

**From:** [Phan, Johnny](#)  
**To:** [Downtown West Project](#)  
**Subject:** FW: Revised Transfer Agreements - H1, H5, H6  
**Date:** Tuesday, May 18, 2021 12:06:34 PM  
**Attachments:** [Transfer Agreement-H5-Google-Spartan \(4849-5558-9607.6\).docx](#)  
[Transfer Agreement-H6-Google-Spartan \(4848-3814-9095.5\).docx](#)  
[Transfer Agreement-H1-Google-Spartan \(4814-0917-4503.7\).docx](#)  
[radAFOE6.pdf](#)  
[radE0A88.pdf](#)  
[radC4563.pdf](#)

---

**From:** Andes, Pam <[pandes@allenmatkins.com](mailto:pandes@allenmatkins.com)>  
**Sent:** Tuesday, May 11, 2021 4:30 PM  
**To:** Phan, Johnny <[Johnny.Phan@sanjoseca.gov](mailto:Johnny.Phan@sanjoseca.gov)>  
**Cc:** [bwillhite@allenmatkins.com](mailto:bwillhite@allenmatkins.com); [gmiller@coblenzlaw.com](mailto:gmillercoblenzlaw.com)  
**Subject:** FW: Revised Transfer Agreements - H1, H5, H6

[External Email]

Johnny:

Attached for your review are the Transfer Agreements, as follows:

- H1 Transfer Agreement – Redline to City’s Sunday (pdf rad E0A88)
- H1 Transfer Agreement – Clean
- H5 Transfer Agreement – Redline to City’s Sunday draft (pdf radAFOE6)
- H5 Transfer Agreement -- Clean
- H6 Transfer Agreement – Redline to City’s Sunday draft (pdfC4563)
- H6 Transfer Agreement -- Clean

The Autumn Parcels Transfer Agreement will follow.

We are moving fast so please run your own redlines.

Please note that the attached remains subject to any changes my client may have.

Thanks! Pam

---

**From:** Willhite, Britney <[bwillhite@allenmatkins.com](mailto:bwillhite@allenmatkins.com)>  
**Sent:** Thursday, May 6, 2021 4:44 PM  
**To:** [johnny.phan@sanjoseca.gov](mailto:johnny.phan@sanjoseca.gov)  
**Cc:** Andes, Pam <[PAndes@allenmatkins.com](mailto:PAndes@allenmatkins.com)>; [gmiller@coblenzlaw.com](mailto:gmillercoblenzlaw.com)  
**Subject:** Revised Transfer Agreements - H1, H5, H6 and Autumn

**Subject to Contract / Contract Denied**

Hi Johnny,

Attached for your review are the Transfer Agreements, as follows:

- H1 Transfer Agreement – Redline to City’s draft from 5/5 – This shows just the new changes
- H1 Transfer Agreement – Redline to Google’s initial draft from 4/13 – This shows the cumulative changes
- H5 Transfer Agreement – Redline to Google’s initial draft from 4/13
- H6 Transfer Agreement – Redline to Google’s initial draft from 4/13
- Autumn Transfer Agreement – Redline to Google’s initial draft from 4/13

In H5, H6 and Autumn, we made changes to conform with the cumulative changes to H1.

Please let us know if anything else remains open.

Please note that the attached remains subject to any changes my client may have.

Thanks,  
Britney

*Please note that this correspondence is not intended to create any legally binding obligation on Google and that no contract will arise or be in existence until such time as all corporate approvals necessary to ratify this transaction have been confirmed by Google and formal written contracts have been executed and exchanged between the parties.*

**Britney J. Willhite**

Partner

Allen Matkins Leck Gamble Mallory & Natsis LLP

1900 Main Street, 5th Floor, Irvine, CA 92614-7321

(949) 851-5452 (direct)

(949) 280-3707 (mobile)

(949) 553-8354 (fax)

[bwillhite@allenmatkins.com](mailto:bwillhite@allenmatkins.com)

**Allen Matkins**

---

Confidentiality Notice: The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If any reader of this communication is not the intended recipient, unauthorized use, disclosure or copying is strictly prohibited, and may be unlawful. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

**DRAFT**  
**PROPERTY TRANSFER AGREEMENT**  
**(H5)**

THIS PROPERTY TRANSFER AGREEMENT (this “Agreement”) is dated as of \_\_\_\_\_, 20\_\_, and is entered into by and between the CITY OF SAN JOSE, a California municipal corporation (“Transferee”), and GOOGLE LLC, a Delaware limited liability company (“Transferor”).

**RECITALS**

A. Transferor is the owner of the land depicted on Exhibit “A” and any improvements and fixtures thereon (collectively, the “Property”).

B. Exhibit “D” of that certain Development Agreement between Transferor and Transferee adopted by Ordinance No. \_\_\_\_\_ (the “DA”) contemplates and requires that Transferor and Transferee enter into this Agreement, and the date of this Agreement shall be the Effective Date of the DA, as defined in Section 2.1 thereof.

C. The Property is located within Transferor’s proposed Downtown West Mixed-Use Plan that is the subject of the DA (the “Project”).

D. Transferor is currently seeking “Approvals” (as such term is defined in the DA), including, without limitation, a Vesting Tentative Map (the “Tentative Map”).

E. Transferee intends to develop the Property with an affordable housing development as more particularly described in the DA in accordance with and subject to the DA (the “Affordable Housing Development”).

NOW, THEREFORE, in consideration of the foregoing recitals, the DA, and other valuable consideration, the sufficiency of which are hereby acknowledged, Transferee and Transferor hereby agree as follows:

1. **TRANSFER OF PROPERTY.**

1.1 **Closing.** Subject to the terms and conditions of this Agreement, the conveyance of the Property by Transferor to Transferee (the “Closing”) shall occur on the date (the “Closing Date”) selected by Transferor upon at least sixty (60) days’ prior written notice to Transferee (the “Closing Notice”), provided that in no event shall the Closing Date occur later than ~~the issuance of a temporary certificate of occupancy for the next residential unit that triggers payment of the “IHO Fee” (as defined in the DA) after exhaustion of all IHO Fee credits from the transfers of the “H6 Property” (as such term is defined in the DA)~~ date that is twelve (12) months from the date on which Transferor’s obligation to perform the “Early H5 Work” (as defined in the DA) is triggered pursuant to Exhibit D of the DA (“Closing Deadline”).

## **DRAFT**

Upon delivery of the Closing Notice to Transferee, Transferee shall have the right to further inspect the Property, pursuant to the terms set forth in Section 3.1 below, to determine if the conditions for Transferee's benefit as set forth in Section 4.5.2 below have been satisfied.

Transferee shall have no right to terminate this Agreement or delay the Closing if Transferee is unable to secure funds or other commitments to enable the construction of the Affordable Housing Development. Notwithstanding the foregoing, following Transferor's delivery of the Closing Notice, Transferee shall have the right to extend the Closing Date two (2) times for one hundred eighty (180) days each (each, an "Extension Period" and the first such extension of the Closing Date being the "Extended Closing Date" and the second such extension being the "Outside Closing Date") if Transferee has not identified the ~~affordable housing developer for the Affordable Housing Development (the~~ "Designee") ~~(as defined in Exhibit D of the DA)~~ by the date that is five (5) business days prior to the originally scheduled Closing Date or Extended Closing Date, as applicable, by providing Transferor with written notice of the status of Transferee's efforts to identify the Designee together with documentation evidencing Transferee's "Good Faith Efforts" (as defined in the DA) to identify and select the Designee, which notice Transferee shall give to Transferor on or before the date that is five (5) business days prior to the originally scheduled Closing Date or the Extended Closing Date, as applicable. If Transferee has not identified and selected the Designee by the scheduled Closing Date, the Extended Closing Date or the Outside Closing Date, as applicable, then Transferee shall take title the Property in Transferee's name or be in default of this Agreement. For the avoidance of doubt, identification and selection of the Designee shall not be a condition to the Closing. If as a result of the foregoing extensions the Extended Closing Date or the Outside Closing Date would occur after the Closing Deadline, then the Closing Deadline shall be extended to coincide with the Extended Closing Date or the Outside Closing Date, as applicable.

If Transferee extends the Closing Date for an Extension Period, then Transferee shall reimburse Transferor for (i) property taxes payable with respect to the Property during such Extension Period ("Taxes"), and (ii) Transferor's costs to light, fence, insure and maintain the Property in a clean and safe manner during such Extension Period ("Operating Expenses"), which reimbursement shall be made within thirty (30) days after request from Transferor (which request shall include reasonable back-up documentation). If Transferee fails to pay such reimbursement to Transferor within such thirty (30) day period, then at Transferor's election, all or a portion of such unpaid amount shall be converted to IHO Fee credits for Transferor's account; provided, however, that in no event shall the IHO Fee credits for the Operating Expenses exceed \$200,000, escalated in accordance with the Engineering News Record (ENR) Construction Cost Index for the San Francisco Urban area published by McGraw Hill on January 1 of every year, or its successor publication. For the avoidance of doubt, such cap on IHO Fee credits shall not apply to Taxes.

For the avoidance of doubt, no extension of the Closing or the Closing Deadline by Transferee pursuant to this Section 1.1 shall delay the issuance of the Temporary Certificate of Occupancy for the next market-rate residential building in the Project.

## **DRAFT**

If Transferee identifies the Designee by the Closing, then concurrently with the Closing (but not before), Transferee and the Designee shall enter into an Assignment and Assumption Agreement in a form reasonably acceptable to Transferor (the “Designee Assignment Agreement”), to be effective as of the Closing, whereby (a) Transferee assigns to the Designee all of Transferee’s rights under Section 19 below that survive the Closing, and (b) the Designee assumes all obligations of Transferee under this Agreement that survive the Closing (including, without limitation, pursuant to Sections 19 and 20 below).

1.2 **Consideration.** The “Purchase Price” for the Property shall be \$1.00.

In addition, upon the Closing, Transferor shall receive “IHO Fee” (as defined in the DA) credits for the transfer of the Property to Transferee (or the Designee, if identified by Transferee) as calculated pursuant to the DA, provided that if Transferee extends the Closing for an Extension Period or if Transferor incurs any delays in the performance of any of its obligations under this Agreement or the DA caused by Transferee, then Transferor shall receive such IHO Fee credits as of the originally scheduled date of the Closing as set forth in the Closing Notice (without regard to any Extension Period or the amount of delay caused by Transferee).

Notwithstanding anything in this Agreement to the contrary, upon the execution of this Agreement, Transferee shall pay to Transferor \$1.00 as independent consideration for the Initial Inspection Period (as defined in Section 3.1 below) and Transferee’s rights under this Agreement. Such independent consideration shall be nonrefundable to Transferee in all events.

2. **TITLE.**

2.1 **General.** Title to the Property shall be conveyed by the Grant Deed and shall be evidenced by an ALTA Standard Coverage Form of Owner’s Policy of Title Insurance (or an ALTA Extended Coverage Form Policy, if Transferee elects such coverage and provides an ALTA Survey to the title company) (“Title Policy”). The Title Policy shall be issued by First American Title Insurance Company; Title Officer(s): Rosalind McCaskill or if unavailable, another Title Officer from First American Title Insurance Company (“Title Company”), with liability in an amount reflective of fair market value at the time of Closing as reasonably determined by Grantee (the “Agreed Value”), insuring title to the Property as vested in Transferee, free and clear of all liens and encumbrances and other matters affecting title to the Property, except (a) the lien for assessments not yet delinquent, (b) any exceptions recorded in connection with obtaining the Approvals or required in order to satisfy the Approvals, (c) any easements, covenants, conditions and restrictions recorded in connection with the development of the Project consistent with the Approvals, (d) any exceptions caused by the acts or omissions of Transferee, and (e) title exceptions which Transferee has approved in writing (or is deemed to have approved) pursuant to this Section 2.1 and Section 2.2 below (which (a) through (e) shall constitute “Approved Title Exceptions”).

Upon the execution hereof, Transferor shall obtain a current title/preliminary report from Title Company and shall email it to Transferee (with hyperlinks to title exception documents) to the Transferee representatives set forth in Section 9 below or to such other representatives as

Formatted: Font color: Auto

## **DRAFT**

Transferee may designate. Transferee shall have until the expiration of the Initial Inspection Period to review such report and exceptions, and any survey obtained by Transferee. If Transferee disapproves any matter affecting title (except Monetary Liens (as defined below), which shall be released upon and as a condition to Closing), then Transferee may terminate this Agreement by written notice to Transferor given on or prior to the expiration of the Initial Inspection Period. If Transferee does not elect to terminate this Agreement on or prior to the expiration of the Initial Inspection Period, then Transferee shall be deemed to have approved all matters affecting title (except Monetary Liens), which shall constitute Approved Title Exceptions, and Transferee shall have no further right to terminate this Agreement pursuant to this Section 2.1.

As used herein, “Monetary Liens” shall mean all liens secured by deeds of trust securing loans made to Transferor, mechanics’ liens relating to work contracted for by Transferor, judgment liens against Transferor, and delinquent real property taxes, provided that if Transferee is the Grantee, Monetary Liens shall include real property taxes for the property tax period in which the Closing occurs and all prior property tax periods in accordance with Section 4.7 below.

2.2 ~~2.2~~ Acts After Date of Agreement. Subject to Section 4.5 below, during the period from the date of this Agreement through the Closing: (a) Transferor shall not record, or permit to be recorded, any document or instrument relating to the Property without Transferee’s consent, which consent shall not be unreasonably withheld, conditioned or delayed; (b) Transferor shall operate, manage and maintain the Property in the ordinary course and consistent with Transferor’s practices as of the date of this Agreement; and (c) Transferor shall not enter into any new leases for the Property or amend any existing leases for the Property without Transferee’s consent, which consent may be withheld in Transferee’s sole and absolute discretion, provided that Transferee’s consent shall not be required for any lease that has a term expiring on or before the Closing.

**Formatted:** Outline numbered + Level: 2 + Numbering  
Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at:  
1" + Tab after: 1.5" + Indent at: 0"

2.3 Possession; Termination of Leases. ~~Exclusive p~~ Possession of the Property shall be delivered to Transferee upon the Closing free of any tenants or occupants (subject to Section 4.5.2.3 below). Transferee shall have no obligations to Transferor or any occupant or prior occupant with respect to any personal property not removed by the Closing.

To the fullest extent permitted by law, Transferor shall defend, indemnify and hold Transferee harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorneys’ fees and costs, and relocation costs and benefits payable by Transferee under California law) solely to the extent filed by a tenant of the Property and arising from Transferor’s termination of any lease of the Property, or any claim by any occupant under such lease regarding its personal property on the Property not removed by the Closing. Transferor’s obligations hereunder shall survive the Closing.

### 3. TRANSFEROR DISCLOSURES; TRANSFEREE INSPECTIONS.

3.1 Initial Inspection Period. From the date of execution hereof until the date that is ninety (90) days after the date of this Agreement (the “Initial Inspection Period”), subject to the terms and conditions set forth in this Section 3.1, Transferee may conduct, at Transferee’s

## **DRAFT**

sole expense, such inspections and testing of the Property, including any improvements thereon, soils and ground water, as Transferee may desire or deem appropriate, in Transferee's sole discretion. In conducting such inspections and testing, Transferee shall endeavor to minimize damage to the Property, and any improvements thereon, and shall, promptly following such inspections and testing (unless otherwise approved by Transferor, in its sole and absolute discretion), return the Property, including the improvements thereon, if any, to its condition prior to Transferee's inspections and testing. Subject to the terms and conditions of this Section 3.1, Transferor hereby grants to Transferee and its authorized employees, representatives, agents and contractors, permission and a license to enter upon the Property for the purpose of conducting such inspections and testing. Transferee shall provide Transferor with at least ten (10) days' prior written notice of its desire to enter the Property for any such inspections or testing, and any such inspections or testing shall be conducted at a time and manner reasonably approved by Transferor. Transferor shall have the right to be present at any such inspections or testing. In the event the Property is occupied by any person(s) other than Transferor, such access by Transferee shall be subject to the rights of such existing occupant(s). Transferor shall endeavor to make arrangements with such person(s) to ensure access by Transferee or its authorized employees, representatives, agents and contractors in order to conduct the inspections and testing, provided that in connection with such inspections and testing, Transferee shall endeavor to minimize interference with such existing occupant(s). Prior to conducting any inspections or testing, Transferee and its third party representatives, agents and contractors shall deliver to Transferor evidence of insurance in form and amount reasonably acceptable to Transferor, covering Transferor as an additional insured. Transferee shall indemnify, protect, defend (with legal counsel reasonably acceptable to Transferor) and hold Transferor harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising from, related to or caused by, Transferee's entry upon the Property or the performance of any inspection or test conducted by or at the request of Transferee or its contractors or agents (but not the results thereof unless same resulted from the exacerbation of existing conditions by Transferee). In the event Transferee determines the Property is not suitable, then Transferee may terminate this Agreement by written notice to Transferor given prior to the end of the Initial Inspection Period. If Transferee does not elect to terminate this Agreement on or prior to the expiration of the Initial Inspection Period, then Transferee shall be deemed to have approved the Property and Transferee shall have no further right to terminate this Agreement pursuant to this Section 3.1.

Notwithstanding anything in this Section 3.1 to the contrary, Transferee shall not be permitted to undertake any air sampling or any intrusive or destructive testing of the Property, including, without limitation, a "Phase II" environmental assessment, nor will Transferee be entitled to directly contact or communicate with the California Regional Water Quality Control Board, United States or California Environmental Protection Agency or other local, state or federal agency regarding the environmental condition of the Property other than requests for documentation or records relating to the Property, without in each instance first obtaining Transferor's prior written consent thereto, which consent Transferor may give or withhold in Transferor's sole and absolute discretion. Notwithstanding the foregoing, if Transferee's Phase I environmental assessment contains a recommendation for Phase II environmental assessment based on Transferee's proposed use of the Property, Transferee shall have the right to conduct a



## **DRAFT**

Phase II environmental assessment without Transferor's consent; provided, however, that Transferee's consultant for any Phase II environmental assessment shall be subject to Transferor's reasonable approval. Further, if, as part of the Due Diligence Information, Transferor provides a Phase I environmental assessment on which Transferee can rely, and that Phase I environmental assessment concludes that a Phase II environmental assessment is not recommended for Transferee's proposed use of the Property, then Transferee shall have no right to conduct a Phase II environmental assessment.

Transferee shall deliver to Transferor copies of any environmental reports and remediation cost estimates obtained by Transferee in the course of its inspections.

Notwithstanding California Civil Code Section 1103.1(a)(9), Transferor shall deliver to Transferee, with reasonable diligence after the execution of this Agreement and at Transferor's cost, a Natural Hazard Disclosure Statement (described in California Civil Code Section 1103.2) prepared by Escrow Holder (as defined in Section 4.1 below) (or its designee) (the "Expert"). Transferee acknowledges and agrees that for purposes of California Civil Code Section 1103.4(c), the Expert is an expert in natural hazard discovery and the Natural Hazard Disclosure Statement is sufficient compliance for application of the exemption provided by Section 1103.4(a) of the California Civil Code.

Transferor has previously delivered to Transferee certain environmental reports with respect to the Property (the "Environmental Reports"). Transferee acknowledges and agrees that Transferor has acted reasonably in relying on the Environmental Reports and the delivery of the Environmental Reports to Transferee constitutes written notice under California Health and Safety Code Section 25359.7.

Prior to the date of this Agreement, Transferor delivered to Transferee the most recent environmental studies, soils studies, and surveys, and plans, specifications, maps, surveys and other similar materials relating to the physical and environmental condition of the Property in Transferor's possession (collectively, the "Due Diligence Items"). Transferor represents and warrants to Transferee that to Transferor's actual knowledge, the Due Diligence Items are accurate and complete duplications of the copies or originals thereof in Transferor's possession. The foregoing representation and warranty of Transferor shall survive the Closing for a period of one (1) year following the Closing.

#### 4. ESCROW.

4.1 Escrow Holder. The escrow shall be opened with First American Title Insurance Company ("Escrow Holder"), within five (5) business days after the date of this Agreement and Transferor depositing a copy of this executed Agreement with Escrow Holder. This document shall be considered as the escrow instructions between the parties, with such further instructions consistent with this Agreement as Transferee, Transferor, or Escrow Holder requires in order to clarify the duties and responsibilities of Escrow Holder.

