spaces;
iii. Banners installed on the light poles, in sets of three 2-sided banners per light pole, approximately 10 sq. ft. in size per banner;
iv. Temporary signs associated with special Events at the Arena or other events occurring in the San Jose area; and
v. Any other Signage approved by Landlord, in its sole discretion.
b. Tenant shall be responsible for obtaining any and all permits and other governmental approvals required for the installation of such Signage, and for complying with all permit conditions.
c. The Signage may display Arena Advertising (as defined in Paragraph 4 below) or other information appropriate to the use of the Arena as a major public assembly facility, subject to compliance with the content requirements set forth in Paragraph 3 below.
2. Governing Standards: Signage shall conform to all Applicable Laws (including the applicable provisions of Title 23 of the San Jose Municipal Code and Council Policy 6-4, as amended), and the Applicable Community Standard.
3. Content Limitations: The content of all Arena Advertising shall conform to the Applicable Community Standard.
a. It shall be deemed to be a violation of the Applicable Community Standard for any Arena Advertising to contain content that:
i. Promotes the sale or use of alcoholic beverages or tobacco products;
ii. Promotes the sale or use of firearms or other weapons or related products;
iii. Promotes any adult book/video store, adult theater, or other form of adult entertainment, as defined in Chapter 20.200 of the San Jose Municipal Code;
iv. Includes language or images of nudity or sexual acts, or language or images that are obscene, vulgar, or profane;
v. Is false, deceptive or misleading;
vi. Depicts violence or anti-social behavior or relates to illegal goods or activities;
vii. Holds a person or group up to public ridicule, derision, embarrassment, or defamation; or
viii. Creates a clear-and-present danger of causing riot, disorder, or other imminent threat to public safety, peace, or order.
b. The parties agree that the above limitations are reasonable and necessary for the public welfare, are a material part of the consideration for this Lease, and will not unreasonably restrict Tenant's ability to maximize operating revenues from Arena Advertising.

## 4. Defined Terms:

a. The term "Applicable Community Standard" shall mean a standard with respect to signage and advertising that is equal to comparable major arenas or stadiums in the San Francisco Bay Area.
b. The term "Arena Advertising" shall mean all advertising, signage, trademarks and trade names, logos, slogans, sponsorships and promotional activities, designations, graphic displays, commercial announcements, and other commercial messages of every kind and nature associated with Events at the Arena, the San Jose Sharks hockey team, the San Jose Barracuda hockey team, or other enterprises by Tenant or Tenant Affiliates.
c. The term "Signage" shall mean all structures, fixtures, equipment, property or materials that are used to graphically display or present Arena Advertising on a fixed, temporary or rotating basis.
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

## EXHIBIT E

## FORM OF REPLACEMENT PARKING LICENSE

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## GOOGLE - DIRIDON STATION AREA PLAN

## PRELIMINARY CONSTRUCTION MANAGEMENT PLAN

## TO PROTECT SAP CENTER PATRONS \& FACILITY OPERATIONS

## Objective

Google must prepare an enforceable SAP Center Preliminary Construction Management Plan with general requirements for all contractors, including specific performance standards described below, in coordination with the City of San Jose and SAP Center to ensure the protection of Arena patrons and facility operations. The City should adopt this Preliminary Plan at the earliest feasible time, use it as a guide for all future phases of project planning, and thereafter include it in all subsequent design, engineering and construction contracts as well as any City agreements including Construction Impact Mitigation Plans and encroachment permits. The Construction Mitigation Plan must pertain to all construction within the boundaries of the project.

## Background

The SAP Center is an essential public facility with over 150 events a year and more than 1.5 million patrons which drive economic development in the downtown area. Comprehensive traffic, access and parking management that ensures patron safety and convenience has been a key element of the Arena's success for over 25 years and is governed by the Arena Traffic and Parking Management Plan (TPMP) adopted by the City.

Consistent with the objectives TPMP and other agreements SAP Center has with the City, Google must be committed to adjust the method, scope, timing and sequence of the construction to avoid and minimize impact to the SAP Center's business and ensure it can continuously operate with no negative impact to the public. Google must also give careful consideration for access, recognizing that this is at the core of SAP Center's successful event operations.