## **DRAFT**

4.2 **Closing.** For the purposes of this Agreement, “Closing” shall be the date on which the Grant Deed for the Property in favor of Transferee (or the Designee, if identified by Transferee by such date) is recorded in the Official Records of the Santa Clara County Recorder’s Office, or if the Closing occurs on a gap basis, the date that Escrow Holder is irrevocably committed to record the Grant Deed.

Transferee shall have no right to terminate this Agreement as a result of any loss or damage, or any condemnation or eminent domain, except as expressly set forth in the paragraph below.

Notwithstanding the foregoing, if, due solely to Transferor’s actions, the Property is reduced in size by more than five percent (5%) from its current size as described in Exhibit “A”, then Transferor shall have the right to (a) provide a replacement site to Transferee, which site shall be acceptable to Transferee’s Director of Housing in his or her sole and absolute discretion, or (b) if no such replacement site is available, as reasonably determined by Transferor, or if Transferee rejects such replacement site as set forth above, then either Transferor or Transferee may terminate this Agreement. Transferee shall have the right to conduct due diligence and inspect any replacement site consistent with the provisions in Section 3.1 above, expressly including the right to conduct Phase I and Phase II environmental assessments, as appropriate; provided, however, that Transferee’s consultant for any Phase II environmental assessment shall be subject to Transferor’s reasonable approval. If Transferee does not reject such replacement site within either ninety (90) days or if Transferee’s Phase I environmental assessment contains a recommendation for Phase II environmental samplingassessment based on Transferee’s proposed use of the replacement site, then within one hundred twenty (120) days, after written notice from Transferor and Transferee’s receipt of copies of all Due Diligence Items for the replacement site in Transferor’s possession, then Transferee shall be deemed to have accepted such replacement site and the term “Property” as used in this Agreement shall be deemed to mean such replacement site. Notwithstanding the foregoing, if, as part of the Due Diligence Information, Transferor provides a Phase I environmental assessment on which Transferee can rely, and that Phase I environmental assessment concludes that a Phase II environmental assessment is not recommended for Transferee’s proposed use of the replacement site, then Transferee shall have no right to conduct a Phase II environmental assessment.

In the event any condemnation or eminent domain (that was not initiated by Transferee) occurs prior to the Closing, and provided that the paragraph above does not apply, then upon the Closing, (a) Transferor shall receive IHO Fee credits for the transfer of the Property as calculated pursuant to the DA (without regard to the taking), and (b) Transferor shall assign to Transferee all of Transferor’s interest in and to the condemnation or eminent domain proceeds attributable to the value of the Property so taken.

4.3 **Transferor Required to Deliver.** Before the Closing, Transferor shall deposit into escrow the following:

## **DRAFT**

4.3.1 A grant deed conveying the Property to Transferee (or the Designee, if identified by Transferee), in the form attached hereto as Exhibit “B”, duly executed by Transferor and acknowledged (the “Grant Deed”); and

~~4.3.2.1.1 The Designee Assignment Agreement, if applicable, pursuant to Section 1.1 above; and~~

Formatted: Font: Calibri

~~4.3.3.2~~ 4.3.2 Any other documents reasonably required by Escrow Holder or the Title Company to be deposited by Transferee to carry out this escrow.

4.4 Transferee Required to Deliver. On or before the Closing, Transferee shall deposit into escrow the Purchase Price and the following (properly executed and acknowledged, if applicable):

4.4.1 If Transferee is acquiring title (i.e., has not identified the Designee and has not assigned this Agreement in accordance with Section 6 below), an executed and acknowledged “Certificate of Acceptance” in the form attached to the Grant Deed (attached hereto as Exhibit “B”);

~~4.4.2 The Designee Assignment Agreement, if applicable, pursuant to Section 1.1 above; and~~

Formatted: Font: Calibri

~~4.4.2.4.3~~ 4.4.3 Any other documents reasonably required by Escrow Holder to be deposited by Transferee to carry out this escrow.

4.5 Conditions to the Closing. Escrow shall not close unless and until both parties have deposited with Escrow Holder all sums and documents required to be deposited as provided in this Agreement. Additionally:

4.5.1 Transferor’s obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of the following condition(s) precedent, which is/are for Transferor’s benefit and may be waived only by Transferor:

4.5.1.1 Transferee shall have performed all agreements to be performed by Transferee hereunder.

~~4.5.1.2~~ 4.5.1.2 Transferor is obligated to transfer the Property ~~upon the earlier of a) the need to obtain IHO Fee Credit for the next residential unit that triggers payment of the IHO Fee after exhaustion of all IHO Fee credits from the transfer of the “H6 Property” (as such term is defined in the DA), or b) within twelve (12) months of the H6 Development Anticipated TCO Notice, as defined and set forth in Exhibit C of this Agreement, by the date that is twelve (12) months from the date on which Transferor’s obligation to perform the Early H6 Work is triggered pursuant to Exhibit D of the DA.~~

Formatted: Not Highlight

**DRAFT**

~~4.5.1.2~~ 4.5.1.3 If this Agreement has been assigned to a Designee, then such Designee shall have certified to Transferor in writing that Designee has obtained commitments to sufficiently fund the Affordable Housing Development on the Property.

Formatted: Body 1",b1, No bullets or numbering

4.5.2 ~~Additionally~~, Transferee's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of all of the following conditions precedent, which are for Transferee's benefit and may be waived only by Transferee:

4.5.2.1 Transferor shall have performed all agreements to be performed by Transferor hereunder.

4.5.2.2 Title Company shall have issued or shall have committed to issue the Title Policy to Transferee, for the amount of the Agreed Value, showing fee title to the Property to be vested in Transferee (or the Designee, if identified by Transferee) subject only to the Approved Title Exceptions.

4.5.2.3 Transferor shall have: (i) caused any and all leases affecting the Property to have been terminated; (ii) provided Transferee with reasonable evidence of such termination; and (iii) removed any holdover tenants.

4.5.2.4 Transferor shall have caused Transferor's Work to be Completed, subject to the terms and conditions set forth in Exhibit "C" attached hereto. Transferor shall use commercially reasonable efforts to satisfy the condition set forth herein on or before the Closing. Transferor shall not be in default of this Agreement if, despite using its commercially reasonable efforts, Transferor does not satisfy the conditions above on or before the Closing. Notwithstanding anything in this Agreement to the contrary, if despite Transferor using its commercially reasonable efforts, Transferor's Work is not Completed by the Closing as a result of any delays caused by Transferee or Force Majeure (as defined in Exhibit "C"), then the provisions of Section 19.2 shall control.

4.5.2.5 There shall have been no material adverse change in the environmental condition of the Property.

Additionally, Transferor's and Transferee's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of the following condition precedent, which is for both parties' benefit and may not be waived by either party: Transferor shall cause the Property to become a legal parcel for conveyance, at Transferor's sole cost and expense. Transferor shall use commercially reasonable efforts to satisfy the condition set forth herein on or before the Closing. Transferor shall not be in default of this Agreement if, despite using its commercially reasonable efforts, Transferor does not satisfy the conditions above on or before the Closing.

If any of the conditions to Closing set forth in this Agreement are not timely satisfied for a reason other than a default of Transferee or Transferor under this Agreement, and this Agreement is terminated, then upon termination of this Agreement, Escrow Holder shall

## **DRAFT**

promptly return to Transferee all funds (and all interest accrued thereon) and documents deposited by Transferee in escrow and to return to Transferor all funds and documents deposited by Transferor in escrow and which are held by Escrow Holder on the date of the termination (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party under Section 4.10 below).

4.6 Recordation of Grant Deed; Delivery of Funds and Possession. On the Closing, upon receipt of the funds and instruments described in this Section 4, Escrow Holder shall cause the Grant Deed to be recorded in the office of the County Recorder of Santa Clara County, California. Thereafter, Escrow Holder shall deliver the proceeds of this escrow (less appropriate charges as shown on a preliminary Settlement Statement executed by Transferee and Transferor) to Transferor, and Transferor shall deliver possession of the Property to Transferee free and clear of all occupants, subject to Section 4.5.2.3 above.

4.7 Prorations. Property taxes shall not be prorated as Transferee is exempt from property taxes; Transferor shall pay all property taxes for the six month property tax billing period in which the Closing occurs, and then may apply for a refund of the property taxes that are allocable to the period after the Closing, and Transferee shall cooperate in good faith therewith. All assessments shall be prorated between Transferee and Transferor as of the Closing based on the latest available tax information. All prorations shall be determined on the basis of a 360-day year. Notwithstanding the foregoing, if Transferee is not directly acquiring title (i.e., Transferee has identified the Designee or has assigned this Agreement in accordance with Section 6 below) and such Designee or assignee is not exempt from property taxes, then property taxes shall be prorated at Closing on an accrual basis, and Transferor shall retain the rights to any refunds of the property taxes for periods prior to the Closing.

4.8 Costs. Transferor shall pay the premium for the Title Policy (excluding the cost of extended coverage and any survey obtained by Transferee in connection with such extended coverage, which shall be paid by Transferee), the escrow fees, the recording costs [if any], any documentary transfer taxes, and any other closing costs or charges charged by Escrow Holder or Title Company not expressly provided for herein. Notwithstanding the foregoing, if Transferee is not directly acquiring title (i.e., Transferee has identified the Designee or has assigned this Agreement in accordance with Section 6 below) and there are any closing costs charged as a result of the Property being transferred directly to such Designee or assignee (e.g., documentary transfer tax or recording fees, where there would otherwise be none if the Property was deeded directly to Transferee), then (a) such closing costs shall be determined based on the Agreed Value, notwithstanding that the Purchase Price is \$1.00, and (b) Transferee or such Designee or assignee shall be responsible for such closing costs.

4.9 Brokers. Transferee and Transferor represent to one another that except for any broker engaged by Transferor, no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement, or to its knowledge is in any way connected with such transaction. Transferor shall pay commissions to any broker engaged by Transferor in accordance with the agreement between Transferor and such Broker. Each party covenants and agrees that any other broker fee or commission, which may be due or payable in connection with

**DRAFT**

the closing of the transaction contemplated by this Agreement through its dealings with that party, shall be borne solely by that party.

4.10 Escrow Cancellation Charges. In the event that this escrow shall fail to close by reason of the default of either party hereunder, the defaulting party shall be liable for all escrow and title cancellation charges. In the event that the escrow shall fail to close for any other reason, each party shall pay one-half (1/2) of all escrow and title cancellation charges.

5. NOTICES. All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and sent by first class United States registered or certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized courier service such as Federal Express, duly addressed to the parties as follows:

To Transferor: Google LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Attn: REWS Department / Downtown West SJ Project  
Executive

With Copies to: Google LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Attn: Legal Department / RE Matters  
and  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
1900 Main Street, 5th Floor  
Irvine, CA 92614  
Attn: Britney Willhite

To Transferee: City of San José  
200 E. Santa Clara Street, 17th Floor  
San Jose, California 95113  
Attn: City Manager

With Copy to: City of San José  
200 E. Santa Clara Street, 16th Floor  
San Jose, California 95113  
Attn: City Attorney

Delivery of any notice or other communication hereunder shall be deemed made on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party as herein provided.

## **DRAFT**

6. **ASSIGNMENT.** This Agreement may not be assigned by Transferor or Transferee without the prior written consent of the other party (in its sole and absolute discretion); provided, however, that (a) Transferor may assign this Agreement to a “Google Affiliate” or to any allowed or permitted “Transferee” (as such terms are defined in the DA), and (b) Transferee may identify the Designee as the transferee/grantee of the Property at the Closing pursuant to Section 1.1 above. Notwithstanding the foregoing, following the Closing, Transferee may assign all of Transferee’s rights under Section 19 below that survive the Closing to any subsequent transferee of the Property without the consent of Transferor, but Transferee shall notify Transferor in writing of such assignment and the name and address of the applicable assignee. The party named in the Grant Deed in accordance with this Section 6 shall be referred to herein as the “Grantee”.

7. **ENTIRE AGREEMENT.** This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

8. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

9. **EMAIL DELIVERY.** This executed Agreement (and executed counterparts of this Agreement), may be delivered by email to Sallie Lim at Sallie@google.com for Transferor, and to the Director of Housing, with copies to Office of Economic Development and City Attorney for Transferee. Any party may change its recipients for purposes of this Section by giving notice to the other party as provided in Section 5 above.

10. **TIME OF THE ESSENCE.** Time is of the essence of this Agreement.

11. **THIRD PARTIES.** Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement. Further, nothing contained in this Agreement, expressed or implied, shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Transferor and Transferor (and Grantee, if applicable).

12. **SEVERABILITY.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

## **DRAFT**

13. **ADDITIONAL DOCUMENTS.** Each party hereto agrees to perform any further reasonable acts and to execute, acknowledge and deliver any further reasonable documents that may be reasonably necessary to carry out the provisions of this Agreement.

14. **AUTHORITY OF CITY MANAGER.** The City Manager or designee of Transferee may give any and all notices, consents and terminations hereunder on behalf of Transferee provided they are in writing. The City Manager or designee is authorized to execute, on behalf of the Transferee, deeds and all other documents as may be necessary to effectuate this Agreement and the transfer of property rights herein. Further, nothing stated herein in this Agreement shall in any way impinge upon the City's regulatory authority under federal, state, or local laws.

16. **NO CONSTRUCTION AGAINST DRAFTER.** This Agreement shall not be construed against the drafter hereof, it being acknowledged that each party has had an opportunity to review and negotiate the terms herein.

17. **REMEDIES.**

17.1 **Default by Transferor.** If Transferor fails to perform any of the obligations of Transferor set forth in this Agreement and fails to cure the same within ten (10) days after delivery of written notice from Transferee (provided that no such notice and cure period shall be applicable to Transferor's failure to deliver any documents or funds required for the Closing as set forth in Section 4 above), then as Transferee's sole and exclusive remedy, Transferee may terminate this Agreement upon written notice to Transferor and Escrow Holder. If Transferee elects to terminate this Agreement, then this Agreement shall automatically terminate, Transferor shall reimburse Transferee for the reasonable third party costs and expenses actually incurred by Transferee in performing the inspections and testing set forth in Section 3.1 above, and Transferor would not receive any IHO Fee credits for the Property and instead Transferor shall satisfy its IHO obligations by (a) identifying a site or sites in the Diridon Station Area Plan which can accommodate at least one hundred twenty (120) affordable housing units as anticipated on the Property, (b) paying one hundred fifty percent (150%) of the IHO Fees due (the "IHO Fee Premium"), or (c) upon mutual agreement of Transferor and Transferee, Transferor shall work with Transferee to maintain yield by condominium-izing a portion of a high rise residential project for affordable housing. If Transferor satisfies its IHO obligations by the payment of the IHO Fee Premium pursuant to clause (b) above, the payment of the IHO Fee Premium shall be made in full to Transferee within thirty (30) days after Transferor's election of clause (b) above, and Transferor shall receive IHO Fee credits for that portion of the IHO Fee Premium equal to one hundred percent (100%) of the IHO fees due, but no credit for that portion of the IHO Fee Premium equal to the additional fifty percent (50%) owned as a result of the default.

17.2 **Default by Transferee.** If Transferee fails to perform any of the obligations of Transferee set forth in this Agreement and fails to cure the same within ten (10) days after delivery of written notice from Transferor (provided that no such notice and cure period shall be applicable to Transferee's failure to deliver any documents or funds required for the Closing as set forth in Section 4 above), then as Transferor's sole and exclusive remedy, Transferor may



## **DRAFT**

terminate this Agreement upon written notice to Transferee and Escrow Holder. If Transferor elects to terminate this Agreement, then this Agreement shall automatically terminate, and upon such termination, Transferor shall receive IHO Fee credits in the same amount as Transferor would have received under the DA and this Agreement if this Agreement has not been terminated due to Transferee's default and the Closing had occurred.

18. **RELEASE.** Except as otherwise expressly set forth in this Agreement, Transferee is acquiring the Property in its existing condition, "AS-IS, WHERE-IS" and as of the Closing, Transferee has made or has waived all inspections and investigations of the Property and its vicinity which Transferee believes are necessary to protect its own interest in, and its contemplated use of, the Property.

Except as otherwise expressly set forth in this Agreement, neither Transferor nor any entity associated or affiliated with Transferor, nor the agents, servants, officers, directors, employees, subsidiaries, divisions, affiliates or successors of Transferor, nor each of them, has made any representation, warranty, inducement, promise, agreement, assurance or statement, oral or written, of any kind to Transferee upon which Transferee is relying, or in connection with which Transferee has made or will make any decisions concerning the Property or its vicinity including, without limitation, its use, condition, value, square footage, compliance with applicable laws, existence or absence of hazardous substances, or the permissibility, feasibility, or convertibility of all or any portion of the Property for any particular use or purpose, including, without limitation, its present or future prospects for sale, lease, development, occupancy or suitability as security for financing.

Transferor hereby specifically disclaims all warranties implied by law arising out of or with respect to the execution of this Agreement, any aspect or element of the Property, or the performance of Transferor's obligations hereunder including, without limitation, all implied warranties of merchantability, habitability and/or fitness for a particular purpose.

Except as otherwise expressly set forth in this Agreement, Transferee hereby releases and forever discharge(s) Transferor and each and every entity associated or affiliated with Transferor, and the agents, servants, officers, directors, employees, subsidiaries, divisions, affiliates and successors of Transferor, and each of them, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, liabilities and demands, including without limitation any claim arising from and/or related to the Property (collectively "Claims"), which Claims are related to the physical and environmental condition of the Property, whether known or unknown, disclosed or undisclosed, anticipated or unanticipated, whenever accruing. In connection with the foregoing releases, Transferee acknowledges that it is familiar with and hereby waives the protections of Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

## **DRAFT**

Notwithstanding the foregoing, the foregoing release shall not apply to (a) Transferor's default or breach of any obligation of Transferor set forth in this Agreement that survives the Closing, (b) any claims for personal injury, death, or damage to personal property based on events occurring prior to the Closing, (c) any claims to the extent arising from Transferor's intentional misrepresentation, or (d) any claims arising under Section 19 below that survive the Closing.

### 19. TRANSFEROR POST-CLOSING COVENANTS.

19.1 Environmental. If the Closing occurs, Transferor shall indemnify, defend, and hold harmless Grantee against any and all third party actions or claims for death or personal injury to the extent such actions or claims are caused by exposure to environmental contamination existing at the Property which exposure occurred prior to the Closing and such actions or claims first accrued prior to the Closing, which indemnity and defense obligation of Transferor shall survive the Closing. Notwithstanding the foregoing, in no event shall such indemnity and defense obligation of Transferor apply to any actions or claims that arise from the negligence or willful misconduct of Transferee or Grantee.