## General Requirements

The City and Google must understand and be sensitive to the unique operational requirements of the SAP Center which will be in continuous operation throughout the performance of Google construction work in and around the Diridon Station area and directly adjacent to the Arena over many years. If the safety of SAP Center patrons and building operations becomes a major objective in planning the Diridon Station construction project, then by extension maintaining the continuity of arena programs, events, operations and activities in a safe and secure manner for all customers, employees and the general public to the maximum extent feasible will be project priorities as well.

The City must acknowledge that modification of its approach to the Google construction project, including method, scope, timing and sequence, will be required to avoid and lessen impacts to SAP Center. Construction must be scheduled and executed in a manner that will enable the SAP Center to maintain its full level of scheduled events and implement them without interruption. Where the project includes work that will affect or impact SAP Center events, contractors must maintain and safeguard Arena operations including traffic flow, pedestrian walkways, parking and access.

Contractors will be required develop, maintain, and implement a plan of construction operations for maintaining and protecting all Arena patrons and operations which will include submittal for approval of plans, computations, a detailed description of the construction procedures, and a schedule for accomplishing the work, including methods of protecting arena events and operations through adequate interface plans. It should include working drawings as well as a detailed narrative describing how the plan is to be implemented.

Oversight of all contractor efforts in this area is critical, and Google will assure that all bid documents and contracts specify that a designated City staff person has the authority to issue stop orders or to temporarily halt contractor activities if the construction management program is not properly maintained and SAP Center events are impacted. Construction contracts should include such requirements and define the contractual liability imposed for failing to achieve them.

A Final Construction Management Plan will also be prepared for review by stakeholders during the engineering and design process of each phase of the project well in advance of the commencement of construction work. The process by which the City Council will approve individual Construction Management Plans for each phase of development will be determined. Google will develop the Final Plans in coordination with SAP Center, the public, and the City. SAP Center will have the right to comment on and reasonably approve the Final Construction Management Plan, including making requests for inclusion of addition general requirements and performance standards based on new information that becomes available as project construction plans and phasing are developed by Google.

## Specific Performance Standards

## Construction Activities During Arena Events

- No above ground construction activities will be conducted within $1 / 3$ of a mile of the SAP Center property during arena event operation periods.
- The City, Google, and SAP Center will update the current Arena TPMP to ensure project construction activities integrate effectively into current traffic and parking management plans that ensure successful Arena operations.
- Any construction activities which may impact SAP Center operations will be coordinated through existing event operation planning and execution efforts between the City and SAP Center.
- Google will also coordinate with the City, SAP Center and other construction projects to minimize cumulative construction impacts that overlap within $1 / 3$ mile of the Arena.


## Vehicular, Pedestrian and Bicycle Access \& Traffic

- Google will prepare a traffic control plan to provide safe and continuous passage to pedestrians, bicyclists and vehicular traffic to and from SAP Center and that allow for safe construction of the project at all times.
- Vehicular access to and from SAP Center will be maintained at levels and standards prior to commencement of construction during all events.
- The Diridon Station construction zone must avoid intrusion into Santa Clara Street right of way. No road closures will occur, and two unobstructed lanes for traffic operations in each direction with current lane widths will be maintained at all times.
- Santa Clara Street sidewalks will be maintained at full width and remain open to pedestrians at all times.
- The project will maintain at least one safe and convenient access route with two lanes in both the north and south bound directions through the construction zone for pedestrians, bicyclists, and vehicles coming to and from SAP Center south of Santa Clara Street.
- Pedestrian and bike routes of access will be safely maintained through and adjacent to construction work areas.
- Emergency vehicle access to and from the Arena will be maintained at all times.
- Dynamic signage indicating available routes and accessibility to the area will be used in the vicinity of construction for major Arena approach routes.


## Parking

- Google will provide replacement parking for all on- and off-street parking temporarily lost to construction in the Diridon Station area during the entire period of the construction project.
- To minimize the impacts of construction on remaining parking inventory, construction crew members will not arrive to the work area in personal vehicles, but rather crew parking will be centralized at specific staging areas outside of the Diridon Station area.
- Only required work vehicles and equipment will be deployed to the work areas, minimizing congestion of unnecessary vehicles near the Diridon Station.
- Any construction crews will depart in adequate time to make existing parking supply readily available for Arena patrons before events so that parking supply is readily available two hours before an Arena event.