19.2 Transferor's Work. Notwithstanding anything in this Agreement to the contrary:

(a) ~~if~~ despite Transferor using its commercially reasonable efforts in accordance with Section 4.5.2.4, Transferor's Work is not Completed by the Closing as a result of any delays caused by Transferee or Force Majeure, then Transferee shall have no right to terminate this Agreement and the Closing shall occur on the Closing Date, provided that following the Closing, Transferor shall diligently pursue the remaining Transferor's Work to Completion (such remaining portion being the "Remaining Transferor's Work"). As security for the performance of the Remaining Transferor's Work, at the Closing, Transferor shall provide Transferee with a construction completion bond in an amount equal to the 1.5 times the cost to perform the Remaining Transferor's Work. Following the Closing, Transferee (or Grantee as applicable) shall provide Transferor with reasonable access to the Property as necessary to perform the Remaining Transferor's Work. ~~For the avoidance of doubt, upon the Closing, Transferor shall receive IHO Fee credits for the transfer of the Property, excluding \$2,500,000 for the H5 Early Work, in accordance with Section 1.2 above. Upon Completion of the Remaining Transferor's Work, Transferor will receive IHO Fee Credit in the amount of \$2,500,000 for H5 Early Work CLF Amount and shall be handled as such in accordance with the terms of Exhibit D to the DA. For the avoidance of doubt, upon the Closing, Transferor shall receive IHO Fee Credits for the transfer of the land portion of the "H5 Early Work CLF Amount" (as defined in the DA), but not for the relevant "Early H5 / H6 Work Portion of IHO Credits", as described in the third column of the IHO Credit Table in Section III.C.5 of the DA. If Transferor Completes the Remaining Transferor's Work, then Transferor shall receive IHO Fee Credit for the relevant "Early H5 / H6 Work Portion of IHO Credits" (as illustrated in the fourth column of the IHO Credit Table with respect to H5) upon Completion. If Transferee performs the Remaining Transferor's Work, Transferor shall provide Transferee with reasonable access to the adjacent property owned by Transferor and permission as necessary to perform the Remaining Transferor's Work.~~

## **DRAFT**

(b) ~~if at six (6) months before Closing, Transferee determines that~~ Transferor is not exercising commercially reasonable efforts to complete Transferor's Work ~~and such work is not Completed by the Closing as a result of Transferor's default in so doing based on the provisions in (c) below,~~ then Transferee shall have no ~~obligation to close, and Closing shall be extended until the Early H5 work is completed, and Transferor shall receive no IHO Fee Credit until Closing,~~ right to terminate this Agreement and the Closing shall occur on the Closing Date at which time Transferor shall pay to Transferee (and not Grantee, if other than Transferee) an amount equal to 150% of all of the costs to Complete the remaining "Early H5 Work" (as described in Schedule 1 to Exhibit C hereof), subject to "Annual Increases" (as defined in Section III.A of the DA) (the "Remaining H5 Work") without regard to the amounts set forth in the IHO Credits Table in the DA. The 150% amount shall not be entitled to treatment as CLF. However, the costs of the Early H5 Work that Transferor has completed shall not be entitled to treatment as CLF and shall be handled as such as set forth in Exhibit D of the DA. Also, Transferor shall receive IHO Fee Credits for Transfer of Property for the H6 land value as illustrated in the third column of the IHC Credit Table in Section III.C.5 of the DA. Transferee shall promptly Complete the Remaining H5 Work thereafter, using the default payment, and Transferor shall provide Transferee with reasonable access to the adjacent property owned by Transferor and permission as necessary to perform the Remaining Transferor's Work.

Formatted: Not Highlight

(c) The parties agree that every three (3) months from the date of the "H5 Notice" (as defined in the DA) the parties shall meet, and Transferor shall provide an update on the Early H5 Work. If in its reasonable discretion Transferee concludes that there is no way for Transferor to complete the Early H5 Work before issuance of the Temporary Certificate of Occupancy for the Affordable Housing Development on the Property, Transferee shall be able to exercise the mechanisms described in (a) or (b) above depending on whether Transferor is diligently pursuing the work, or not.

19.3 Mid-Block Crossing. At the Closing, Transferor shall retain ownership of the mid-block crossing between the Property and the "H6 Property" (as defined in the DA). Following the Closing, upon request from Grantee, Transferor shall provide to Grantee a commercially reasonable construction easement over such mid-block crossing for the time period commencing on the later of (a) the Closing, and (b) the commencement of construction on the Property or the "H6 Property" (whichever is sooner), and continuing until the date that is six (6) months following the issuance of the last temporary certificate of occupancy for the Property and the "H6 Property".

19.4 Survival. The provisions of this Section 19 shall survive the Closing.

## 20. GRANTEE POST-CLOSING COVENANTS.

20.1 Condition of Property. Following the Closing, Grantee shall be responsible to keep the Property in good, clean and safe condition. In connection therewith, Grantee shall be responsible to maintain the Erosion Controls and the Fence (as such terms are defined in Schedule 1 to Exhibit "C" attached hereto) installed as part of Transferor's Work in good condition and repair, and to provide for adequate lighting and security prior to and during development and

**DRAFT**

construction of the Property. The obligations set forth in this Section 20.1 shall also be set forth in the Grant Deed, which obligations shall run with the land of the Property.

20.2 Construction Rights-of-Way. Following the Closing, upon request from Transferor from time to time, Grantee shall grant Transferor a commercially reasonable construction right-of-way as may be reasonably necessary for the construction of the Project, provided that such construction rights-of-way do not materially interfere with the development and use of the Property for the Affordable Housing Development.

20.3 Construction Costs. Grantee shall bear all construction costs related to the Affordable Housing Development.

20.4 Private Street Work. During the performance of the Private Street Work (as defined in Schedule 1 to Exhibit “C” attached hereto) and following completion of the Private Street Work, if Grantee shall cause any damage to the Private Street Work, then Grantee shall repair such damage, and if such damage is caused following completion of the Private Street Work, Grantee shall restore the affected area to the condition immediately prior to the damage. All such repair and restoration by Grantee shall be at Grantee’s sole cost and expense.

20.5 Successors and Assigns. The provisions of this Section 20 shall be binding on Grantee and its successors and assigns. Grantee shall cause all such successors and assigns to be bound by the terms and conditions of this Section 20.

20.6 Survival. The provisions of this Section 20 shall survive the Closing.

21. INTENTIONALLY DELETED.

22. ATTORNEYS' FEES. Should legal action be brought by either party against the other for a default under this Agreement or to enforce any provision herein, the prevailing party in such action shall not be entitled to recover its attorneys' fees and costs from the other party. Each party to the legal action shall bear its own attorneys' fees and costs.

23. MEET AND CONFER PROCESS. Before sending a notice of default in accordance with Section 17 above, the party that may assert that the other party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other party to discuss the alleged failure and shall permit such party a reasonable period, but not less than thirty (30) days and not more than sixty (60) days, to respond to or cure such alleged failure. The party asserting such failure shall request that such meeting and conference occur within twenty (20) business days following the request and if, despite the “Good Faith Efforts” (as defined in the DA) of the requesting party, such meeting has not occurred within twenty (20) business days of such request, such party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 17 above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Negotiation Period Privilege; CPRA Confidential Treatment Request; Not for Public Release –  
CPRA Exempt; Confidential and Proprietary Business-Siting Information

~~City~~Google Comments 5-9-11-21

**DRAFT**

Negotiation Period Privilege; CPRA Confidential Treatment Request; Not for Public Release –  
CPRA Exempt; Confidential and Proprietary Business-Siting Information

~~City~~Google Comments 5-9-11-21

**DRAFT**

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

**TRANSFEROR:**

GOOGLE LLC, a Delaware limited liability  
company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSFeree:**

CITY OF SAN JOSÉ

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**EXHIBIT "A"**

**DEPICTION OF THE PROPERTY**

[NOTE TO CITY: To be inserted from Schedule D1 to the DA]

**EXHIBIT "B"**  
**FORM OF GRANT DEED**

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO AND  
MAIL TAX STATEMENTS TO:

---

APN:

SPACE ABOVE THIS LINE FOR RECORDER

G R A N T   D E E D

**The Undersigned Grantor Declares: DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0; Recorded for the benefit of the City of San Jose and is exempt from transfer tax per Revenue and Taxation Code Section 11922 and exempt from recording fee per Government Code Section 6103 and/or 27383.**

computed on the consideration or full value of property conveyed, OR  
 computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,

unincorporated area;  **City of San Jose**, and

Signature of Declarant

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_ ("GRANTOR"), does hereby GRANT to \_\_\_\_\_ "GRANTEE", for valuable consideration, receipt of which is hereby acknowledged, all certain real property situate in the City of San José, County of Santa Clara, State of California, described in Exhibit "1" attached hereto and made a part hereof (the "Property").

Exhibit "A"  
Page 1 of 1



By its signature hereon, Grantee, as the owner of the Property, hereby covenants and agrees that Grantee shall be responsible to keep the Property in good, clean and safe condition and to maintain attractive fencing, and to provide for adequate lighting and security prior to and during development and construction of the Property. The foregoing covenants and agreements shall be appurtenant to the Property and be binding on Grantee and each successor-in-interest to Grantee in the Property and every part thereof. It is the intention and understanding of the parties hereto that the foregoing covenants and agreements shall run with the land (as defined in California Civil Code Sections 1460 & 1462) of the Property and every part thereof in accordance with California Civil Code Section 1468.

Dated: \_\_\_\_\_, 202\_\_

**“GRANTOR”**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Dated: \_\_\_\_\_

**“GRANTEE”**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Dated: \_\_\_\_\_

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.

**ACKNOWLEDGEMENT**

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are

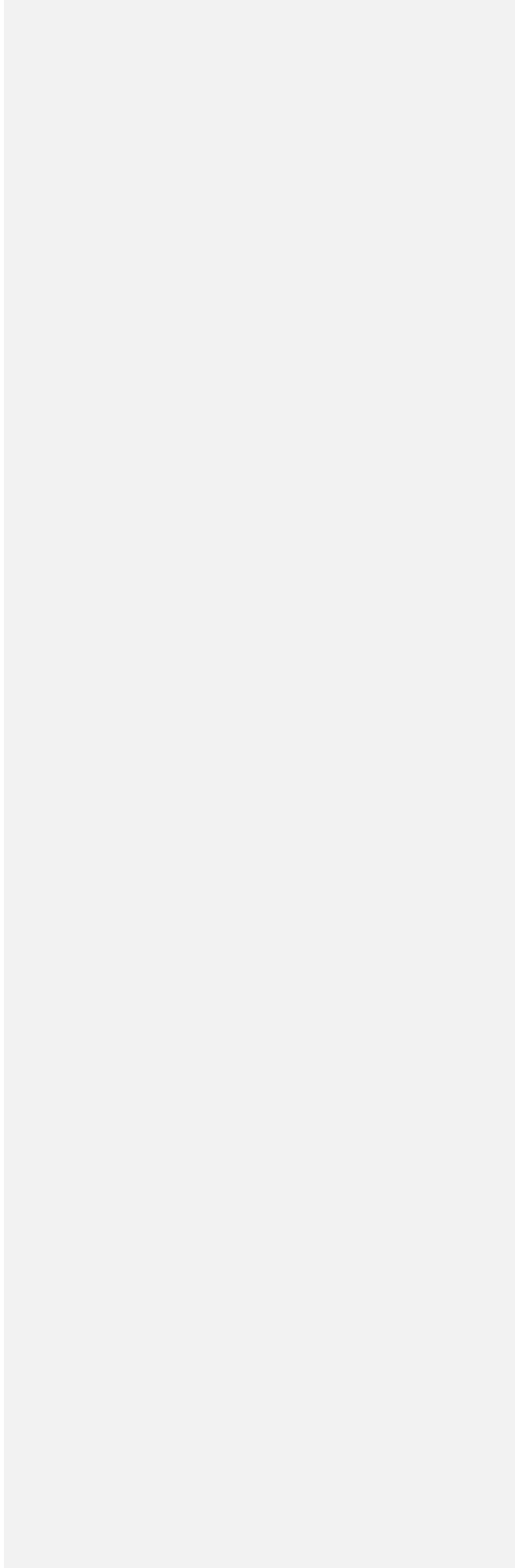
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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 \_\_\_\_\_ (Seal)

**Exhibit 1 to Grant Deed  
Legal Description**



[USE ONLY IF CITY IS GRANTEE]  
Deed Acceptance  
APN:

**DEED ACCEPTANCE**

This is to certify that the interest in real property conveyed by *Grant Deed*, dated \_\_\_\_\_, 202\_, from \_\_\_\_\_, a corporation under a holding agreement to the City of San Jose, a municipal corporation of the State of California, is hereby accepted by the undersigned officer of said City on behalf of the City Council of the City of San Jose, pursuant to authority conferred by the City Council of the City of San Jose on April 4, 1995 (shown as Item 9o on the April 4, 1995 City Council Agenda). The Grantee consents to recordation thereof by its duly authorized officer.

CITY OF SAN JOSE,  
A Municipal Corporation of the State of California

By: \_\_\_\_\_ Date: \_\_\_\_\_  
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.

**ACKNOWLEDGEMENT**

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me,  
\_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
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 \_\_\_\_\_ (Seal)

**EXHIBIT “C”**

**TRANSFEROR’S WORK**

1. As used in this Agreement, “Transferor’s Work” shall mean that certain work described on Schedule 1 attached hereto.

2. Transferee shall provide the following written notices to Transferor:

(a) When the affordable housing developer for the Affordable Housing Development has been selected and a funding commitment for predevelopment has been made (such notice being the “Developer Selection Notice”);

(b) Upon the commencement of construction of the affordable housing development on the “H6 Property” (as defined in the DA) (the “H6 Development”) (such notice being the “H6 Development Commencement Notice”); and

(c) Twelve (12) months prior to the date that Transferee reasonably expects to receive the temporary certificate of occupancy for the H6 Development (such notice being the “H6 Development Anticipated TCO Notice”).

The date that is the later of Transferor’s receipt of the Developer Selection Notice and the H6 Development Commencement Notice, but in all events no later than the date of Transferor’s receipt of the H6 Development Anticipated TCO Notice, is referred to herein as the “Transferor’s Work Commencement Date”.

3. Following the Transferor’s Work Commencement Date, Transferor shall promptly procure and mobilize relevant consultants and prepare plans and specifications for Transferor’s Work (the “Plans”).

4. Upon finalizing the Plans, Transferor shall promptly and diligently pursue obtaining all permits necessary for Transferor’s Work, subject to delays caused by Transferee or Force Majeure (as defined below) (the “Permitted Plans”). Transferor shall provide Transferee with a copy of the Permitted Plans. Upon receipt of the Permitted Plans, Transferor shall diligently perform Transferor’s Work to Completion, subject to delays caused by Transferee or Force Majeure.

5. As used herein, “Completion” or “Completed” shall mean that Transferor’s Work has been completed in accordance with the building permit(s) issued with respect to Transferor’s Work and the City Building Division has completed its final inspection of Transferor’s Work. Transferee shall diligently and in good faith process all submissions and requests from Transferor necessary for Transferor to perform Transferor’s Work to Completion.

~~6.~~  
~~7.~~ As used herein, “Force Majeure” shall mean any event or condition that: (i) is beyond Transferor’s control; (ii) prevents Transferor’s performance of this Agreement; (iii) Transferor could not have reasonably foreseen; and (iv) arises from one or more of the following: (1) naturally occurring events constituting an act of God; (2) unusually severe and abnormal climactic

Formatted: Font color: Text 1

conditions (as compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Property); (3) strikes, stoppages or boycotts that affect a specific trade on a national or regional level, to the extent not caused by the acts or omissions of Transferor; (4) the unavailability of construction materials for projects similar to Transferor's project as contemplated in the DA (i.e. a large scale mixed-use project) that causes significant construction delays, or significant construction delays resulting from such materials being unusually difficult or impossible to obtain, or from defects, tariffs, embargoes, or trade disputes, where, in each case, Transferor is unable to obtain alternative or replacement materials, within the same or substantially similar time period at substantially the same cost (and without having to forfeit any significant deposits or advance payments); (5) acts of terrorism or war; (6) riots or other civil unrest; (7) a local, state or federal declaration of emergency based on an epidemic or pandemic, including any quarantine or other health-related orders, directives, regulations, laws or other requirements implemented in response to such epidemic or pandemic; (8) orders issued by any other governmental body having jurisdiction over the Project; (9) casualty; or (10) condemnation unrelated to DISC or other transit project(s). Neither the inability of Transferor to obtain construction financing for Transferor's project nor the condition of, or changes in, the real estate market shall constitute a Force Majeure event, except to the extent such inability or changes result from a Force Majeure event.

## **SCHEDULE 1 TO EXHIBIT “C”**

### **SCOPE OF TRANSFEROR’S WORK**

- Establish erosion and sediment controls on the boundary of the Property (the “Erosion Controls”) and fence off the Property on all sides (the “Fence”)
- Disconnect and cap all utilities on the Property, and furnish a survey to Transferee of the terminated locations
- Abate any hazardous materials contained within the buildings to the extent required by law prior to demolishing such buildings, and demolish any buildings including offsite buildings (partially or totally) necessary to complete the work
- Remove slabs, footings, piles to a depth of 4 feet below the surface and asphalt parking lots
- Rough grade the Property without imported fill or compaction, in order to provide a free draining surface
- Perform the “Private Street Work”, as follows:
  - Construct the entire private street from Auzerais Avenue to the Property boundary in the area depicted as “Early H5 Work” on Figure 1.0 attached hereto, including curb and gutter (the “Private Street”)
  - Complete sidewalks, street trees & planting, street furnishings, signage and lighting to those portions of the Property (identified as “H5 Affordable Housing” on Figure 1.0 attached hereto) and the property identified as “H6 Affordable Housing” on Figure 1.0 attached hereto) that have frontage on the Private Street in accordance with the “Downtown West Design Standards and Guidelines” (as defined in the DA)
  - Install water, sewer, storm drain lines and an electrical conduit bank in a joint trench from existing services in Auzerais Avenue to the Property boundary in the Private Street (excluding any electrical wire or equipment)
  - Submit and obtain Transferee’s approval of a Private Improvement Plan for the Private Street Work (which approval shall not be unreasonably withheld, conditioned or delayed), which includes a variance to allow the street trees (and sidewalk) on that portion of the property identified as “H4 Market Rate Housing” on Figure 1.0 attached hereto to be deferred until completion of the H4 development (which term “H4” is described in the DA)





**DRAFT**  
**PROPERTY TRANSFER AGREEMENT**  
**(H6)**

THIS PROPERTY TRANSFER AGREEMENT (this “Agreement”) is dated as of \_\_\_\_\_, 20\_\_, and is entered into by and between the CITY OF SAN JOSE, a California municipal corporation (“Transferee”), and GOOGLE LLC, a Delaware limited liability company (“Transferor”).

**RECITALS**

A. Transferor is the owner of the land depicted on Exhibit “A” and any improvements and fixtures thereon (collectively, the “Property”).

B. Exhibit “D” of that certain Development Agreement– between Transferor and Transferee adopted by Ordinance No. \_\_\_\_\_ (the “DA”) contemplates and requires that Transferor and Transferee enter into this Agreement, and the date of this Agreement shall be the Effective Date of the DA, as defined in Section 2.1 thereof.

C. The Property is located within Transferor’s proposed Downtown West Mixed-Use Plan that is the subject of the DA (the “Project”).

D. Transferor is currently seeking “Approvals” (as such term is defined in the DA), including, without limitation, a Vesting Tentative Map (the “Tentative Map”).

E. Transferee intends to develop the Property with an affordable housing development as more particularly described in the DA in accordance with and subject to the DA (the “Affordable Housing Development”).

NOW, THEREFORE, in consideration of the foregoing recitals, the DA, and other valuable consideration, the sufficiency of which are hereby acknowledged, Transferee and Transferor hereby agree as follows:

1. **TRANSFER OF PROPERTY.**

1.1 **Closing.** Subject to the terms and conditions of this Agreement, the conveyance of the Property by Transferor to Transferee (the “Closing”) shall occur on the date (the “Closing Date”) selected by Transferor upon at least sixty (60) days’ prior written notice to Transferee (the “Closing Notice”), provided that in no event shall the Closing Date occur later than the ~~issuance of a Temporary Certificate of Occupancy for the first (1<sup>st</sup>) residential unit that triggers payment of the “IHO Fee” (as defined in the DA)~~ date that is fifteen (15) months from the date on which Transferor’s obligation to perform the “Early H6 Work” (as defined in the DA) is triggered pursuant to Exhibit D of the DA (“Closing Deadline”).

Upon delivery of the Closing Notice to Transferee, Transferee shall have the right to further inspect the Property, pursuant to the terms set forth in Section 3.1 below, to determine if the conditions for Transferee’s benefit as set forth in Section 4.5.2 below have been satisfied.

## **DRAFT**

Transferee shall have no right to terminate this Agreement or delay the Closing if Transferee is unable to secure funds or other commitments to enable the construction of the Affordable Housing Development. Notwithstanding the foregoing, following Transferor's delivery of the Closing Notice, Transferee shall have the right to extend the Closing Date two (2) times for one hundred eighty (180) days each (each, an "Extension Period" and the first such extension of the Closing Date being the "Extended Closing Date" and the second such extension being the "Outside Closing Date") if Transferee has not identified the ~~affordable housing developer for the Affordable Housing Development (the~~ "Designee") ~~(as defined in Exhibit D of the DA)~~ by the date that is five (5) business days prior to the originally scheduled Closing Date or Extended Closing Date, as applicable, by providing Transferor with written notice of the status of Transferee's efforts to identify the Designee together with documentation evidencing Transferee's "Good Faith Efforts" (as defined in the DA) to identify and select the Designee, which notice Transferee shall give to Transferor on or before the date that is five (5) business days prior to the originally scheduled Closing Date or the Extended Closing Date, as applicable. If Transferee has not identified and selected the Designee by the scheduled Closing Date, the Extended Closing Date or the Outside Closing Date, as applicable, then Transferee shall take title the Property in Transferee's name or be in default of this Agreement. For the avoidance of doubt, identification and selection of the Designee shall not be a condition to the Closing. If as a result of the foregoing extensions the Extended Closing Date or the Outside Closing Date would occur after the Closing Deadline, then the Closing Deadline shall be extended to coincide with the Extended Closing Date or the Outside Closing Date, as applicable.