## Truck Traffic/Equipment Staging

- All truck ingress, staging and egress for the Diridon Station construction area will occur south of Santa Clara Street.
- No equipment or truck staging will occur north of Santa Clara Street within $1 / 3$ of a mile of the Arena property.
- On Arena event days, all downtown station truck traffic will be routed away SAP Center during scheduled operations.
- Truck headways will be established to avoid platoons of trucks upon on local streets near the Arena.


## Construction/Staging Area

- The construction/staging area will be appropriately screened along Santa Clara Street to reduce visual effects on SAP Center patrons.
- Location of construction material stockpile areas will not be visible from any road.
- No unnecessary idling of heavy equipment will occur in the construction/staging area.
- Construction equipment will be located as far away from the Arena as reasonably feasible.


## Dust/Debris/Noise

- At truck exit areas, wheel washing equipment will be used followed by street weeping to maintain clean streets and reduce street debris.
- Wind fencing and phased grading operations will be implemented along with use of water trucks to minimize and control fugitive dust.
- Street sweeping will occur on surrounding streets at least once a day.
- Noise barrier walls will be used around the construction/staging zone to reduce construction noise levels to an appropriate level.
- Noise producing fixed equipment will be located within enclosures to further mitigate noise.


## Utilities

Coordination and repositioning must be done to ensure uninterrupted service of all utilities for SAP Center.

| Date: | April 26, 2021 | WDI No.: | 05098.313 |
| :--- | :--- | :--- | :--- |
| Project: | SAP Center |  |  |
| From: | Michelle Wendler |  |  |
| To: | Jim Goddard |  |  |
| Regarding: | SSE/Google Downtown West Project Review |  |  |

Per your request, we have reviewed the March 2021 Revised Google Land Use documents and April 2021 Revised Draft EIR for the Downtown West Project including supplemental memorandums for the purposes of understanding the impacts related to parking on SAP Center and the surrounding area. Per your request we are focusing our concerns with the access to parking within the Delmas site from Santa Clara St.

1. Original comment: Documents show curb cuts as being allowed from W. Santa Clara Street to the Delmas (E1) sites on page 296 of the Downtown West Design Standards Guidelines, but in the enlarged site view on pages 136 and 138, it is not clear where this might occur. Entry/exits to underground parking on W. Santa Clara Street are important for event customer use of this site for parking. The illustrative drawings in general do not show actual curb cuts, as documents usually would. Therefore, it is not possible to determine whether they can adequately serve access for parking or to understand impacts associated with curb cuts.


New comments based on revised documents: There are inconsistencies in the approach to the access for parking to the Delmas parcel from Santa Clara St.

- on page 299 of the Revised Downtown West Design Standards and Guidelines March 2021 (shown below) remove Santa Clara St. as a preferred location for off street parking and loading entrance/exit
- on page 134 of the Revised Downtown West Design Standards and Guidelines March 2021 (shown below) a location for a curb cut is still not shown.
- the Site-Wide Focused LTA dated 4/16/2021 (shown below) describes a driveway access from Santa Clara St. near the location of existing Delmas St.
- the Supplemental Analysis for the Downtown West Mixed-Use Project dated 4/16/2021 regarding the closure of Delmas(shown below) does not describe the access from Santa Clara St. on page 1-2 when describing the proposed future condition of Delmas.
- In addition, the analyses that have been presented in meetings between SSE, The City of San Jose and Google have all assumed that there would be an egress and ingress to this site from Santa Clara St. for parking.
Providing entry/exits to underground parking on the Delmas site from W. Santa Clara Street are important for event customer use of this site for parking and this access has been promised in numerous discussions. It should be properly shown and described in all the documentation.