If Transferee extends the Closing Date for an Extension Period, then Transferee shall reimburse Transferor for (i) property taxes payable with respect to the Property during such Extension Period ("Taxes"), and (ii) Transferor's costs to light, fence, insure and maintain the Property in a clean and safe manner during such Extension Period ("Operating Expenses"), which reimbursement shall be made within thirty (30) days after request from Transferor (which request shall include reasonable back-up documentation). If Transferee fails to pay such reimbursement to Transferor within such thirty (30) day period, then at Transferor's election, all or a portion of such unpaid amount shall be converted to IHO Fee credits for Transferor's account; provided, however, that in no event shall the IHO Fee credits for the Operating Expenses exceed \$200,000, escalated in accordance with the Engineering News Record (ENR) Construction Cost Index for the San Francisco Urban area published by McGraw Hill on January 1 of every year, or its successor publication. For the avoidance of doubt, such cap on IHO Fee credits shall not apply to Taxes.

For the avoidance of doubt, no extension of the Closing or the Closing Deadline by Transferee pursuant to this Section 1.1 shall delay the issuance of the Temporary Certificate of Occupancy for the ~~first market-rate residential building in the Project.~~

If Transferee identifies the Designee by the Closing, then concurrently with the Closing (but not before), Transferee and the Designee shall enter into an Assignment and Assumption Agreement in a form reasonably acceptable to Transferor (the "Designee Assignment Agreement"), to be effective as of the Closing, whereby (a) Transferee assigns to the Designee all of Transferee's rights under Section 19 below and Section 21 below that survive the Closing, and

## **DRAFT**

(b) the Designee assumes all obligations of Transferee under this Agreement that survive the Closing (including, without limitation, pursuant to Sections 19, 20 and 21 below).

1.2 **Consideration.** The “Purchase Price” for the Property shall be \$1.00.

In addition, upon the Closing, Transferor shall receive “IHO Fee” (as defined in the DA) credits for the transfer of the Property to Transferee (or the Designee, if identified by Transferee) as calculated pursuant to the DA, provided that if Transferee extends the Closing for an Extension Period or if Transferor incurs any delays in the performance of any of its obligations under this Agreement or the DA caused by Transferee, then Transferor shall receive such IHO Fee credits as of the originally scheduled date of the Closing as set forth in the Closing Notice (without regard to any Extension Period or the amount of delay caused by Transferee).

Notwithstanding anything in this Agreement to the contrary, upon the execution of this Agreement, Transferee shall pay to Transferor \$1.00 as independent consideration for the Initial Inspection Period (as defined in Section 3.1 below) and Transferee’s rights under this Agreement. Such independent consideration shall be nonrefundable to Transferee in all events.

2. **TITLE.**

2.1 **General.** Title to the Property shall be conveyed by the Grant Deed and shall be evidenced by an ALTA Standard Coverage Form of Owner’s Policy of Title Insurance (or an ALTA Extended Coverage Form Policy, if Transferee elects such coverage and provides an ALTA Survey to the title company) (“Title Policy”). The Title Policy shall be issued by First American Title Insurance Company; Title Officer(s): Rosalind McCaskill or if unavailable, another Title Officer from First American Title Insurance Company (“Title Company”), with liability in an amount reflective of fair market value at the time of Closing as reasonably determined by Grantee (the “Agreed Value”), insuring title to the Property as vested in Transferee, free and clear of all liens and encumbrances and other matters affecting title to the Property, except (a) the lien for assessments not yet delinquent, (b) any exceptions recorded in connection with obtaining the Approvals or required in order to satisfy the Approvals, (c) any easements, covenants, conditions and restrictions recorded in connection with the development of the Project consistent with the Approvals, (d) any exceptions caused by the acts or omissions of Transferee, and (e) title exceptions which Transferee has approved in writing (or is deemed to have approved) pursuant to this Section 2.1 [and Section 2.2 below](#) (which (a) through (e) shall constitute “Approved Title Exceptions”).

Upon the execution hereof, Transferor shall obtain a current title/preliminary report from Title Company and shall email it to Transferee (with hyperlinks to title exception documents) to the Transferee representatives set forth in Section 9 below or to such other representatives as Transferee may designate. Transferee shall have until the expiration of the Initial Inspection Period to review such report and exceptions, and any survey obtained by Transferee. If Transferee disapproves any matter affecting title (except Monetary Liens (as defined below), which shall be released upon and as a condition to Closing), then Transferee may terminate this Agreement by written notice to Transferor given on or prior to the expiration of the Initial Inspection Period. If

## **DRAFT**

Transferee does not elect to terminate this Agreement on or prior to the expiration of the Initial Inspection Period, then Transferee shall be deemed to have approved all matters affecting title (except Monetary Liens), which shall constitute Approved Title Exceptions, and Transferee shall have no further right to terminate this Agreement pursuant to this Section 2.1.

As used herein, “Monetary Liens” shall mean all liens secured by deeds of trust securing loans made to Transferor, mechanics’ liens relating to work contracted for by Transferor, judgment liens against Transferor, and delinquent real property taxes, provided that if Transferee is the Grantee, Monetary Liens shall include real property taxes for the property tax period in which the Closing occurs and all prior property tax periods in accordance with Section 4.7 below.

2.2 ~~2.2~~ Acts After Date of Agreement. Subject to Section 4.5 below, during the period from the date of this Agreement through the Closing: (a) Transferor shall not record, or permit to be recorded, any document or instrument relating to the Property without Transferee’s consent, which consent shall not be unreasonably withheld, conditioned or delayed; (b) Transferor shall operate, manage and maintain the Property in the ordinary course and consistent with Transferor’s practices as of the date of this Agreement; and (c) Transferor shall not enter into any new leases for the Property or amend any existing leases for the Property without Transferee’s consent, which consent may be withheld in Transferee’s sole and absolute discretion, provided that Transferee’s consent shall not be required for any lease that has a term expiring on or before the Closing.

**Formatted:** Outline numbered + Level: 2 + Numbering  
Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at:  
1" + Tab after: 1.5" + Indent at: 0"

2.3 Possession; Termination of Leases. Exclusive Possession of the Property shall be delivered to Transferee upon the Closing free of any tenants or occupants (subject to Section 4.5.2.3 below). Transferee shall have no obligations to Transferor or any occupant or prior occupant with respect to any personal property not removed by the Closing.

To the fullest extent permitted by law, Transferor shall defend, indemnify and hold Transferee harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorneys’ fees and costs, and relocation costs and benefits payable by Transferee under California law) solely to the extent filed by a tenant of the Property and arising from Transferor’s termination of any lease of the Property, or any claim by any occupant under such lease regarding its personal property on the Property not removed by the Closing. Transferor’s obligations hereunder shall survive the Closing.

### 3. TRANSFEROR DISCLOSURES; TRANSFEEE INSPECTIONS.

3.1 Initial Inspection Period. From the date of execution hereof until the date that is ninety (90) days after the date of this Agreement (the “Initial Inspection Period”), subject to the terms and conditions set forth in this Section 3.1, Transferee may conduct, at Transferee’s sole expense, such inspections and testing of the Property, including any improvements thereon, soils and ground water, as Transferee may desire or deem appropriate, in Transferee’s sole discretion. In conducting such inspections and testing, Transferee shall endeavor to minimize damage to the Property, and any improvements thereon, and shall, promptly following such inspections and testing (unless otherwise approved by Transferor, in its sole and absolute

## **DRAFT**

discretion), return the Property, including the improvements thereon, if any, to its condition prior to Transferee's inspections and testing. Subject to the terms and conditions of this Section 3.1, Transferor hereby grants to Transferee and its authorized employees, representatives, agents and contractors, permission and a license to enter upon the Property for the purpose of conducting such inspections and testing. Transferee shall provide Transferor with at least ten (10) days' prior written notice of its desire to enter the Property for any such inspections or testing, and any such inspections or testing shall be conducted at a time and manner reasonably approved by Transferor. Transferor shall have the right to be present at any such inspections or testing. In the event the Property is occupied by any person(s) other than Transferor, such access by Transferee shall be subject to the rights of such existing occupant(s). Transferor shall endeavor to make arrangements with such person(s) to ensure access by Transferee or its authorized employees, representatives, agents and contractors in order to conduct the inspections and testing, provided that in connection with such inspections and testing, Transferee shall endeavor to minimize interference with such existing occupant(s). Prior to conducting any inspections or testing, Transferee and its third party representatives, agents and contractors shall deliver to Transferor evidence of insurance in form and amount reasonably acceptable to Transferor, covering Transferor as an additional insured. Transferee shall indemnify, protect, defend (with legal counsel reasonably acceptable to Transferor) and hold Transferor harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising from, related to or caused by, Transferee's entry upon the Property or the performance of any inspection or test conducted by or at the request of Transferee or its contractors or agents (but not the results thereof unless same resulted from the exacerbation of existing conditions by Transferee). In the event Transferee determines the Property is not suitable, then Transferee may terminate this Agreement by written notice to Transferor given prior to the end of the Initial Inspection Period. If Transferee does not elect to terminate this Agreement on or prior to the expiration of the Initial Inspection Period, then Transferee shall be deemed to have approved the Property and Transferee shall have no further right to terminate this Agreement pursuant to this Section 3.1.

Notwithstanding anything in this Section 3.1 to the contrary, Transferee shall not be permitted to undertake any air sampling or any intrusive or destructive testing of the Property, including, without limitation, a "Phase II" environmental assessment, nor will Transferee be entitled to directly contact or communicate with the California Regional Water Quality Control Board, United States or California Environmental Protection Agency or other local, state or federal agency regarding the environmental condition of the Property other than requests for documentation or records relating to the Property, without in each instance first obtaining Transferor's prior written consent thereto, which consent Transferor may give or withhold in Transferor's sole and absolute discretion. Notwithstanding the foregoing, if Transferee's Phase I environmental assessment contains a recommendation for Phase II environmental assessment based on Transferee's proposed use of the Property, Transferee shall have the right to conduct a Phase II environmental assessment without Transferor's consent; provided, however, that Transferee's consultant for any Phase II environmental assessment shall be subject to Transferor's reasonable approval. Further, if, as part of the Due Diligence Information, Transferor provides a Phase I environmental assessment on which Transferee can rely, and that Phase I environmental assessment concludes that a Phase II environmental assessment is not recommended for

**DRAFT**

Transferee's proposed use of the Property, then Transferee shall have no right to conduct a Phase II environmental assessment.

Transferee shall deliver to Transferor copies of any environmental reports and remediation cost estimates obtained by Transferee in the course of its inspections.

Notwithstanding California Civil Code Section 1103.1(a)(9), Transferor shall deliver to Transferee, with reasonable diligence after the execution of this Agreement and at Transferor's cost, a Natural Hazard Disclosure Statement (described in California Civil Code Section 1103.2) prepared by Escrow Holder (as defined in Section 4.1 below) (or its designee) (the "Expert"). Transferee acknowledges and agrees that for purposes of California Civil Code Section 1103.4(c), the Expert is an expert in natural hazard discovery and the Natural Hazard Disclosure Statement is sufficient compliance for application of the exemption provided by Section 1103.4(a) of the California Civil Code.

Transferor has previously delivered to Transferee certain environmental reports with respect to the Property (the "Environmental Reports"). Transferee acknowledges and agrees that Transferor has acted reasonably in relying on the Environmental Reports and the delivery of the Environmental Reports to Transferee constitutes written notice under California Health and Safety Code Section 25359.7.

Prior to the date of this Agreement, Transferor delivered to Transferee the most recent environmental studies, soils studies, and surveys, and plans, specifications, maps, surveys and other similar materials relating to the physical and environmental condition of the Property in Transferor's possession (collectively, the "Due Diligence Items"). Transferor represents and warrants to Transferee that to Transferor's actual knowledge, the Due Diligence Items are accurate and complete duplications of the copies or originals thereof in Transferor's possession. The foregoing representation and warranty of Transferor shall survive the Closing for a period of one (1) year following the Closing.

4. **ESCROW.**

4.1 **Escrow Holder.** The escrow shall be opened with First American Title Insurance Company ("Escrow Holder"), within five (5) business days after the date of this Agreement and Transferor depositing a copy of this executed Agreement with Escrow Holder. This document shall be considered as the escrow instructions between the parties, with such further instructions consistent with this Agreement as Transferee, Transferor, or Escrow Holder requires in order to clarify the duties and responsibilities of Escrow Holder.

4.2 **Closing.** For the purposes of this Agreement, "Closing" shall be the date on which the Grant Deed for the Property in favor of Transferee (or the Designee, if identified by Transferee by such date) is recorded in the Official Records of the Santa Clara County Recorder's Office, or if the Closing occurs on a gap basis, the date that Escrow Holder is irrevocably committed to record the Grant Deed.



**DRAFT**

Transferee shall have no right to terminate this Agreement as a result of any loss or damage, or any condemnation or eminent domain, except as expressly set forth in the paragraph below.

Notwithstanding the foregoing, if, due solely to Transferor's actions, the Property is reduced in size by more than five percent (5%) from its current size as described in Exhibit "A", then Transferor shall have the right to (a) provide a replacement site to Transferee, which site shall be acceptable to Transferee's Director of Housing in his or her sole and absolute discretion, or (b) if no such replacement site is available, as reasonably determined by Transferor, or if Transferee rejects such replacement site as set forth above, then either Transferor or Transferee may terminate this Agreement. Transferee shall have the right to conduct due diligence and inspect any replacement site consistent with the provisions in Section 3.1 above, expressly including the right to conduct Phase I and Phase II environmental assessments, as appropriate; provided, however, that Transferee's consultant for any Phase II environmental assessment shall be subject to Transferor's reasonable approval. If Transferee does not reject such replacement site within either ninety (90) days or if Transferee's Phase I environmental assessment contains a recommendation for Phase II environmental assessment based on Transferee's proposed use of the replacement site, then within one hundred twenty (120) days, after written notice from Transferor and Transferee's receipt of copies of all Due Diligence Items for the replacement site in Transferor's possession, then Transferee shall be deemed to have accepted such replacement site and the term "Property" as used in this Agreement shall be deemed to mean such replacement site. Notwithstanding the foregoing, if, as part of the Due Diligence Information, Transferor provides a Phase I environmental assessment on which Transferee can rely, and that Phase I environmental assessment concludes that a Phase II environmental assessment is not recommended for Transferee's proposed use of the replacement site, then Transferee shall have no right to conduct a Phase II environmental assessment.

In the event any condemnation or eminent domain (that was not initiated by Transferee) occurs prior to the Closing, and provided that the paragraph above does not apply, then upon the Closing, (a) Transferor shall receive IHO Fee credits for the transfer of the Property as calculated pursuant to the DA (without regard to the taking), and (b) Transferor shall assign to Transferee all of Transferor's interest in and to the condemnation or eminent domain proceeds attributable to the value of the Property so taken.

4.3 Transferor Required to Deliver. Before the Closing, Transferor shall deposit into escrow the following:

4.3.1 A grant deed conveying the Property to Transferee (or the Designee, if identified by Transferee), in the form attached hereto as Exhibit "B", duly executed by Transferor and acknowledged (the "Grant Deed"); and

~~4.3.2.1.1 The Designee Assignment Agreement, if applicable pursuant to Section 1.1 above; and~~



**DRAFT**

~~4.3.3~~4.3.2 Any other documents reasonably required by Escrow Holder or the Title Company to be deposited by Transferee to carry out this escrow.

4.4 Transferee Required to Deliver. On or before the Closing, Transferee shall deposit into escrow the Purchase Price and the following (properly executed and acknowledged, if applicable):

4.4.1 If Transferee is acquiring title (i.e., has not identified the Designee and has not assigned this Agreement in accordance with Section 6 below), an executed and acknowledged “Certificate of Acceptance” in the form attached to the Grant Deed (attached hereto as Exhibit “B”);

~~4.4.2~~ The Designee Assignment Agreement, if applicable, pursuant to Section 1.1 above; and

~~4.4.2.4.3~~ Any other documents reasonably required by Escrow Holder to be deposited by Transferee to carry out this escrow.

4.5 Conditions to the Closing. Escrow shall not close unless and until both parties have deposited with Escrow Holder all sums and documents required to be deposited as provided in this Agreement. Additionally:

4.5.1 Transferor’s obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of the following condition(s) precedent, which is/are for Transferor’s benefit and may be waived only by Transferor:

4.5.1.1 Transferee shall have performed all agreements to be performed by Transferee hereunder.

~~4.5.1.2~~ Transferor is obligated to transfer the Property in order to obtain IHO Fee Credit for the first (1<sup>st</sup>) residential unit that triggers payment of the IHO Fee by the date that is fifteen (15) months from the date on which Transferor’s obligation to perform the Early H6 Work is triggered pursuant to Exhibit D of the DA.

~~4.5.1.2~~ 4.5.1.3 If this Agreement has been assigned to a Designee, then such Designee shall have certified to Transferor in writing that Designee has obtained commitments to sufficiently fund the Affordable Housing Development on the Property.

4.5.2 ~~Additionally~~, Transferee’s obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of all of the following conditions precedent, which are for Transferee’s benefit and may be waived only by Transferee:

4.5.2.1 Transferor shall have performed all agreements to be performed by Transferor hereunder.

Formatted: Not Highlight

Formatted: Body 1",b1, No bullets or numbering

Formatted: Font: (Default) Times New Roman, 12 pt

**DRAFT**

4.5.2.2 Title Company shall have issued or shall have committed to issue the Title Policy to Transferee, for the amount of the Agreed Value, showing fee title to the Property to be vested in Transferee (or the Designee, if identified by Transferee) subject only to the Approved Title Exceptions.

4.5.2.3 Transferor shall have: (i) caused any and all leases affecting the Property to have been terminated; (ii) provided Transferee with reasonable evidence of such termination; and (iii) removed any holdover tenants.

4.5.2.4 Transferor shall have caused Transferor's Work to be Completed, subject to the terms and conditions set forth in Exhibit "C" attached hereto. Transferor shall use commercially reasonable efforts to satisfy the condition set forth herein on or before the Closing. Transferor shall not be in default of this Agreement if, despite using its commercially reasonable efforts, Transferor does not satisfy the conditions above on or before the Closing. Notwithstanding anything in this Agreement to the contrary, if despite Transferor using its commercially reasonable efforts, Transferor's Work is not Completed by the Closing as a result of any delays caused by Transferee or Force Majeure (as defined in Exhibit "C"), then the provisions of Section 19.2 shall control.

4.5.2.5 There shall have been no material adverse change in the environmental condition of the Property.

Additionally, Transferor's and Transferee's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of the following condition precedent, which is for both parties' benefit and may not be waived by either party: Transferor shall cause the Property to become a legal parcel for conveyance, at Transferor's sole cost and expense. Transferor shall use commercially reasonable efforts to satisfy the condition set forth herein on or before the Closing. Transferor shall not be in default of this Agreement if, despite using its commercially reasonable efforts, Transferor does not satisfy the conditions above on or before the Closing.

If any of the conditions to Closing set forth in this Agreement are not timely satisfied for a reason other than a default of Transferee or Transferor under this Agreement, and this Agreement is terminated, then upon termination of this Agreement, Escrow Holder shall promptly return to Transferee all funds (and all interest accrued thereon) and documents deposited by Transferee in escrow and to return to Transferor all funds and documents deposited by Transferor in escrow and which are held by Escrow Holder on the date of the termination (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party under Section 4.10 below).

4.6 Recordation of Grant Deed; Delivery of Funds and Possession. On the Closing, upon receipt of the funds and instruments described in this Section 4, Escrow Holder shall cause the Grant Deed to be recorded in the office of the County Recorder of Santa Clara County, California. Thereafter, Escrow Holder shall deliver the proceeds of this escrow (less appropriate charges as shown on a preliminary Settlement Statement executed by Transferee and Transferor)

**DRAFT**

to Transferor, and Transferor shall deliver possession of the Property to Transferee free and clear of all occupants, subject to Section 4.5.2.3 above.

4.7 Prorations. Property taxes shall not be prorated as Transferee is exempt from property taxes; Transferor shall pay all property taxes for the six month property tax billing period in which the Closing occurs, and then may apply for a refund of the property taxes that are allocable to the period after the Closing, and Transferee shall cooperate in good faith therewith. All assessments shall be prorated between Transferee and Transferor as of the Closing based on the latest available tax information. All prorations shall be determined on the basis of a 360-day year. Notwithstanding the foregoing, if Transferee is not directly acquiring title (i.e., Transferee has identified the Designee or has assigned this Agreement in accordance with Section 6 below) and such Designee or assignee is not exempt from property taxes, then property taxes shall be prorated at Closing on an accrual basis, and Transferor shall retain the rights to any refunds of the property taxes for periods prior to the Closing.

4.8 Costs. Transferor shall pay the premium for the Title Policy (excluding the cost of extended coverage and any survey obtained by Transferee in connection with such extended coverage, which shall be paid by Transferee), the escrow fees, the recording costs [if any], any documentary transfer taxes, and any other closing costs or charges charged by Escrow Holder or Title Company not expressly provided for herein. Notwithstanding the foregoing, if Transferee is not directly acquiring title (i.e., Transferee has identified the Designee or has assigned this Agreement in accordance with Section 6 below) and there are any closing costs charged as a result of the Property being transferred directly to such Designee or assignee (e.g., documentary transfer tax or recording fees, where there would otherwise be none if the Property was deeded directly to Transferee), then (a) such closing costs shall be determined based on the Agreed Value, notwithstanding that the Purchase Price is \$1.00, and (b) Transferee or such Designee or assignee shall be responsible for such closing costs.

4.9 Brokers. Transferee and Transferor represent to one another that except for any broker engaged by Transferor, no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement, or to its knowledge is in any way connected with such transaction. Transferor shall pay commissions to any broker engaged by Transferor in accordance with the agreement between Transferor and such Broker. Each party covenants and agrees that any other broker fee or commission, which may be due or payable in connection with the closing of the transaction contemplated by this Agreement through its dealings with that party, shall be borne solely by that party.

4.10 Escrow Cancellation Charges. In the event that this escrow shall fail to close by reason of the default of either party hereunder, the defaulting party shall be liable for all escrow and title cancellation charges. In the event that the escrow shall fail to close for any other reason, each party shall pay one-half (1/2) of all escrow and title cancellation charges.

5. NOTICES. All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and sent by first class United States registered

**DRAFT**

or certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized courier service such as Federal Express, duly addressed to the parties as follows:

To Transferor: Google LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Attn: REWS Department / Downtown West SJ Project  
Executive

With Copies to: Google LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Attn: Legal Department / RE Matters  
and  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
1900 Main Street, 5th Floor  
Irvine, CA 92614  
Attn: Britney Willhite

To Transferee: City of San José  
200 E. Santa Clara Street, 17th Floor  
San Jose, California 95113  
Attn: City Manager

With Copy to: City of San José  
200 E. Santa Clara Street, 16th Floor  
San Jose, California 95113  
Attn: City Attorney

Delivery of any notice or other communication hereunder shall be deemed made on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party as herein provided.

6. ASSIGNMENT. This Agreement may not be assigned by Transferor or Transferee without the prior written consent of the other party (in its sole and absolute discretion); provided, however, that (a) Transferor may assign this Agreement to a "Google Affiliate" or to any allowed or permitted "Transferee" (as such terms are defined in the DA), and (b) Transferee may identify the Designee as the transferee/grantee of the Property at the Closing pursuant to Section 1.1 above. Notwithstanding the foregoing, following the Closing, Transferee may assign all of Transferee's rights under Section 19 below and Section 21 below that survive the Closing to any subsequent transferee of the Property without the consent of Transferor, but Transferee shall notify Transferor in writing of such assignment and the name and address of the applicable assignee. The party named in the Grant Deed in accordance with this Section 6 shall be referred to herein as the "Grantee".

## **DRAFT**

7. **ENTIRE AGREEMENT.** This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

8. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

9. **EMAIL DELIVERY.** This executed Agreement (and executed counterparts of this Agreement), may be delivered by email to Sallie Lim at Sallie@google.com for Transferor, and to the Director of Housing, with copies to Office of Economic Development and City Attorney for Transferee. Any party may change its recipients for purposes of this Section by giving notice to the other party as provided in Section 5 above.

10. **TIME OF THE ESSENCE.** Time is of the essence of this Agreement.

11. **THIRD PARTIES.** Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement. Further, nothing contained in this Agreement, expressed or implied, shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Transferor and Transferor (and Grantee, if applicable).

12. **SEVERABILITY.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13. **ADDITIONAL DOCUMENTS.** Each party hereto agrees to perform any further reasonable acts and to execute, acknowledge and deliver any further reasonable documents that may be reasonably necessary to carry out the provisions of this Agreement.

14. **AUTHORITY OF CITY MANAGER.** The City Manager or designee of Transferee may give any and all notices, consents and terminations hereunder on behalf of Transferee provided they are in writing. The City Manager or designee is authorized to execute, on behalf of the Transferee, deeds and all other documents as may be necessary to effectuate this Agreement and the transfer of property rights herein. Further, nothing stated herein in this Agreement shall in any way impinge upon the City's regulatory authority under federal, state, or local laws.

**DRAFT**

16. NO CONSTRUCTION AGAINST DRAFTER. This Agreement shall not be construed against the drafter hereof, it being acknowledged that each party has had an opportunity to review and negotiate the terms herein.

17. REMEDIES.

17.1 Default by Transferor. If Transferor fails to perform any of the obligations of Transferor set forth in this Agreement and fails to cure the same within ten (10) days after delivery of written notice from Transferee (provided that no such notice and cure period shall be applicable to Transferor's failure to deliver any documents or funds required for the Closing as set forth in Section 4 above), then as Transferee's sole and exclusive remedy, Transferee may terminate this Agreement upon written notice to Transferor and Escrow Holder. If Transferee elects to terminate this Agreement, then this Agreement shall automatically terminate, Transferor shall reimburse Transferee for the reasonable third party costs and expenses actually incurred by Transferee in performing the inspections and testing set forth in Section 3.1 above, and Transferor would not receive any IHO Fee credits for the Property and instead Transferor shall satisfy its IHO obligations by (a) identifying a site or sites in the Diridon Station Area Plan which can accommodate at least one hundred eighty (180) affordable housing units as anticipated on the Property, (b) paying one hundred fifty percent (150%) of the IHO Fees due (the "IHO Fee Premium"), or (c) upon mutual agreement of Transferor and Transferee, Transferor shall work with Transferee to maintain yield by condominium-izing a portion of a high rise residential project for affordable housing. If Transferor satisfies its IHO obligations by the payment of the IHO Fee Premium pursuant to clause (b) above, the payment of the IHO Fee Premium shall be made in full to Transferee within thirty (30) days after Transferor's election of clause (b) above, and Transferor shall receive IHO Fee credits for that portion of the IHO Fee Premium equal to one hundred percent (100%) of the IHO fees due, but no credit for that portion of the IHO Fee Premium equal to the additional fifty percent (50%) owned as a result of the default.

17.2 Default by Transferee. If Transferee fails to perform any of the obligations of Transferee set forth in this Agreement and fails to cure the same within ten (10) days after delivery of written notice from Transferor (provided that no such notice and cure period shall be applicable to Transferee's failure to deliver any documents or funds required for the Closing as set forth in Section 4 above), then as Transferor's sole and exclusive remedy, Transferor may terminate this Agreement upon written notice to Transferee and Escrow Holder. If Transferor elects to terminate this Agreement, then this Agreement shall automatically terminate, and upon such termination, Transferor shall receive IHO Fee credits in the same amount as Transferor would have received under the DA and this Agreement if this Agreement has not been terminated due to Transferee's default and the Closing had occurred.

18. RELEASE. Except as otherwise expressly set forth in this Agreement, Transferee is acquiring the Property in its existing condition, "AS-IS, WHERE-IS"<sup>22</sup>, and as of the Closing, Transferee has made or has waived all inspections and investigations of the Property and its vicinity which Transferee believes are necessary to protect its own interest in, and its contemplated use of, the Property.

## **DRAFT**

Except as otherwise expressly set forth in this Agreement, neither Transferor nor any entity associated or affiliated with Transferor, nor the agents, servants, officers, directors, employees, subsidiaries, divisions, affiliates or successors of Transferor, nor each of them, has made any representation, warranty, inducement, promise, agreement, assurance or statement, oral or written, of any kind to Transferee upon which Transferee is relying, or in connection with which Transferee has made or will make any decisions concerning the Property or its vicinity including, without limitation, its use, condition, value, square footage, compliance with applicable laws, existence or absence of hazardous substances, or the permissibility, feasibility, or convertibility of all or any portion of the Property for any particular use or purpose, including, without limitation, its present or future prospects for sale, lease, development, occupancy or suitability as security for financing.

Transferor hereby specifically disclaims all warranties implied by law arising out of or with respect to the execution of this Agreement, any aspect or element of the Property, or the performance of Transferor's obligations hereunder including, without limitation, all implied warranties of merchantability, habitability and/or fitness for a particular purpose.

Except as otherwise expressly set forth in this Agreement, Transferee hereby releases and forever discharge(s) Transferor and each and every entity associated or affiliated with Transferor, and the agents, servants, officers, directors, employees, subsidiaries, divisions, affiliates and successors of Transferor, and each of them, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, liabilities and demands, including without limitation any claim arising from and/or related to the Property (collectively "Claims"), which Claims are related to the physical and environmental condition of the Property, whether known or unknown, disclosed or undisclosed, anticipated or unanticipated, whenever accruing. In connection with the foregoing releases, Transferee acknowledges that it is familiar with and hereby waives the protections of Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Notwithstanding the foregoing, the foregoing release shall not apply to (a) Transferor's default or breach of any obligation of Transferor set forth in this Agreement that survives the Closing, (b) any claims for personal injury, death, or damage to personal property based on events occurring prior to the Closing, (c) any claims to the extent arising from Transferor's intentional misrepresentation, or (d) any claims arising under Section 19 below or Section 21 below that survive the Closing.

### 19. TRANSFEROR POST-CLOSING COVENANTS.

19.1 Environmental. If the Closing occurs, Transferor shall indemnify, defend, and hold harmless Grantee against any and all third party actions or claims for death or personal

## DRAFT

injury to the extent such actions or claims are caused by exposure to environmental contamination existing at the Property which exposure occurred prior to the Closing and such actions or claims first accrued prior to the Closing, which indemnity and defense obligation of Transferor shall survive the Closing. Notwithstanding the foregoing, in no event shall such indemnity and defense obligation of Transferor apply to any actions or claims that arise from the negligence or willful misconduct of Transferee or Grantee.

19.2 Transferor's Work. Notwithstanding anything in this Agreement to the contrary:

(a) ~~if~~ despite Transferor using its commercially reasonable efforts in accordance with Section 4.5.2.4, Transferor's Work is not Completed by the Closing as a result of any delays caused by Transferee or Force Majeure, then Transferee shall have no right to terminate this Agreement and the Closing shall occur on the Closing Date, provided that following the Closing, Transferor shall diligently pursue the remaining Transferor's Work to Completion (such remaining portion being the "Remaining Transferor's Work"). As security for the performance of the Remaining Transferor's Work, at the Closing, Transferor shall provide Transferee with a construction completion bond in an amount equal to the 1.5 times the cost to perform the Remaining Transferor's Work. Following the Closing, ~~Grantee~~Transferee (or Grantee, as applicable) shall provide Transferor with reasonable access to the Property as necessary to perform the Remaining Transferor's Work. ~~For the avoidance of doubt, upon the Closing, Transferor shall receive IHO Fee credits for the transfer of the Property, excluding \$1,000,000 for the H6 Early Work, in accordance with Section 1.2 above. Upon Completion of the Remaining Transferor's Work, Transferor will receive IHO Fee Credit for the in the amount of \$1,000,000 for the H6 Early Work CLF Amount and shall be handled as such in accordance with the terms of Exhibit D to the DA. For the avoidance of doubt, upon the Closing, Transferor shall receive IHO Fee Credits for the H6 land value as illustrated in the third column of the IHO Credit Table in Section III.C.5 of the DA. If Transferor Completes the Remaining Transferor's Work, then Transferor shall receive IHO Fee Credits for the "Early H5 / H6 Work Portion of IHO Credits" (as illustrated in the fourth column of the IHO Credit Table with respect to H6) upon Completion. If Transfee performs the Remaining Transferor's Work, Transferor shall provide Transferee with reasonable access to the adjacent property owned by Transferor and permission as necessary to perform the Remaining Transferor's Work.~~

(b) ~~if at six (6) months before Closing, Transferee determines that~~ Transferor is not exercising commercially reasonable efforts to complete Transferor's Work ~~and such work is not Completed by the Closing as a result Transferor's default in so doing based on the provisions in (c) below~~, then Transferee shall have no ~~obligation to close, and Closing shall be extended until the Early H6 Work is completed, and Transferor shall receive no IHO Fee Credit until Closing~~ right to terminate this Agreement and the Closing shall occur on the Closing Date at which time Transferor shall pay to Transferee (and not Grantee, if other than Transferee) an amount equal to 150% of all of the costs to Complete the remaining "Early H6 Work" (as described in Schedule 1 to Exhibit C hereof), subject to "Annual Increases" (as defined in Section III.A of Exhibit D of the DA) (the "Remaining H6 Work") without regard to the amounts set forth in the IHO Credits Table in the DA. The 150% amount shall not be entitled to treatment as CLF and shall be handled as

Formatted: Not Highlight



## **DRAFT**

such as set forth in Exhibit D of the DA. Also, Transferor shall receive IHO Fee Credits for Transfer of Property for the H6 land value illustrated in the third column of the IHO Credit Table in Section III.C.5 of the DA. Transferee shall promptly Complete the Remaining H6 Work thereafter, using the default payment, and Transferor shall provide Transferee with reasonable access to the adjacent property owned by Transferor and permission as necessary to perform the Remaining Transferor's Work.

(c) Since the "Early H5 Work" (as defined in the DA) is critical to the successful operation of the Property, the parties agree that every three (3) months from the date of the "H5 Notice" (as defined in the DA) the parties shall meet, and Transferor shall provide an update on the Early H5 Work. If in its reasonable discretion Transferee concludes that there is no way for Transferor to complete the Early H5 Work before issuance of the Temporary Certificate of Occupancy for the Affordable Housing Development on the Property, Transferee shall be able to exercise the mechanisms described in (a) or (b) above depending on whether Transferor is diligently pursuing the work, or not.

19.3 Mid-Block Crossing. At the Closing, Transferor shall retain ownership of the mid-block crossing between the Property and the "H5 Property" (as defined in the DA). Following the Closing, upon request from Grantee, Transferor shall provide to Grantee a commercially reasonable construction easement over such mid-block crossing for the time period commencing on the later of (a) the Closing, and (b) the commencement of construction on the Property or the "H5 Property" (whichever is sooner), and continuing until the date that is six (6) months following the issuance of the last temporary certificate of occupancy for the Property and the "H5 Property".

19.4 Survival. The provisions of this Section 19 shall survive the Closing.

## 20. GRANTEE POST-CLOSING COVENANTS.

20.1 Condition of Property. Following the Closing, Grantee shall be responsible to keep the Property in good, clean and safe condition. In connection therewith, Grantee shall be responsible to maintain the Erosion Controls and the Fence (as such terms are defined in Schedule 1 to Exhibit "C" attached hereto) installed as part of Transferor's Work in good condition and repair, and to provide for adequate lighting and security prior to and during development and construction of the Property. The obligations set forth in this Section 20.1 shall also be set forth in the Grant Deed, which obligations shall run with the land of the Property.

20.2 Construction Rights-of-Way. Following the Closing, upon request from Transferor from time to time, Grantee shall grant Transferor a commercially reasonable construction right-of-way as may be reasonably necessary for the construction of the Project, provided that such construction rights-of-way do not materially interfere with the development and use of the Property for the Affordable Housing Development.

20.3 Construction Costs. Grantee shall bear all construction costs related to the Affordable Housing Development.

**DRAFT**

20.4 Frontage Work. During the performance of the Frontage Work (as defined in Schedule 1 to Exhibit “C” attached hereto) and following completion of the Frontage Work, if Grantee shall cause any damage to the Frontage Work, then Grantee shall repair such damage, and if such damage is caused following completion of the Frontage Work, Grantee shall restore the affected area to the condition immediately prior to the damage. All such repair and restoration by Grantee shall be at Grantee’s sole cost and expense.

20.5 Successors and Assigns. The provisions of this Section 20 shall be binding on Grantee and its successors and assigns. Grantee shall cause all such successors and assigns to be bound by the terms and conditions of this Section 20.

20.6 Survival. The provisions of this Section 20 shall survive the Closing.

21. PRIVATE STREET WORK. Pursuant to the transfer agreement for the “H5 Property” (as defined in the DA) (the “H5 Transfer Agreement”), Transferor shall perform the “Private Street Work” (as defined in the H5 Transfer Agreement). The following provisions shall apply prior to and following the Closing hereunder, which provisions shall survive the Closing:

21.1 Grantee shall reasonably cooperate with Transferor in connection with the performance of the Private Street Work.

21.2 Following the Closing, upon request from Transferor, Grantee shall provide to Transferor a commercially reasonable construction easement to facilitate the performance of the Private Street Work.

21.3 On completion of the Private Street Work, Transferor will give notice to Grantee that such portion of the Private Street Work is complete and available for access and use.

21.4 During the performance of the Private Street Work and following completion of the Private Street Work, if Grantee shall cause any damage to the Private Street Work, then Grantee shall repair such damage, and if such damage is caused following completion of the Private Street Work, Grantee shall restore the affected area to the condition immediately prior to the damage. All such repair and restoration by Grantee shall be at Grantee’s sole cost and expense.

The provisions of this Section 21 shall be binding on Grantee and its successors and assigns. Grantee shall cause all such successors and assigns to be bound by the terms and conditions of this Section 21.

22. ATTORNEYS' FEES. Should legal action be brought by either party against the other for a default under this Agreement or to enforce any provision herein, the prevailing party in such action shall not be entitled to recover its attorneys' fees and costs from the other party. Each party to the legal action shall bear its own attorneys' fees and costs.

**DRAFT**

23. MEET AND CONFER PROCESS. Before sending a notice of default in accordance with Section 17 above, the party that may assert that the other party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other party to discuss the alleged failure and shall permit such party a reasonable period, but not less than thirty (30) days and not more than sixty (60) days, to respond to or cure such alleged failure. The party asserting such failure shall request that such meeting and conference occur within twenty (20) business days following the request and if, despite the “Good Faith Efforts” (as defined in the DA) of the requesting party, such meeting has not occurred within twenty (20) business days of such request, such party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 17 above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Negotiation Period Privilege; CPRA Confidential Treatment Request; Not for Public Release –  
CPRA Exempt; Confidential and Proprietary Business-Siting Information

~~City~~Google Comments 5-9-11-21

**DRAFT**

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

**TRANSFEROR:**

GOOGLE LLC, a Delaware limited liability  
company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSFeree:**

CITY OF SAN JOSÉ

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**EXHIBIT "A"**

**DEPICTION OF THE PROPERTY**

[NOTE TO CITY: To be inserted from Schedule D1 to the DA]

**EXHIBIT "B"**  
**FORM OF GRANT DEED**

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO AND  
MAIL TAX STATEMENTS TO:

Formatted: English (United States)

Formatted: English (United States)

APN:

SPACE ABOVE THIS LINE FOR RECORDER

G R A N T D E E D

**The Undersigned Grantor Declares: DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0; Recorded for the benefit of the City of San Jose and is exempt from transfer tax per Revenue and Taxation Code Section 11922 and exempt from recording fee per Government Code Section 6103 and/or 27383.**

computed on the consideration or full value of property conveyed, OR  
 computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,  
 unincorporated area;  **City of San Jose**, and  
 Signature of Declarant

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_ ("GRANTOR"), does hereby GRANT to \_\_\_\_\_ "GRANTEE", for valuable consideration, receipt of which is hereby acknowledged, all certain real property situate in the City of San José, County of Santa Clara, State of California, described in Exhibit "1" attached hereto and made a part hereof (the "Property").