## EXCERPT OF DOCUMENTS BELOW

Pages 299 and 134 of Revised Downtown West Design Standards and Guidelines March 2021


## Page 8 of Site-Wide Focused LTA dated 4/16/2021

"5. Driveway Access (formally Delmas Avenue)/Santa Clara Street
At this side street stop-controlled intersection with driveway access from Santa Clara Street to Block E of DTW, the westbound through and left-turns exceed available storage capacity during the AM peak hour for both the average and 95th percentile queues. The westbound through cannot be extended, since it represents the full length to adjacent intersections at the northbound SR 87 off-ramp. The average and 95th percentile queues are 140 and 220 feet, respectively, for the 120 -foot turn pocket. The westbound left-turn pocket could be extended based on review of aerial photography; though the final design would need to be coordinated with the final driveway location.
All queues can be accommodated in the available storage during the PM peak hour. Future FLTAs would evaluate and finalize the final intersection design, including signal control, the lane geometries, turn pocket lengths, and other operational considerations. The intersection design would need to be coordinated with the proposed pedestrian crossing at the Guadalupe River. This intersection is partially inside of the DTW project area and not subject to the VTM."

Page 1-2 of Supplemental Analysis for the Downtown West Mixed-Use Project dated 4/16/2021 Regarding the closure of Delmas
"Delmas Avenue currently is a two-lane roadway that runs west of and parallel to SR-87 between West Santa Clara Street and Auzerais Street. As proposed, the Project would eliminate vehicle through access for the approximately 700-foot segment of Delmas Avenue between West Santa Clara Street and San Fernando Street. Through access would be provided for pedestrians and bicyclists only. The southern portion of the removed segment of Delmas Avenue would be reconfigured as a private street/driveway from West San Fernando Street. This new private street would connect with two new private streets between West San Fernando Street and West Santa Clara. These new streets would provide parking access to the proposed development on the portion of the Project area between Los Gatos Creek and the Guadalupe River."

From: Jim Goddard
Sent: Thursday, April 1, 2021 6:51 PM
To: Klein, Nanci (Nanci.Klein@sanjoseca.gov) [Nanci.Klein@sanjoseca.gov](mailto:Nanci.Klein@sanjoseca.gov)
Cc: Jonathan Becher Jon Gustafson; Ken Caveney; Sean Morley; Lucy Lofrumento;
Cameron.Day@sanjoseca.gov; Jessica Zenk (jessica.zenk@sanjoseca.gov)
Subject: Requests for Modifications to Protect SAP Center

Nanci,

As you know, SSE has been working hard to keep up with the proposed Downtown West project entitlements, which pose severe ramifications for the future viability of the SAP Center. With recent updates and modifications provided in March, including the DSAP Amendment and associated CEQA documents, the materials now include thousands of pages, and we understand more information is still pending release including a draft development agreement.

We are providing the attached document, which the mayor requested during our recent meeting, that addresses SSE's requests for modifications to protect the SAP Center through this unprecedented land use entitlement process. These modifications are generally consistent with the key issues list previously shared and discussions the SSE team has had with City and Google representatives over a very long period of time.

In our recent communications it has become apparent there is no current consensus among the parties (even on a conceptual level) regarding the terms under which SSE would be able to consent to Google's purchase of Lots A, B \& C. And, although SSE remains committed to continuing discussions with the City and Google about acceptable terms, there is no guarantee that such an agreement will ever be achieved. Thus, the document includes a number of requests to ensure the proposed project at a minimum remains consistent with the current Arena Management Agreement. We look forward to discussing this list and associated comments with you and Google.

While we have tried to ensure that the request document is comprehensive, it remains a work in progress. SSE is working hard to finish its review, but this is a difficult task given the volume and complexity of the approval documents and the importance they have for the future viability of the SAP Center. We may change or add requests once the development agreement is released and we can complete review of all final materials that will be presented to the City Council for approval.

Please distribute this email and attached document to others at the City as you deem appropriate.

## SHARKS SPORTS \& ENTERTAINMENT LLC

Downtown West Mixed-Use Plan Requests for Modifications to Protect the SAP Center

April 2, 2021

SSE requests that the City and Google make the following modifications to the draft land use entitlements applications proposed by Google for the Downtown West Mixed Use Plan, in order to ensure the City-owned arena is properly protected and that the primary objective of the current Diridon Station Area Plan, adopted in 2014, is fulfilled:

Ensure the continued vitality of the San José Arena, recognizing that the San José Arena is a major anchor for both Downtown San José and the Diridon Station area, and that sufficient parking and efficient access for San José Arena customers, consistent with the provisions of the Arena Management Agreement, are critical for the San José Arena's on-going success.

At a minimum, the City and Google are required to ensure that the proposed land use entitlements are consistent with SSE's rights under the Arena Management Agreement. In many instances, the land use entitlement documents directly conflict with the AMA, and require modification in order to conform.

## Request \#1: Expressly incorporate the current DSAP objective to protect the arena in each of the project approvals requested by Google, and require each future development within the mixed-use plan to fulfill this obligation prior to receiving final city approval.

Comment: Both Google and the City have assured SSE that the Downtown West project will benefit the arena and that future development of the project will not impact the facility's operations or the safety of its patrons, consistent with the DSAP arena objective above. However, this objective is not included anywhere in the goals of the project, nor is it incorporated into any of the specific application documents. This objective must be embedded in the project approvals to ensure the requirement will be achieved.

The land use approvals Google seeks are unprecedented in terms of the breadth of flexibility provided and lack of discretionary review the City will retain going forward. However, the applications remain completely silent about the future operations of the arena. Unless specific language to protect the arena is included now, the City may not be able to prevent future developments that will likely imperil the operations of SAP Center.

Request \# 2: Maintain the current General Plan and Zoning District designations on the arena parking lots as "Public/Quasi Public" and maintain the current parcel lines for the arena land (including the adjacent parking lots) without new mapping; remove these parcels from the Downtown West project entitlement approval documents.

Comment: Neither the City nor Google has made a formal request for SSE to consent to the transfer of the arena parking lots (Lots A, B and C) for inclusion in the project, nor have the issues SSE identified more than two years ago to support potential transfer been addressed in any material way. In order for the arena to remain a thriving part of the downtown and continue to serve as a long-term home for the Sharks, arena parking lots should not be included in the Google project until their development is reasonably foreseeable.

More important, the City is precluded under the Arena Management Agreement from creating new burdens on title to the property leased by SSE under the agreement, including the arena parking lots $\mathrm{A}, \mathrm{B}$ and C . Rezoning of these specific parking lots adjacent to the arena as part of the Google project and approving the PD Permit and Tentative Map with these parcels included will create a burden on title to the arena property and so cannot be undertaken by the applicant or the City without SSE's consent. Google has already excluded properties owned by Caltrain and the VTA, and so can easily accomplish this modification.

Request \# 3: Clarify that, even if and when SSE approves of changes to the zoning for arena parking lots $A, B$ and $C$, the interim use of that property shall remain an existing permitted use pursuant to current zoning district designation without a requirement to obtain a Downtown West Use Certificate or Use Permit or any other conditions of approval. Further, clarify existing non-conforming uses to expressly state that these arena parking lots will remain a conforming use rather than become legal non-conforming one as provided for in the applications.

Comment: The City has obligations to its residents (who approved and paid for the arena), to not shorten or diminish the usefulness of the arena facilities, and has made similar agreements with SSE in the AMA. The A, B and C parking lots are integral to the success of the SAP Center and must remain permanent, at least so long as the current AMA remains in place, especially with the elimination of adequate parking supply in the area. Changing the allowed uses on these lots prior to imminent development, and making existing permitted uses legally non-compliant, will limit the arena operator's ability to maximize the economic use of the facilities as currently allowed by the AMA.

Request \# 4: Modify the circulation plan and mobility requirements to provide the following street network changes:
a) Delete all references to the Cahill Street extension north of Santa Clara Street across arena parking lots until such time as the properties are available for development, and after SSE consents to a transfer of the property.
b) Provide two through lanes and a left turn lane in each direction on Barack Obama Blvd. (Autumn Street) between Santa Clara Street and Park Avenue in accordance with currently adopted City plans for Autumn Street.
c) On Santa Clara Street, maintain two general traffic through lanes in each direction and one or two left turn lanes, as needed, between Stockton Avenue and Almaden Blvd.
d) Maintain level of service D or better during the arrival peak hour for SAP Center events on principal traffic routes used by SAP Center customers (Autumn corridor, W. Santa Clara corridor, and Julian corridor), except that no traffic lanes would need to be added beyond the existing lanes at any intersection to achieve level of service D. This exception would not apply to Barack Obama Blvd. (Autumn St.), because that street is planned to be converted from one-way to two-way operation (see point b) above).