By its signature hereon, Grantee, as the owner of the Property, hereby covenants and agrees that Grantee shall be responsible to keep the Property in good, clean and safe condition and to maintain attractive fencing and to provide for adequate lighting and security prior to and during development and construction of the Property. The foregoing covenants and agreements shall be appurtenant to the Property and be binding on Grantee and each successor-in-interest to Grantee in the Property

Exhibit "A"  
Page 1 of 1

and every part thereof. It is the intention and understanding of the parties hereto that the foregoing covenants and agreements shall run with the land (as defined in California Civil Code Sections 1460 & 1462) of the Property and every part thereof in accordance with California Civil Code Section 1468.

Dated: \_\_\_\_\_, 202\_\_

**"GRANTOR"**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Dated: \_\_\_\_\_

**"GRANTEE"**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Dated: \_\_\_\_\_

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.

**ACKNOWLEDGEMENT**

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
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.

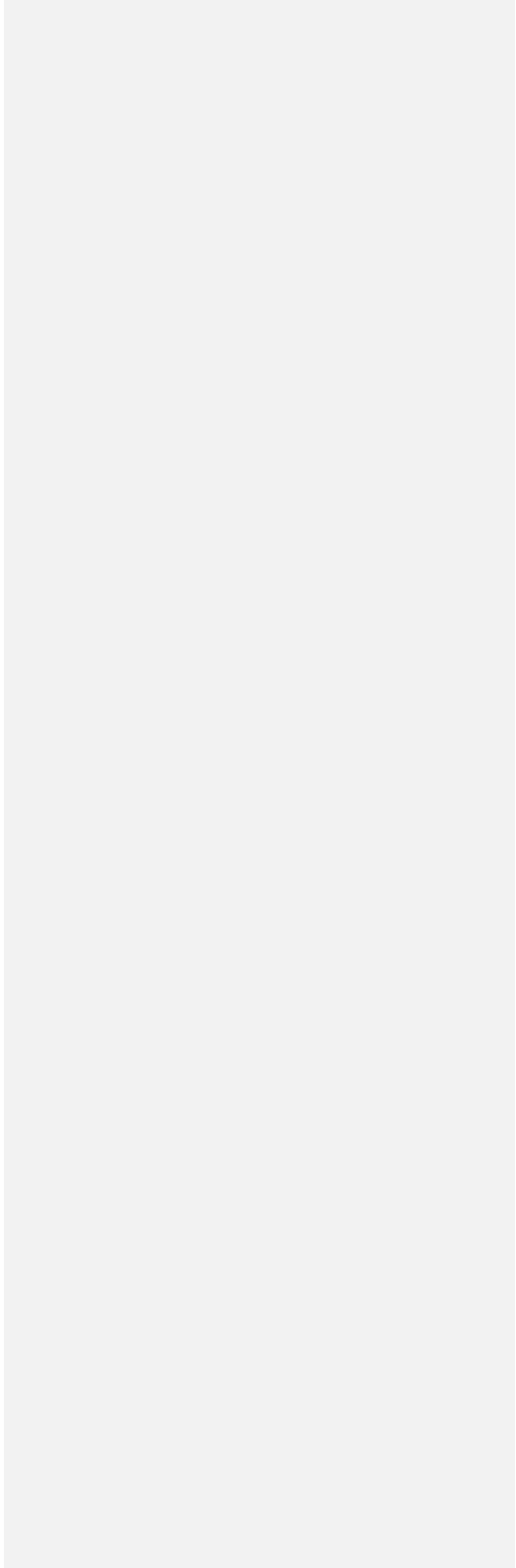
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing Paragraph is true and correct.

WITNESS my hand and official seal

Signature \_\_\_\_\_ (Seal)



**Exhibit 1 to Grant Deed  
Legal Description**



[USE ONLY IF CITY IS GRANTEE]  
Deed Acceptance  
APN:

**DEED ACCEPTANCE**

This is to certify that the interest in real property conveyed by *Grant Deed*, dated \_\_\_\_\_, 202\_, from \_\_\_\_\_, a corporation under a holding agreement to the City of San Jose, a municipal corporation of the State of California, is hereby accepted by the undersigned officer of said City on behalf of the City Council of the City of San Jose, pursuant to authority conferred by the City Council of the City of San Jose on April 4, 1995 (shown as Item 9o on the April 4, 1995 City Council Agenda). The Grantee consents to recordation thereof by its duly authorized officer.

CITY OF SAN JOSE,  
A Municipal Corporation of the State of California

By: \_\_\_\_\_ Date: \_\_\_\_\_  
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.

**ACKNOWLEDGEMENT**

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me,  
\_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
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 \_\_\_\_\_ (Seal)

## EXHIBIT "C"

### TRANSFEROR'S WORK

1. As used in this Agreement, "Transferor's Work" shall mean that certain work described on Schedule 1 attached hereto.
2. Following the date that Transferor receives the vertical improvement superstructure permit associated with the first office building for the Project, Transferor shall promptly procure and mobilize relevant consultants and prepare plans and specifications for Transferor's Work (the "Plans").
3. Upon finalizing the Plans, Transferor shall promptly and diligently pursue obtaining all permits necessary for Transferor's Work, subject to delays caused by Transferee or Force Majeure (as defined below) (the "Permitted Plans"). Transferor shall provide Transferee with a copy of the Permitted Plans. Upon receipt of the Permitted Plans, Transferor shall diligently perform Transferor's Work to Completion, subject to delays caused by Transferee or Force Majeure.
4. As used herein, "Completion" or "Completed" shall mean that Transferor's Work has been completed in accordance with the building permit(s) issued with respect to Transferor's Work and the City Building Division has completed its final inspection of Transferor's Work. Transferee shall diligently and in good faith process all submissions and requests from Transferor necessary for Transferor to perform Transferor's Work to Completion.

~~5.~~ \_\_\_\_\_

6. As used herein, "Force Majeure" shall mean any event or condition that: (i) is beyond Transferor's control; (ii) prevents Transferor's performance of this Agreement; (iii) Transferor could not have reasonably foreseen; and (iv) arises from one or more of the following: (1) naturally occurring events constituting an act of God; (2) unusually severe and abnormal climactic conditions (as compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Property); (3) strikes, stoppages or boycotts that affect a specific trade on a national or regional level, to the extent not caused by the acts or omissions of Transferor; (4) the unavailability of construction materials for projects similar to Transferor's project as contemplated in the DA (i.e. a large scale mixed-use project) that causes significant construction delays, or significant construction delays resulting from such materials being unusually difficult or impossible to obtain, or from defects, tariffs, embargoes, or trade disputes, where, in each case, Transferor is unable to obtain alternative or replacement materials, within the same or substantially similar time period at substantially the same cost (and without having to forfeit any significant deposits or advance payments); (5) acts of terrorism or war; (6) riots or other civil unrest; (7) a local, state or federal declaration of emergency based on an epidemic or pandemic, including any quarantine or other health-related orders, directives, regulations, laws or other requirements implemented in response to such epidemic or pandemic; (8) orders issued by any other governmental body having jurisdiction over the Project; (9) casualty; or (10) condemnation unrelated to DISC or other transit project(s). Neither the inability of Transferor to obtain construction financing for Transferor's project nor the condition of, or changes in, the real estate market shall constitute a Force Majeure event, except to the extent such inability or changes result from a Force Majeure event.

Formatted: Font color: Text 1



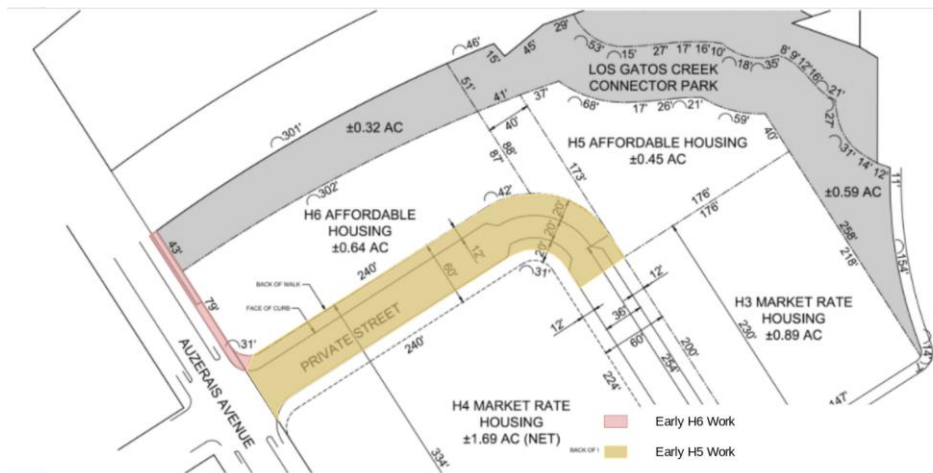
**SCHEDULE 1 TO EXHIBIT “C”**

**SCOPE OF TRANSFEROR’S WORK**

- Establish erosion and sediment controls on the boundary of the Property (the “Erosion Controls”) and fence off the Property on all sides (the “Fence”)
- Disconnect and cap any utilities on the Property at its boundary in Auzerais Avenue, and furnish a survey to Transferee of the terminated locations
- Abate any hazardous materials contained within the buildings to the extent required by law prior to demolishing such buildings, and demolish any buildings [including offsite buildings \(partially or totally\) needed to complete the work](#)
- Remove slabs, footings, piles to a depth of 4 feet below the surface and asphalt parking lots
- Rough grade the Property without imported fill or compaction, in order to provide a free draining surface
- Improve the street frontage on Auzerais Avenue in the area depicted as “Early H6 Work” on [Figure 1.0](#) attached hereto (approximately 100 lineal feet), in accordance with the “Downtown West Design Standards and Guidelines” (as defined in the DA), including street sidewalk improvements to Auzerais Avenue, curbs, gutters sidewalks, street furnishings, signage & street trees in accordance with the Downtown West Design Standards and Guidelines (the “Frontage Work”)

**SCHEDULE 1**

**FIGURE 1.0**



~~City~~Google Comments 5-9-11-21 **DRAFT**

**PROPERTY TRANSFER AGREEMENT**  
**(H1)**

THIS PROPERTY TRANSFER AGREEMENT (this “Agreement”) is dated as of \_\_\_\_\_, 20\_\_, and is entered into by and between the CITY OF SAN JOSE, a California municipal corporation (“Transferee”), and GOOGLE LLC, a Delaware limited liability company (“Transferor”).

**RECITALS**

A. Transferor is the owner of the land described on Exhibit “A” and any improvements and fixtures thereon (collectively, the “Property”).

B. Exhibit “D” of that certain Development Agreement between Transferor and Transferee adopted by Ordinance No. \_\_\_\_ (the “DA”), contemplates and requires that Transferor and Transferee enter into this Agreement, and the date of this Agreement shall be the Effective Date of the DA, as defined in Section 2.1 thereof.

C. The Property is located within Transferor’s proposed Downtown West Mixed-Use Plan that is the subject of the DA (the “Project”).

D. Transferor is currently seeking “Approvals” (as such term is defined in the DA), including, without limitation, a Vesting Tentative Map (the “Tentative Map”).

E. Transferee intends to develop the Property with an affordable housing development as more particularly described in the DA in accordance with and subject to the DA (the “Affordable Housing Development”).

F. As of the date hereof, the Property consists of approximately 1.0779 acres. Upon receipt of the Approvals, the Property shall consist of approximately 1.06 acres, as shown on Schedule D1 to the DA.

NOW, THEREFORE, in consideration of the foregoing recitals, the DA, and other valuable consideration, the sufficiency of which are hereby acknowledged, Transferee and Transferor hereby agree as follows:

1. **TRANSFER OF PROPERTY.**

1.1 Closing. Subject to the terms and conditions of this Agreement, the conveyance of the Property by Transferor to Transferee (the “Closing”) shall occur on the date (the “Closing Date”) selected by Transferor upon at least sixty (60) days’ prior written notice to Transferee (the “Closing Notice”), provided that in no event shall the Closing Date occur later than the issuance of a temporary certificate of occupancy for the next residential unit that triggers payment of the “IHO Fee” (as defined in the DA) after exhaustion of all IHO Fee credits from the transfers of the “H6 Property” and the “H5 Property” (as such terms are defined in the DA) (“Closing Deadline”).



[CityGoogle](#) Comments 5-9-11-21 **DRAFT**

Upon delivery of the Closing Notice to Transferee, Transferee shall have the right to further inspect the Property, pursuant to the terms set forth in Section 3.1 below, to determine if the conditions for Transferee's benefit as set forth in Section 4.5.2 below have been satisfied.

Transferee shall have no right to terminate this Agreement or delay the Closing if Transferee is unable to secure funds or other commitments to enable the construction of the Affordable Housing Development. Notwithstanding the foregoing, following Transferor's delivery of the Closing Notice, Transferee shall have the right to extend the Closing Date two (2) times for one hundred eighty (180) days each (each, an "Extension Period" and the first such extension of the Closing Date being the "Extended Closing Date" and the second such extension being the "Outside Closing Date") if Transferee has not identified the ~~affordable housing developer for the Affordable Housing Development (the~~ "Designee") (as defined in Exhibit D of the DA) by the date that is five (5) business days prior to the originally scheduled Closing Date or Extended Closing Date, as applicable, by providing Transferor with written notice of the status of Transferee's efforts to identify the Designee together with documentation evidencing Transferee's "Good Faith Efforts" (as defined in the DA) to identify and select the Designee, which notice Transferee shall give to Transferor on or before the date that is five (5) business days prior to the originally scheduled Closing Date or the Extended Closing Date, as applicable. If Transferee has not identified and selected the Designee by the scheduled Closing Date, the Extended Closing Date or the Outside Closing Date, as applicable, then Transferee shall take title the Property in Transferee's name or be in default of this Agreement. For the avoidance of doubt, identification and selection of the Designee shall not be a condition to the Closing. If as a result of the foregoing extensions the Extended Closing Date or the Outside Closing Date would occur after the Closing Deadline, then the Closing Deadline shall be extended to coincide with the Extended Closing Date or the Outside Closing Date, as applicable.

If Transferee extends the Closing Date for an Extension Period, then Transferee shall reimburse Transferor for (i) property taxes payable with respect to the Property during such Extension Period ("Taxes"), and (ii) Transferor's costs to light, fence, insure and maintain the Property in a clean and safe manner during such Extension Period ("Operating Expenses"), which reimbursement shall be made within thirty (30) days after request from Transferor (which request shall include reasonable back-up documentation). If Transferee fails to pay such reimbursement to Transferor within such thirty (30) day period, then at Transferor's election, all or a portion of such unpaid amount shall be converted to IHO Fee credits for Transferor's account; provided, however, that in no event shall the IHO Fee credits for the Operating Expenses exceed \$200,000, escalated in accordance with the Engineering News Record (ENR) Construction Cost Index for the San Francisco Urban area published by McGraw Hill on January 1 of every year, or its successor publication. For the avoidance of doubt, such cap on IHO Fee credits shall not apply to Taxes.

For the avoidance of doubt, no extension of the Closing or the Closing Deadline by Transferee pursuant to this Section 1.1 shall delay the issuance of the Temporary Certificate of Occupancy for the next market-rate residential building in the Project.

If Transferee identifies the Designee by the Closing, then concurrently with the Closing (but not before), Transferee and the Designee shall enter into an Assignment and

~~City~~Google Comments 5-9-11-21 **DRAFT**

Assumption Agreement in a form reasonably acceptable to Transferor (the “Designee Assignment Agreement”), to be effective as of the Closing, whereby (a) Transferee assigns to the Designee all of Transferee’s rights under Section 19 below and Exhibit “D” that survive the Closing, and (b) the Designee assumes all obligations of Transferee under this Agreement that survive the Closing (including, without limitation, pursuant to Sections 19 and 20 below).

1.2 Consideration. The “Purchase Price” for the Property shall be \$1.00.

In addition, upon the Closing, Transferor shall receive IHO Fee credits for the transfer of the Property to Transferee (or the Designee, if identified by Transferee) as calculated pursuant to the DA, provided that if Transferee extends the Closing for an Extension Period or if Transferor incurs any delays in the performance of any of its obligations under this Agreement or the DA caused by Transferee, then Transferor shall receive such IHO Fee credits as of the originally scheduled date of the Closing as set forth in the Closing Notice (without regard to any Extension Period or the amount of delay caused by Transferee).

Notwithstanding anything in this Agreement to the contrary, upon the execution of this Agreement, Transferee shall pay to Transferor \$1.00 as independent consideration for the Initial Inspection Period (as defined in Section 3.1 below) and Transferee’s rights under this Agreement. Such independent consideration shall be nonrefundable to Transferee in all events.

2. TITLE.

2.1 General. Title to the Property shall be conveyed by the Grant Deed and shall be evidenced by an ALTA Standard Coverage Form of Owner’s Policy of Title Insurance (or an ALTA Extended Coverage Form Policy, if Transferee elects such coverage and provides an ALTA Survey to the title company) (“Title Policy”). The Title Policy shall be issued by First American Title Insurance Company; Title Officer(s): Rosalind McCaskill or if unavailable, another Title Officer from First American Title Insurance Company (“Title Company”), with liability in an amount reflective of fair market value at the time of Closing as reasonably determined by Grantee (the “Agreed Value”), insuring title to the Property as vested in Transferee, free and clear of all liens and encumbrances and other matters affecting title to the Property, except (a) the lien for assessments not yet delinquent, (b) any exceptions recorded in connection with obtaining the Approvals or required in order to satisfy the Approvals, (c) any easements, covenants, conditions and restrictions recorded in connection with the development of the Project consistent with the Approvals, (d) any exceptions caused by the acts or omissions of Transferee, and (e) title exceptions which Transferee has approved in writing (or is deemed to have approved) pursuant to this Section 2.1 and Section 2.2 below (which (a) through (e) shall constitute “Approved Title Exceptions”).

Formatted: No underline, Font color: Auto

Upon the execution hereof, Transferor shall obtain a current title/preliminary report from Title Company and shall email it to Transferee (with hyperlinks to title exception documents) to the Transferee representatives set forth in Section 9 below or to such other representatives as Transferee may designate. Transferee shall have until the expiration of the Initial Inspection Period to review such report and exceptions, and any survey obtained by Transferee. If Transferee disapproves any matter affecting title (except Monetary Liens (as defined below), which shall be

~~City~~Google Comments 5-9-11-21 **DRAFT**

released upon and as a condition to Closing), then Transferee may terminate this Agreement by written notice to Transferor given on or prior to the expiration of the Initial Inspection Period. If Transferee does not elect to terminate this Agreement on or prior to the expiration of the Initial Inspection Period, then Transferee shall be deemed to have approved all matters affecting title (except Monetary Liens), which shall constitute Approved Title Exceptions, and Transferee shall have no further right to terminate this Agreement pursuant to this Section 2.1.

As used herein, “Monetary Liens” shall mean all liens secured by deeds of trust securing loans made to Transferor, mechanics’ liens relating to work contracted for by Transferor, judgment liens against Transferor, and delinquent real property taxes, provided that if Transferee is the Grantee, Monetary Liens shall include real property taxes for the property tax period in which the Closing occurs and all prior property tax periods in accordance with Section 4.7 below.

~~2.2~~ ~~2.2~~ Acts After Date of Agreement. Subject to Section 4.5 below, during the period from the date of this Agreement through the Closing: (a) Transferor shall not record, or permit to be recorded, any document or instrument relating to the Property without Transferee’s consent, which consent shall not be unreasonably withheld, conditioned or delayed; (b) Transferor shall operate, manage and maintain the Property in the ordinary course and consistent with Transferor’s practices as of the date of this Agreement; and (c) Transferor shall not enter into any new leases for the Property or amend any existing leases for the Property without Transferee’s consent, which consent may be withheld in Transferee’s sole and absolute discretion, provided that Transferee’s consent shall not be required for any lease that has a term expiring on or before the Closing. Additionally, during the period from the date of this Agreement through the Closing, Transferor and Transferee shall comply with those certain terms and conditions set forth in Exhibit “D” attached hereto to be performed prior to the Closing.