Comment: SSE has repeatedly advised the City and Google that proposed reduction in street network capacity by eliminating roads and lanes on remaining ones, while increasing daytime population in the area by a factor of 20 , will create gridlock for residents, workers, and visitors, including arena patrons. SSE continues to share information with the City and Google which confirms this patently obvious conclusion. Studies produced by the City and Google rely on unrealistic trip reduction assumptions, a system of road management (including dynamic lanes and conversion of streets to one-way operation during event peak periods), and other expensive traffic control operations to justify the project.
Unfortunately, these and other possible measures will not be able to overcome the fundamental problems caused by reduced roadway capacity, which would make arrival for patrons to the arena during the peak hour before an event incredibly problematic at best, and at worst result in a local transportation system failure. Once the project is approved, the City will have no recourse to make any future modifications when the inevitable problems arise. Therefore, the City should not give up this critical roadway capacity.

Request \# 5: Require that on each occasion when specific development plans are presented to the City for approval, and prior to approving changes to the current street network, the City will include the following as part of the approval process:

- Develop detailed preliminary plans for any proposed street changes desired along principal traffic routes used by SAP Center customers, and provide to SSE for review and comment prior to completion of the LTA discussed below. Any modifications based on results of the LTA or other considerations must also be submitted to SSE for review and comment.
- Conduct a focused Local Transportation Analysis (LTA) for the proposed development, which will address the development's impact on level of service at all nearby impacted intersections during the 6 to $\mathbf{7 p m}$ peak arrival hour for events at SAP Center.

Comment: Section 21.2.3 of the AMA provides that the City must coordinate with SSE "regarding any material changes to the design, configuration or operation of the major streets and intersections in the vicinity of the Arena to the extent that they may have a direct impact on the safe and efficient flow of vehicular, bicycle, and pedestrian traffic to and from the Arena, including Autumn Street and the intersection at Autumn Street and Park Avenue." It goes on to state that the parties "shall work together in good faith with the goal of achieving the best overall function of the streets and intersections for the benefit of both the Arena and all other development in the Diridon Area.

The City's obligations under the AMA will continue following approval of the land use entitlement documents for the Downtown West project. However, the minimized process for approval of future development within Downtown West may make it difficult, if not impossible, for the City to fulfill such obligations unless the above suggested procedures are required in the entitlement documents.

Request \# 6: Modify the project documents to provide that Delmas Street will remain open between Santa Clara and San Fernando streets. As a less desirable alternative, ensure that Google will be required to provide a driveway (entrance/exit) to the Delmas development parking that is accessible from both the east and west on Santa Clara Street.

Comment: It is SSE's understanding, based on discussions with Google representatives and recent presentations by Google's consultants, that Google plans to provide a driveway at Santa Clara Street to/from the Delmas development parking. Although this was not SSE's preferred alternative, SSE has determined that it is a satisfactory resolution subject to the final design of the driveway and parking, including all the parking being accessible from this driveway. However, SSE cannot find this requirement in the project approval documents, and it is important to ensure that this parking facility will be easily accessible to arena patrons as represented.

If access to this parking facility is not provided directly from Santa Clara Street, then the convenience and efficacy of this critical supply of "Available Parking Spaces" will be severely curtailed, thus diminishing the value of such parking as mitigation for the impacts on the arena caused by the loss of parking resulting from the project. It would also be contrary to the purpose of the Transportation and Parking Management Plan (TPMP) for the arena, as incorporated into the AMA. Such purpose is stated "to establish event traffic and parking management strategies" that promote efficient and effective vehicular and pedestrian traffic circulation; provide convenient and easy access to and from area parking facilities, and minimize traffic congestion on surrounding roadway facilities, among other things.

Request \# 7: Include a requirement that expressly mandates Google will be solely responsible to fund any additional traffic operation expenses needed to implement the requested proposed street circulation management plan for events at the arena.

Comment: Google must mitigate every impact it creates, including additional costs to support its massive development plan. With respect to traffic operation costs which will amount to millions of dollars a year, the community -- including the arena operator -- must not bear responsibility for funding them, which would essentially serve as a subsidy for Google. SSE and/or its customers certainly should not be asked to mitigate Google's project by covering such costs, as the current approvals likely would require.

Request \# 8: Modify the approval documents to require the consent of the arena operator prior to any improvement along the arena frontage, including Santa Clara Street and sidewalks

Comment: The project approval documents include significant planned modifications along Santa Clara Street. These modifications are conceptual at this point so it is not possible to determine what, if any, modifications would be made to the arena frontage between the existing structure and face of the curb. The City has a requirement to not modify lands leased by SSE without its consent, and to make best efforts to coordinate future changes to the road network with SSE to preserve arena operations. Providing consent rights to street frontage improvements proposed by the project is a simple way to ensure the arena operations and SSE's leasehold rights can be protected, in compliance with the AMA.

Request \# 9: Modify the infrastructure plan and other application approval documents to reflect that the utilidor route will not pass through or under the arena parking lots until such time in the future that the parcels may be transferred to Google and included in the General Development Plan.

Comment: It is not clear why Google has proposed a private utility system as a basic part of its development plan that relies on its ability to traverse property leased and controlled by a third party on a long-term basis without obtaining that party's prior consent, regardless of underlying City ownership. Even without the extension of Cahill Street, installation of the utilidor would create major disruption to arena operations, and granting Google the right to construct it is not a property right the City retains under the AMA.

Request \# 10: Make the potential 4,800 commercial parking spaces allowed in the project applications a minimum requirement, not an "up to" maximum.

Comment: Google's applications and the associated technical studies make clear that even under best case scenarios for transportation mode shift improvements, more than 7,000 of the $25,000+$ workers will still drive to work in a single occupant vehicle and many more will carpool. More realistic scenarios show that the number of workers who will need to park in the area will likely be thousands higher. This does not account for parking demands that may be created by additional development, including the proposed DSAP expansion, BART, Caltrain or High Speed Rail projects. The proposed parking requirement for Google of only 2,800 spaces will create significant parking deficiencies in the area, along with associated traffic circulation and safety issues for residents and visitors to the area, including arena
patrons. While a 4,800-parking space requirement will not solve the challenge, it will certainly help reduce parking deficiencies. Google should be required to fund and build the parking supply its demand will create, not simply have the option to provide it in the future, or rely on a future city district parking plan which may or may not ever be established or achieve the intended results.

Request \# 11: Conform Google's phasing plan for the Delmas property to comply with the agreement between the City, Google and SSE that parking available on Delmas West must remain available until such time as Block E parking or a suitable alternative is created.

Comment: As part of SSE's agreement to consent to the sale of Lot D to Google, which was critical to the company's commitment to move forward with its Downtown West project, Google agreed to retain all existing parking spaces on the Delmas West site until either (i) 408 new "Available Parking Spaces" are provided on Block E and Milligan or other approved alternative location; or (ii) BART service commences to Diridon, or (iii) Google has constructed at least 500 "Available Parking Spaces" as part of the development on Delmas East (all subject to the specific terms of the Lot D Lease with Google). The City's progress on Block E and the Milligan site has stalled, and there is no timeline for those facilities to be available for parking in the future. Google's project entitlements, including timing of development of the Delmas site, must account for fulfilling this obligation.

Request \# 12: Include specific construction mitigation measures in the final entitlement approvals to protect the unique operations of the Arena (Arena Protection Plan).

Comment: For more than two years, SSE has continued to plead with the City to address the obvious construction impact challenges presented by the BART project, without any substantive response to specific requests. It is clear that Google's project will pose even greater challenges for the arena's continuing successful operations. Yet, the entitlement approvals remain silent on how to mitigate construction impacts, and once approvals are given, the City's ability to manage any impacts to the arena will be greatly reduced. In the event that Google cannot propose basic construction impact mitigation program prior to approvals, the City can and should establish basic performance standards and other mitigation measures (an Arena Protection Plan) to ensure the safe and convenient ingress and egress of arena visitors (over 1.5 million annually), arena employees, vendors and contractors.

Request \# 13: Modify Google's permitted uses to ensure that the allowed auditorium and event/conference center uses are adjunct only to the applicant's corporate business, so that the facility will not create competition for the arena or convention center.