**Formatted:** Outline numbered + Level: 2 + Numbering  
Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at:  
1" + Tab after: 1.5" + Indent at: 0"

2.3 Possession; Termination of Leases. Exclusive Possession of the Property shall be delivered to Transferee upon the Closing free of any tenants or occupants (subject to Section 4.5.2.3 below). Transferee shall have no obligations to Transferor or any occupant or prior occupant with respect to any personal property not removed by the Closing.

To the fullest extent permitted by law, Transferor shall defend, indemnify and hold Transferee harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorneys’ fees and costs, and relocation costs and benefits payable by Transferee under California law) solely to the extent filed by a tenant of the Property and arising from Transferor’s termination of any lease of the Property, or any claim by any occupant under such lease regarding its personal property on the Property not removed by the Closing. Transferor’s obligations hereunder shall survive the Closing.

3. TRANSFEROR DISCLOSURES; TRANSFEEE INSPECTIONS.

3.1 Initial Inspection Period. From the date of execution hereof until the date that is ninety (90) days after the date of this Agreement (the “Initial Inspection Period”), subject to the terms and conditions set forth in this Section 3.1, Transferee may conduct, at Transferee’s sole expense, such inspections, as Transferee may desire or deem appropriate, in Transferee’s sole discretion. In conducting such inspections, Transferee shall endeavor to minimize damage to the

~~City~~Google Comments 5-9-11-21 **DRAFT**

Property, and any improvements thereon, and shall, promptly following such inspections and testing (unless otherwise approved by Transferor, in its sole and absolute discretion), return the Property, including the improvements thereon, if any, to its condition prior to Transferee's inspections. Subject to the terms and conditions of this Section 3.1, Transferor hereby grants to Transferee and its authorized employees, representatives, agents and contractors, permission and a license to enter upon the Property for the purpose of conducting such inspections. Transferee shall provide Transferor with at least ten (10) days' prior written notice of its desire to enter the Property for any such inspections, and any such inspections shall be conducted at a time and manner reasonably approved by Transferor. Transferor shall have the right to be present at any such inspections. In the event the Property is occupied by any person(s) other than Transferor, such access by Transferee shall be subject to the rights of such existing occupant(s). Transferor shall endeavor to make arrangements with such person(s) to ensure access by Transferee or its authorized employees, representatives, agents and contractors in order to conduct the inspections, provided that in connection with such inspections, Transferee shall endeavor to minimize interference with such existing occupant(s). Prior to conducting any inspections, Transferee and its third party representatives, agents and contractors shall deliver to Transferor evidence of insurance in form and amount reasonably acceptable to Transferor, covering Transferor as an additional insured. Transferee shall indemnify, protect, defend (with legal counsel reasonably acceptable to Transferor) and hold Transferor harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising from, related to or caused by, Transferee's entry upon the Property or the performance of any inspection conducted by or at the request of Transferee or its contractors or agents (but not the results thereof unless same resulted from the exacerbation of existing conditions by Transferee). In the event Transferee determines the Property is not suitable, then Transferee may terminate this Agreement by written notice to Transferor given prior to the end of the Initial Inspection Period. If Transferee does not elect to terminate this Agreement on or prior to the expiration of the Initial Inspection Period, then Transferee shall be deemed to have approved the Property and Transferee shall have no further right to terminate this Agreement pursuant to this Section 3.1.

Notwithstanding anything in this Section 3.1 to the contrary, Transferee shall not be permitted to undertake any air sampling or any intrusive or destructive testing of the Property, including, without limitation, a "Phase II" environmental assessment, nor will Transferee be entitled to directly contact or communicate with the California Regional Water Quality Control Board, United States or California Environmental Protection Agency or other local, state or federal agency regarding the environmental condition of the Property other than requests for documentation or records relating to the Property, without in each instance first obtaining Transferor's prior written consent thereto, which consent Transferor may give or withhold in Transferor's sole and absolute discretion.

Transferee shall deliver to Transferor copies of any environmental reports and remediation cost estimates obtained by Transferee in the course of its inspections.

Notwithstanding California Civil Code Section 1103.1(a)(9), Transferor shall deliver to Transferee, with reasonable diligence after the execution of this Agreement and at Transferor's cost, a Natural Hazard Disclosure Statement (described in California Civil Code

~~City~~Google Comments 5-911-21 **DRAFT**

Section 1103.2) prepared by Escrow Holder (as defined in Section 4.1 below) (or its designee) (the “Expert”). Transferee acknowledges and agrees that for purposes of California Civil Code Section 1103.4(c), the Expert is an expert in natural hazard discovery and the Natural Hazard Disclosure Statement is sufficient compliance for application of the exemption provided by Section 1103.4(a) of the California Civil Code.

Transferor has previously delivered to Transferee certain environmental reports with respect to the Property (the “Environmental Reports”). Transferee acknowledges and agrees that Transferor has acted reasonably in relying on the Environmental Reports and the delivery of the Environmental Reports to Transferee constitutes written notice under California Health and Safety Code Section 25359.7.

Prior to the date of this Agreement, Transferor delivered to Transferee the most recent environmental studies, soils studies, and surveys, and plans, specifications, maps, surveys and other similar materials relating to the physical and environmental condition of the Property in Transferor’s possession (collectively, the “Due Diligence Items”). Transferor represents and warrants to Transferee that to Transferor’s actual knowledge, the Due Diligence Items are accurate and complete duplications of the copies or originals thereof in Transferor’s possession. The foregoing representation and warranty of Transferor shall survive the Closing for a period of one (1) year following the Closing.

#### 4. ESCROW.

4.1 Escrow Holder. The escrow shall be opened with First American Title Insurance Company (“Escrow Holder”), within five (5) business days after the date of this Agreement and Transferor depositing a copy of this executed Agreement with Escrow Holder. This document shall be considered as the escrow instructions between the parties, with such further instructions consistent with this Agreement as Transferee, Transferor, or Escrow Holder requires in order to clarify the duties and responsibilities of Escrow Holder.

4.2 Closing. For the purposes of this Agreement, “Closing” shall be the date on which the Grant Deed for the Property in favor of Transferee (or the Designee, if identified by Transferee by such date) is recorded in the Official Records of the Santa Clara County Recorder’s Office, or if the Closing occurs on a gap basis, the date that Escrow Holder is irrevocably committed to record the Grant Deed.

Transferee shall have no right to terminate this Agreement as a result of any loss or damage, or any condemnation or eminent domain, except as expressly set forth in the paragraph below.

Notwithstanding the foregoing, if, due solely to Transferor’s actions, the Property is reduced in size by more than five percent (5%) from its size as shown on Schedule D1 to the DA (i.e., 1.06 acres), then Transferor shall have the right to (a) provide a replacement site to Transferee, which site shall be acceptable to Transferee’s Director of Housing in his or her sole and absolute discretion, or (b) if no such replacement site is available, as reasonably determined by Transferor, or if Transferee rejects such replacement site as set forth above, then either

~~City~~Google Comments 5-9-11-21 **DRAFT**

Transferor or Transferee may terminate this Agreement. Transferee shall have the right to conduct due diligence and inspect any replacement site consistent with the provisions in Section 3.1 above, expressly including the right to conduct Phase I and Phase II environmental assessments, as appropriate; provided, however, that Transferee's consultant for any Phase II environmental assessment shall be subject to Transferor's reasonable approval. If Transferee does not reject such replacement site within either ninety (90) days, or if Transferee's Phase I environmental assessment contains a recommendation for Phase II environmental assessment based on Transferee's proposed use of the replacement site, then within one hundred twenty (120) days, after written notice from Transferor and Transferee's receipt of copies of all Due Diligence Items for the replacement site in Transferor's possession, then Transferee shall be deemed to have accepted such replacement site and the term "Property" as used in this Agreement shall be deemed to mean such replacement site. Notwithstanding the foregoing, if, as part of the Due Diligence Information, Transferor provides a Phase I environmental assessment on which Transferee can rely, and that Phase I environmental assessment concludes that a Phase II environmental assessment is not recommended for Transferee's proposed use of the replacement site, then Transferee shall have no right to conduct a Phase II environmental assessment.

In the event any condemnation or eminent domain (that was not initiated by Transferee) occurs prior to the Closing, and provided that the paragraph above does not apply, then upon the Closing, (a) Transferor shall receive IHO Fee credits for the transfer of the Property as calculated pursuant to the DA (without regard to the taking), and (b) Transferor shall assign to Transferee all of Transferor's interest in and to the condemnation or eminent domain proceeds attributable to the value of the Property so taken.

4.3 Transferor Required to Deliver. Before the Closing, Transferor shall deposit into escrow the following:

4.3.1 A grant deed conveying the Property to Transferee (or the Designee, if identified by Transferee), in the form attached hereto as Exhibit "B", duly executed by Transferor and acknowledged (the "Grant Deed"); and

~~4.3.2.1.1 The Designee Assignment Agreement, if applicable, pursuant to Section 1.1 above; and~~

~~4.3.3~~ 4.3.2 Any other documents reasonably required by Escrow Holder or the Title Company to be deposited by Transferee to carry out this escrow.

4.4 Transferee Required to Deliver. On or before the Closing, Transferee shall deposit into escrow the Purchase Price and the following (properly executed and acknowledged, if applicable):

4.4.1 If Transferee is acquiring title (i.e., has not identified the Designee and has not assigned this Agreement in accordance with Section 6 below), an executed and acknowledged "Certificate of Acceptance" in the form attached to the Grant Deed (attached hereto as Exhibit "B");

Formatted: Font: Calibri

~~City~~Google Comments 5-9-11-21 **DRAFT**

4.4.2 The Designee Assignment Agreement, if applicable, pursuant to Section 1.1 above; and

Formatted: Font: Calibri

~~4.4.2.4.3~~ 4.4.3 Any other documents reasonably required by Escrow Holder to be deposited by Transferee to carry out this escrow.

4.5 Conditions to the Closing. Escrow shall not close unless and until both parties have deposited with Escrow Holder all sums and documents required to be deposited as provided in this Agreement. Additionally:

4.5.1 Transferor's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of the following condition(s) precedent, which is/are for Transferor's benefit and may be waived only by Transferor:

4.5.1.1 Transferee shall have performed all agreements to be performed by Transferee hereunder.

4.5.1.2 Transferor is obligated to transfer the Property in order to obtain IHO Fee Credit for the next residential unit that triggers payment of the IHO Fee after exhaustion of all IHO Fee Credits from the transfers of the "H6 Property" and the "H5 Property" (as such terms are defined in the DA).

~~4.5.1.2~~ 4.5.1.3 If this Agreement has been assigned to a Designee, then such Designee shall have certified to Transferor in writing that Designee has obtained commitments to sufficiently fund the Affordable Housing Development on the Property.

Formatted: Body 1",b1, No bullets or numbering

4.5.2 ~~Additionally~~, Transferee's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of all of the following conditions precedent, which are for Transferee's benefit and may be waived only by Transferee:

4.5.2.1 Transferor shall have performed all agreements to be performed by Transferor hereunder.

4.5.2.2 Title Company shall have issued or shall have committed to issue the Title Policy to Transferee, for the amount of the Agreed Value, showing fee title to the Property to be vested in Transferee (or the Designee, if identified by Transferee) subject only to the Approved Title Exceptions.

4.5.2.3 Transferor shall have: (i) caused any and all leases affecting the Property to have been terminated; (ii) provided Transferee with reasonable evidence of such termination; and (iii) removed any holdover tenants.

4.5.2.4 Transferor shall have caused Transferor's Work to be Completed, subject to the terms and conditions set forth in Exhibit "C" attached hereto. Transferor shall use commercially reasonable efforts to satisfy the condition set forth herein on or before the Closing. Transferor shall not be in default of this Agreement if, despite using its commercially



~~City~~Google Comments 5-9-11-21 **DRAFT**

reasonable efforts, Transferor does not satisfy the conditions above on or before the Closing. Notwithstanding anything in this Agreement to the contrary, if despite Transferor using its commercially reasonable efforts, Transferor's Work is not Completed by the Closing as a result of any delays caused by Transferee or Force Majeure (as defined in Exhibit "C"), then the provisions of Section 19.2 shall control.

4.5.2.5 The condition to the Closing set forth in Section 6 of Exhibit "D" attached hereto shall be satisfied. For the avoidance of doubt, no other obligations under Exhibit "D" shall be a condition precedent to the Closing.

If any of the conditions to Closing set forth in this Agreement are not timely satisfied for a reason other than a default of Transferee or Transferor under this Agreement, and this Agreement is terminated, then upon termination of this Agreement, Escrow Holder shall promptly return to Transferee all funds (and all interest accrued thereon) and documents deposited by Transferee in escrow and to return to Transferor all funds and documents deposited by Transferor in escrow and which are held by Escrow Holder on the date of the termination (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party under Section 4.10 below).

4.6 Recordation of Grant Deed; Delivery of Funds and Possession. On the Closing, upon receipt of the funds and instruments described in this Section 4, Escrow Holder shall cause the Grant Deed to be recorded in the office of the County Recorder of Santa Clara County, California. Thereafter, Escrow Holder shall deliver the proceeds of this escrow (less appropriate charges as shown on a preliminary Settlement Statement executed by Transferee and Transferor) to Transferor, and Transferor shall deliver possession of the Property to Transferee free and clear of all occupants, subject to Section 4.5.2.3 above.

4.7 Prorations. Property taxes shall not be prorated as Transferee is exempt from property taxes; Transferor shall pay all property taxes for the six month property tax billing period in which the Closing occurs, and then may apply for a refund of the property taxes that are allocable to the period after the Closing, and Transferee shall cooperate in good faith therewith. All assessments shall be prorated between Transferee and Transferor as of the Closing based on the latest available tax information. All prorations shall be determined on the basis of a 360-day year. Notwithstanding the foregoing, if Transferee is not directly acquiring title (i.e., Transferee has identified the Designee or has assigned this Agreement in accordance with Section 6 below) and such Designee or assignee is not exempt from property taxes, then property taxes shall be prorated at Closing on an accrual basis, and Transferor shall retain the rights to any refunds of the property taxes for periods prior to the Closing.

4.8 Costs. Transferor shall pay the premium for the Title Policy (excluding the cost of extended coverage and any survey obtained by Transferee in connection with such extended coverage, which shall be paid by Transferee), the escrow fees, the recording costs [if any], any documentary transfer taxes, and any other closing costs or charges charged by Escrow Holder or Title Company not expressly provided for herein. Notwithstanding the foregoing, if Transferee is not directly acquiring title (i.e., Transferee has identified the Designee or has assigned this Agreement in accordance with Section 6 below) and there are any closing costs charged as a result



~~City~~Google Comments 5-9-11-21 **DRAFT**

of the Property being transferred directly to such Designee or assignee (e.g., documentary transfer tax or recording fees, where there would otherwise be none if the Property was deeded directly to Transferee), then (a) such closing costs shall be determined based on the Agreed Value, notwithstanding that the Purchase Price is \$1.00, and (b) Transferee or such Designee or assignee shall be responsible for such closing costs.

4.9 Brokers. Transferee and Transferor represent to one another that except for any broker engaged by Transferor, no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement, or to its knowledge is in any way connected with such transaction. Transferor shall pay commissions to any broker engaged by Transferor in accordance with the agreement between Transferor and such Broker. Each party covenants and agrees that any other broker fee or commission, which may be due or payable in connection with the closing of the transaction contemplated by this Agreement through its dealings with that party, shall be borne solely by that party.

4.10 Escrow Cancellation Charges. In the event that this escrow shall fail to close by reason of the default of either party hereunder, the defaulting party shall be liable for all escrow and title cancellation charges. In the event that the escrow shall fail to close for any other reason, each party shall pay one-half (1/2) of all escrow and title cancellation charges.

5. NOTICES. All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and sent by first class United States registered or certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized courier service such as Federal Express, duly addressed to the parties as follows:

To Transferor: Google LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Attn: REWS Department / Downtown West SJ Project  
Executive

With Copies to: Google LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Attn: Legal Department / RE Matters  
and  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
1900 Main Street, 5th Floor  
Irvine, CA 92614  
Attn: Britney Willhite

To Transferee: City of San José  
200 E. Santa Clara Street, 17th Floor  
San Jose, California 95113  
Attn: City Manager

~~City~~Google Comments 5-9-11-21 **DRAFT**

With Copy to: City of San José  
200 E. Santa Clara Street, 16th Floor  
San Jose, California 95113  
Attn: City Attorney

Delivery of any notice or other communication hereunder shall be deemed made on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party as herein provided.

6. ASSIGNMENT. This Agreement may not be assigned by Transferor or Transferee without the prior written consent of the other party (in its sole and absolute discretion); provided, however, that (a) Transferor may assign this Agreement to a "Google Affiliate" or to any allowed or permitted "Transferee" (as such terms are defined in the DA), and (b) Transferee may identify the Designee as the transferee/grantee of the Property at the Closing pursuant to Section 1.1 above. Notwithstanding the foregoing, following the Closing, Transferee may assign all of Transferee's rights under Section 19 below and Exhibit "D" that survive the Closing to any subsequent transferee of the Property without the consent of Transferor, but Transferee shall notify Transferor in writing of such assignment and the name and address of the applicable assignee. The party named in the Grant Deed in accordance with this Section 6 shall be referred to herein as the "Grantee".

7. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

8. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

9. EMAIL DELIVERY. This executed Agreement (and executed counterparts of this Agreement), may be delivered by email to Sallie Lim at Sallie@google.com for Transferor, and to the Director of Housing, with copies to Office of Economic Development and City Attorney for Transferee. Any party may change its recipients for purposes of this Section by giving notice to the other party as provided in Section 5 above.

10. TIME OF THE ESSENCE. Time is of the essence of this Agreement.

11. THIRD PARTIES. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement. Further, nothing contained in this Agreement, expressed or implied, shall be deemed or construed by the parties hereto or by any

~~City~~Google Comments 5-9-11-21 **DRAFT**

third party to create the relationship of principal and agent, partnership, joint venturer or any association between Transferor and Transferee (and Grantee, if applicable).

12. SEVERABILITY. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13. ADDITIONAL DOCUMENTS. Each party hereto agrees to perform any further reasonable acts and to execute, acknowledge and deliver any further reasonable documents that may be reasonably necessary to carry out the provisions of this Agreement.

14. AUTHORITY OF CITY MANAGER. The City Manager or designee of Transferee may give any and all notices, consents and terminations hereunder on behalf of Transferee provided they are in writing. The City Manager or designee is authorized to execute, on behalf of the Transferee, deeds and all other documents as may be necessary to effectuate this Agreement and the transfer of property rights herein. Further, nothing stated herein in this Agreement shall in any way impinge upon the City's regulatory authority under federal, state, or local laws.

16. NO CONSTRUCTION AGAINST DRAFTER. This Agreement shall not be construed against the drafter hereof, it being acknowledged that each party has had an opportunity to review and negotiate the terms herein.

17. REMEDIES.

17.1 Default by Transferor. If Transferor fails to perform any of the obligations of Transferor set forth in this Agreement and fails to cure the same within ten (10) days after delivery of written notice from Transferee (provided that no such notice and cure period shall be applicable to Transferor's failure to deliver any documents or funds required for the Closing as set forth in Section 4 above), then as Transferee's sole and exclusive remedy, Transferee may terminate this Agreement upon written notice to Transferor and Escrow Holder. If Transferee elects to terminate this Agreement, then this Agreement shall automatically terminate, Transferor shall reimburse Transferee for the reasonable third party costs and expenses actually incurred by Transferee in performing the inspections and testing set forth in Section 3.1 above, and Transferor would not receive any IHO Fee credits for the Property and instead Transferor shall satisfy its IHO obligations by (a) identifying a site or sites in the Diridon Station Area Plan which can accommodate at least three hundred (300) affordable housing units as anticipated on the Property, (b) paying one hundred fifty percent (150%) of the IHO Fees due (the "IHO Fee Premium"), or (c) upon mutual agreement of Transferor and Transferee, Transferor shall work with Transferee to maintain yield by condominium-izing a portion of a high rise residential project for affordable housing. If Transferor satisfies its IHO obligations by the payment of the IHO Fee Premium pursuant to clause (b) above, the payment of the IHO Fee Premium shall be made in full to Transferee within thirty (30) days after Transferor's election of clause (b) above, and Transferor shall receive IHO Fee credits for that portion of the IHO Fee Premium equal to one hundred percent

~~City~~Google Comments 5-9-11-21 **DRAFT**

(100%) of the IHO fees due, but no credit for that portion of the IHO Fee Premium equal to the additional fifty percent (50%) owned as a result of the default.