Comment: The applicant has represented to the public that these facilities are intended to support its larger corporate business with occasional use for community events. However, the definition of the uses would allow any property owner within the district to utilize such a facility in the future for commercial events that could easily create competition for both
the arena and convention center. This is likely unintended but clearly a permitted use in the entitlement documents as currently drafted, and this use limitation needs to be added to avoid harm to these important community facilities and their economic development benefits to the City.

Request \# 14: Modify the conditions and administrative permits requirements to allow the Director of PBCE to impose reasonable conditions related to the operation of the future specific use/development proposed to ensure it will not create unreasonable operational impacts for the arena.

Comment: Upon approval of the land use entitlement applications, the applicant or future property owners would have the ability to establish a wide range of uses by right with limited ability by the City to make modifications to protect the public's interest, including the continued successful operation of the arena. As continued vitality of the arena is a basic objective of the DSAP, the City can and should preserve its rights to protect the building's ongoing success, particularly since many of the proposed uses will likely conflict at times with the arena's event and daily operations.

Request \# 15: Ensure that for any special uses that could create conflicts with arena operations, Google's administrative permit requirements include a procedure whereby the arena operator must be notified of the application for the proposed activity, and before granting any permit for approval the Director must consult with the arena operator and impose reasonable conditions to protect the arena's operations

Comment: The proposed uses described in the Google development plan include live entertainment, auditorium, outdoor vending and other special events that, as currently drafted in the Conditions of Administrative Permit section, will likely create conflicts with arena operations without any recourse by the City to correct them. This relinquishment of land use authority goes well beyond the scope of use or approval process for typical projects. The permit procedures in the entitlements guarantee that Google can schedule a wide-ranging number of large events that could trigger road closures or competition for scarce parking on arena event days, without any oversight by the City or the need for any coordination or deference for events at the arena. Neither Google nor successive owners of parcels covered by the entitlements should be granted unique rights to schedule these types of events without going through the approval procedures imposed on others in the area, and without consideration for potential conflicts with the arena operations.

In addition, use rights granted in the entitlement documents should not conflict with other City ordinances. For instance, the outdoor vending rights appear to conflict with the updated peddler's ordinance adopted by the City less than 2 years ago. At minimum, the specific protections granted to the arena in the ordinance should be included (or incorporated by reference) in the entitlement documents.

Request \# 16: The City must ensure that any update to the Diridon Station Area Plan does not preclude the ability to establish a stand-alone parking structure on Block E as long planned for the site.

Comment: Both the Lot E and Milligan sites are anticipated to be interim parking lots and potentially, new parking structures that would serve arena patrons. However, current draft of the proposed DSAP Amendment would modify the zoning designation for these sites. This along with new mixed use design guidelines, would preclude the properties from being developed solely as a stand-alone parking structure in a manner that will protect future arena operations long contemplated by the City and as reflected in the currently adopted DSAP.

Specifically, the proposed zoning designations for these sites are Downtown Primary Commercial. We believe that instead these sites should be zoned Public/Quasi-public to allow the construction of public parking facilities. We are also concerned that requiring the future structures to be "wrapped with active uses" will diminish parking capacity and ingress/egress functionality for event purposes, and cause access and safety impacts to pedestrians accessing the parking from either the arena or other nearby uses. Also, because there is a potential for both sites to be used for interim parking uses, Section 5.4 Surface Parking Lots of the Downtown Design Standards and Guidelines (DDGs) should not be required.

In addition, because these future required parking facilities must provide for safe and efficient ingress and egress that supports access to the street network, in accordance with the objective of the DSAP to ensure the continued vitality of the Arena consistent with the provisions of the AMA, the future parking lots and structures on these sites must not be required to be consistent with Section 3.5.3 Parking and Vehicular Access Location of the DDGs. The ability of parking facilities to best serve arena events is tantamount to pedestrian safety and good transportation management.


[^0]:    ${ }^{1}$ Traffic Safety Bulletin 20-02-R1: Interim Local Development Intergovernmental Review Practitioners Guidance, Rachel Carpenter, Chief Safety Officer, December 18, 2020. https://dot.ca.gov/programs/safety-programs/policy

[^1]:    American Land Title Association
    Endorsement 17-06 (Access and Entry)
    Adopted 6/17/06

[^2]:    American Land Title Association
    Endorsement 25-06 (Same as Survey)
    Adopted 10/16/08