17.2 Default by Transferee. If Transferee fails to perform any of the obligations of Transferee set forth in this Agreement and fails to cure the same within ten (10) days after delivery of written notice from Transferor (provided that no such notice and cure period shall be applicable to Transferee's failure to deliver any documents or funds required for the Closing as set forth in Section 4 above), then as Transferor's sole and exclusive remedy, Transferor may terminate this Agreement upon written notice to Transferee and Escrow Holder. If Transferor elects to terminate this Agreement, then this Agreement shall automatically terminate, and upon such termination, Transferor shall receive IHO Fee credits in the same amount as Transferor would have received under the DA and this Agreement if this Agreement has not been terminated due to Transferee's default and the Closing had occurred.

18. RELEASE. Except as otherwise expressly set forth in this Agreement, Transferee is acquiring the Property in its existing condition, "AS-IS, WHERE-IS, WITH ALL FAULTS", and as of the Closing, Transferee has made or has waived all inspections and investigations of the Property and its vicinity which Transferee believes are necessary to protect its own interest in, and its contemplated use of, the Property.

Except as otherwise expressly set forth in this Agreement, neither Transferor nor any entity associated or affiliated with Transferor, nor the agents, servants, officers, directors, employees, subsidiaries, divisions, affiliates or successors of Transferor, nor each of them, has made any representation, warranty, inducement, promise, agreement, assurance or statement, oral or written, of any kind to Transferee upon which Transferee is relying, or in connection with which Transferee has made or will make any decisions concerning the Property or its vicinity including, without limitation, its use, condition, value, square footage, compliance with applicable laws, existence or absence of hazardous substances, or the permissibility, feasibility, or convertibility of all or any portion of the Property for any particular use or purpose, including, without limitation, its present or future prospects for sale, lease, development, occupancy or suitability as security for financing.

Transferor hereby specifically disclaims all warranties implied by law arising out of or with respect to the execution of this Agreement, any aspect or element of the Property, or the performance of Transferor's obligations hereunder including, without limitation, all implied warranties of merchantability, habitability and/or fitness for a particular purpose.

Except as otherwise expressly set forth in this Agreement, Transferee hereby releases and forever discharge(s) Transferor and each and every entity associated or affiliated with Transferor, and the agents, servants, officers, directors, employees, subsidiaries, divisions, affiliates and successors of Transferor, and each of them, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, liabilities and demands, including without limitation any claim arising from and/or related to the Property (collectively "Claims"), which Claims are related to the physical and environmental condition of the Property, whether known or unknown, disclosed or undisclosed, anticipated or unanticipated, whenever

~~City~~Google Comments 5-9-11-21 **DRAFT**

accruing. In connection with the foregoing releases, Transferee acknowledges that it is familiar with and hereby waives the protections of Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Notwithstanding the foregoing, the foregoing release shall not apply to (a) Transferor's default or breach of any obligation of Transferor set forth in this Agreement that survives the Closing, (b) any claims for personal injury, death, or damage to personal property based on events occurring prior to the Closing, (c) any claims to the extent arising from Transferor's intentional misrepresentation, or (d) any claims arising under Section 19 below or under Exhibit "D" that survive the Closing.

19. TRANSFEROR POST-CLOSING COVENANTS.

19.1 Environmental. Following the Closing, Transferor and Transferee (or Grantee, if applicable) shall comply with those certain terms and conditions set forth in Exhibit "D" attached hereto to be performed following the Closing.

19.2 Transferor's Work. Notwithstanding anything in this Agreement to the contrary, if despite Transferor using its commercially reasonable efforts in accordance with Section 4.5.2.4, Transferor's Work (other than Item 6 as set forth in Schedule 1 to Exhibit "C") is not Completed by the Closing as a result of any delays caused by Transferee or Force Majeure, then Transferee shall have no right to terminate this Agreement and the Closing shall occur on the Closing Date, provided that following the Closing, Transferor shall diligently pursue the remaining Transferor's Work to Completion (such remaining portion being the "Remaining Transferor's Work"). Notwithstanding the foregoing, it shall be a condition to the Closing in accordance with Section 4.5.2 above that Item 6 as set forth in Schedule 1 to Exhibit "C" shall be Completed by the Closing in accordance with Section 4.5.2.4 above. As security for the performance of the Remaining Transferor's Work, at the Closing, Transferor shall provide Transferee with a construction completion bond in an amount equal to the 1.5 times the cost to perform the Remaining Transferor's Work. Following the Closing, Grantee shall provide Transferor with reasonable access to the Property as necessary to perform the Remaining Transferor's Work.

19.3 Survival. The provisions of this Section 19 shall survive the Closing.

20. GRANTEE POST-CLOSING COVENANTS.

20.1 Condition of Property. Following the Closing, Grantee shall be responsible to keep the Property in good, clean and safe condition. In connection therewith, Grantee shall be responsible to maintain the Erosion Controls and the Fence (as such terms are defined in Schedule 1 to Exhibit "C" attached hereto) installed as part of Transferor's Work in good condition and repair, and to provide for adequate lighting and security prior to and during development and

~~City~~Google Comments 5-9-11-21 **DRAFT**

construction of the Property. The obligations set forth in this Section 20.1 shall also be set forth in the Grant Deed, which obligations shall run with the land of the Property.

20.2 Construction Rights-of-Way. Following the Closing, upon request from Transferor from time to time, Grantee shall grant Transferor a commercially reasonable construction right-of-way as may be reasonably necessary for the construction of the Project, provided that such construction rights-of-way do not materially interfere with the development and use of the Property for the Affordable Housing Development.

20.3 Construction Costs. Grantee shall bear all construction costs related to the Affordable Housing Development.

20.4 Realignment Work. During the performance of the Realignment Work (as defined in Schedule 1 to Exhibit “C” attached hereto) and following completion of the Realignment Work, if Grantee shall cause any damage to the Realignment Work, then Grantee shall repair such damage, and if such damage is caused following completion of the Realignment Work, Grantee shall restore the affected area to the condition immediately prior to the damage. All such repair and restoration by Grantee shall be at Grantee’s sole cost and expense.

20.5 Successors and Assigns. The provisions of this Section 20 shall be binding on Grantee and its successors and assigns. Grantee shall cause all such successors and assigns to be bound by the terms and conditions of this Section 20.

20.6 Survival. The provisions of this Section 20 shall survive the Closing.

21. INTENTIONALLY DELETED.

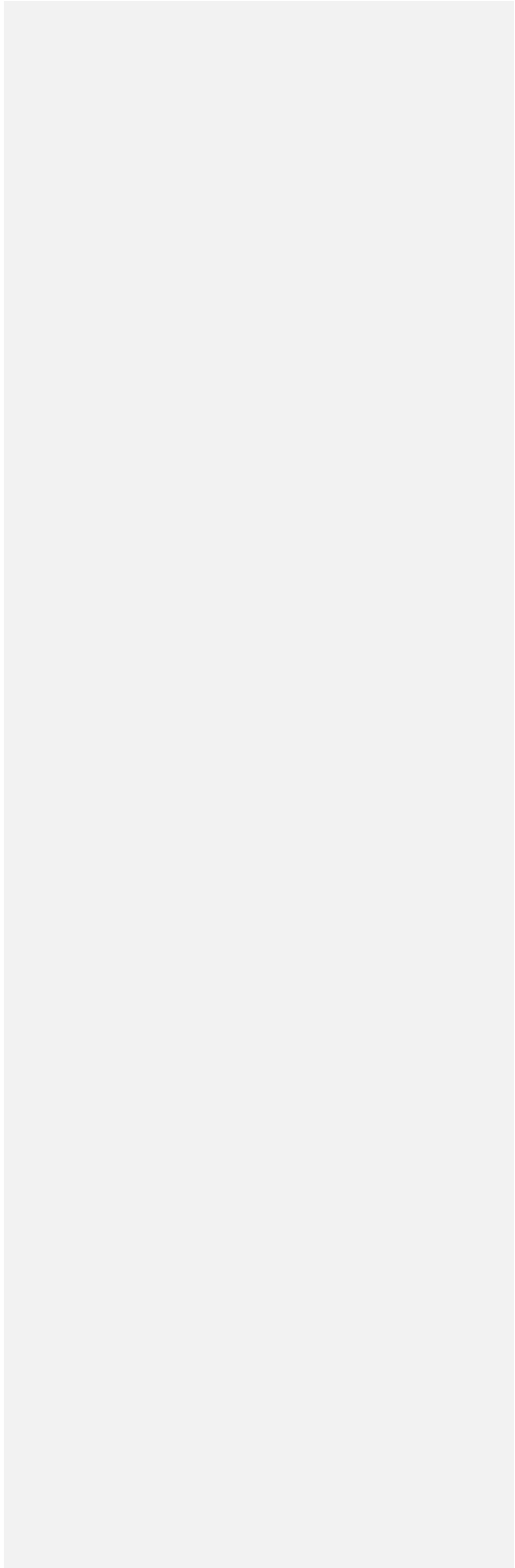
22. ATTORNEYS' FEES. Should legal action be brought by either party against the other for a default under this Agreement or to enforce any provision herein, the prevailing party in such action shall not be entitled to recover its attorneys' fees and costs from the other party. Each party to the legal action shall bear its own attorneys' fees and costs.

23. MEET AND CONFER PROCESS. Before sending a notice of default in accordance with Section 17 above, the party that may assert that the other party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other party to discuss the alleged failure and shall permit such party a reasonable period, but not less than thirty (30) days and not more than sixty (60) days, to respond to or cure such alleged failure. The party asserting such failure shall request that such meeting and conference occur within twenty (20) business days following the request and if, despite the “Good Faith Efforts” (as defined in the DA) of the requesting party, such meeting has not occurred within twenty (20) business days of such request, such party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 17 above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Negotiation Period Privilege; CPRA Confidential Treatment Request; Not for Public Release –  
CPRA Exempt; Confidential and Proprietary Business-Siting Information

~~City~~Google Comments 5-9-21 11-21 **DRAFT**



Negotiation Period Privilege; CPRA Confidential Treatment Request; Not for Public Release –  
CPRA Exempt; Confidential and Proprietary Business-Siting Information

~~City~~Google Comments 5-9-11-21 **DRAFT**

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

**TRANSFEROR:**

GOOGLE LLC, a Delaware limited liability  
company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSFeree:**

CITY OF SAN JOSÉ

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

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

PARCEL ONE:

ALL OF LOTS 12 AND 13, IN BLOCK 1, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF THE KEISER TRACT", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MAY 7, 1914 IN BOOK "O" OF MAPS, AT PAGE 49.

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF LORRAINE AVENUE (60 FEET WIDE) WITH THE NORTHWESTERLY LINE OF SAN CARLOS STREET (60 FEET WIDE) AS SAID AVENUE AND STREET ARE SHOWN UPON THAT CERTAIN MAP ENTITLED "MAP OF THE KEISER TRACT, BEING A SUBDIVISION OF LOTS 7 AND 12 OF SUNOL PARTITION WHICH MAP WAS FILED FOR RECORD ON MAY 7, 1914 IN BOOK "O" OF MAPS, AT PAGE 49, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, SAID POINT OF BEGINNING BEING ALSO THE MOST SOUTHERLY CORNER OF LOT 11 AS SAID LOT 11 IS SHOWN UPON SAID MAP; THENCE ALONG SAID NORTHEASTERLY LINE OF LORRAINE AVENUE NORTH 35 DEG. 55 MIN. 54 SEC. WEST 240.00 FEET TO THE POINT OF INTERSECTION OF SAID NORTHEASTERLY LINE WITH THE SOUTHEASTERLY LINE OF LORRAINE AVENUE, LAST SAID POINT BEING THE MOST WESTERLY CORNER OF LOT 12 AS SAID LOT 12 IS SHOWN UPON SAID MAP AND THE TRUE POINT OF BEGINNING; THENCE ALONG THE SOUTHWESTERLY EXTENSION OF SAID SOUTHEASTERLY LINE OF LORRAINE AVENUE SOUTH 54 DEG. 01 MIN. 47 SEC. WEST 30.00 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT 30.00 FEET, MEASURED AT RIGHT ANGLES, SOUTHWESTERLY FROM SAID NORTHEASTERLY LINE OF LORRAINE AVENUE; THENCE ALONG SAID PARALLEL LINE SOUTH 35 DEG. 55 MIN. 54 SEC. EAST 120.00 FEET; THENCE AT RIGHT ANGLES NORTH 54 DEG. 04 MIN. 06 SEC. EAST 30.00 FEET TO SAID NORTHEASTERLY LINE OF LORRAINE AVENUE, THENCE ALONG SAID NORTHEASTERLY LINE OF LORRAINE AVENUE NORTH 35 DEG. 55 MIN. 54 SEC. WEST 120.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL THREE:

LOTS 10 AND 11 IN BLOCK 1, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF THE KEISER TRACT, BEING A SUBDIVISION OF LOTS 7 AND 12 OF SUNOL PARTITION, SAN JOSE, CALIF.", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MAY 7, 1914 IN VOL. "O" OF MAPS, PAGE 49.

PARCEL FOUR:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF LORRAINE AVENUE (60 FEET WIDE) WITH THE NORTHWESTERLY LINE OF SAN CARLOS STREET (60 FEET WIDE) AS SAID AVENUE AND STREET ARE SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF THE KEISER TRACT BEING A SUBDIVISION OF LOTS 7 AND 12 OF SUNOL PARTITION", WHICH MAP WAS FILED FOR RECORD ON MAY 7, 1914 IN BOOK "O" OF MAPS AT PAGE 49, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, SAID POINT OF BEGINNING BEING ALSO THE MOST SOUTHERLY CORNER OF LOT 11, AS SAID LOT 11 IS SHOWN UPON SAID MAP; THENCE ALONG SAID NORTHEASTERLY LINE OF LORRAINE AVENUE NORTH 35 DEG. 55 MIN. 54 SEC. WEST 120.00 FEET TO THE POINT OF INTERSECTION OF SAID NORTHEASTERLY LINE WITH THE SOUTHEASTERLY LINE OF LOT 12, LAST SAID POINT BEING THE MOST SOUTHERLY CORNER OF LOT 12, AS SAID LOT 12, IS SHOWN UPON SAID MAP; THENCE ALONG THE SOUTHWESTERLY EXTENSION OF SAID LOT 12, SOUTH 54 DEG. 01 MIN. 47 SEC. WEST 30.00 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT 30.00 FEET, MEASURED AT RIGHT ANGLES, SOUTHWESTERLY FROM SAID NORTHEASTERLY LINE OF LORRAINE AVENUE; THENCE ALONG SAID PARALLEL LINE SOUTH 36 DEG. 55 MIN. 54 SEC. EAST 120.00 FEET TO A POINT IN SAID NORTHWESTERLY LINE OF SAN CARLOS STREET AS IT CROSSES LORRAINE AVENUE; THENCE ALONG SAID NORTHWESTERLY LINE OF SAN CARLOS STREET NORTH 54 DEG. 02 MIN. 20 SEC. EAST 30.00 FEET TO THE POINT OF BEGINNING.

PARCEL FIVE:

PORTION OF LOTS 2 THRU 7, BLOCK 3 AND PORTION OF LORRAINE AVENUE (VACATED BY RESOLUTION RECORDED IN BOOK 0643 OF OFFICIAL RECORDS, PAGE 469), MAP OF KEISER TRACT, FILED MAY 7, 1914 IN BOOK "O" OF MAPS, PAGE 49, SANTA CLARA COUNTY RECORDS, AS FOLLOWS:

BEGINNING AT THE EAST CORNER OF SAID LOT 5, BEING THE INTERSECTION OF THE SOUTHWEST LINE OF LORRAINE AVENUE AND NORTHWEST LINE OF SAN CARLOS STREET, AS SHOWN ON SAID MAP; THENCE ALONG SAID NORTHWEST LINE, S. 54° 02' 20" W. 38.13 FEET TO THE MOST SOUTHEAST CORNER OF LAND CONVEYED TO CITY OF SAN JOSE, BY DEED RECORDED IN BOOK 0655 OF OFFICIAL RECORDS, PAGE 35; THENCE ALONG THE GENERALLY NORTH AND EAST LINE OF SAID LAND, ALONG THE ARC OF A CURVE CONCAVE NORTHERLY WITH A RADIUS OF 50.00 FEET, THROUGH A CENTRAL ANGLE OF 107° 20' 06", A DISTANCE OF 93.67 FEET TO A POINT OF COMPOUND CURVATURE; THENCE ALONG THE ARC OF A CURVE CONCAVE EASTERLY WITH A RADIUS OF 550.00 FEET, THROUGH A CENTRAL ANGLE OF 19° 37' 49" A DISTANCE OF 188.44 FEET AND N. 1° 00' 15" W. 0.68 FEET TO A POINT IN THE SOUTHWEST LINE OF SAID LORRAINE AVENUE, DISTANT THEREON S. 35° 55' 54" E. 7.71 FEET FROM THE NORTH CORNER OF SAID LOT 2, BEING THE WEST CORNER OF LAND CONVEYED TO JOHN J. SCHIRO, ET UX, BY DEED RECORDED IN BOOK 0655 OF OFFICIAL RECORDS, PAGE 39; THENCE ALONG THE NORTHWEST, NORTHEAST AND SOUTHEAST LINE THEREOF, ALONG A

TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 18.26 FEET, THROUGH A CENTRAL ANGLE OF  $55^{\circ} 02' 02''$ , FOR AN ARC DISTANCE OF 17.54 FEET, N.  $54^{\circ} 01' 47''$  E. 14.30 FEET TO THE CENTERLINE OF SAID LORRAINE AVENUE, S.  $35^{\circ} 55' 54''$  E. 240 FEET ALONG SAID CENTERLINE TO THE NORTHWEST LINE OF SAID SAN CARLOS STREET AND S.  $54^{\circ} 02' 20''$  W. 30 FEET ALONG SAID LINE TO THE POINT OF BEGINNING.

APN: 259-47-040; 259-47-079; 259-47-038; 259-47-077; 259-47-080

**EXHIBIT "B"**

**FORM OF GRANT DEED**

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO AND  
MAIL TAX STATEMENTS TO:

APN:

SPACE ABOVE THIS LINE FOR RECORDER

G R A N T D E E D

**The Undersigned Grantor Declares: DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0; Recorded for the benefit of the City of San Jose and is exempt from transfer tax per Revenue and Taxation Code Section 11922 and exempt from recording fee per Government Code Section 6103 and/or 27383.**

computed on the consideration or full value of property conveyed, OR  
 computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,

unincorporated area;  **City of San Jose**, and

Signature of Declarant

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_ ("GRANTOR"), does hereby GRANT to \_\_\_\_\_ "GRANTEE", for valuable consideration, receipt of which is hereby acknowledged, all certain real property situate in the City of San José, County of Santa Clara, State of California, described in Exhibit "1" attached hereto and made a part hereof (the "Property").

By its signature hereon, Grantee, as the owner of the Property, hereby covenants and agrees that Grantee shall be responsible to keep the Property in good, clean and safe condition and to maintain attractive fencing, and to provide for adequate lighting and security prior to and during development and construction of the Property. The foregoing covenants and agreements shall be appurtenant to the Property and be binding on Grantee and each successor-in-interest to Grantee in the Property and every part thereof. It is the intention and understanding of the parties hereto that the foregoing covenants and agreements shall run with the land (as defined in California Civil Code Sections

Exhibit "A"

Page 1 of 1

1460 & 1462) of the Property and every part thereof in accordance with California Civil Code Section 1468.

Dated: \_\_\_\_\_, 202\_\_

**"GRANTOR"**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Dated: \_\_\_\_\_

**"GRANTEE"**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Dated: \_\_\_\_\_

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.

**ACKNOWLEDGEMENT**

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of officer)

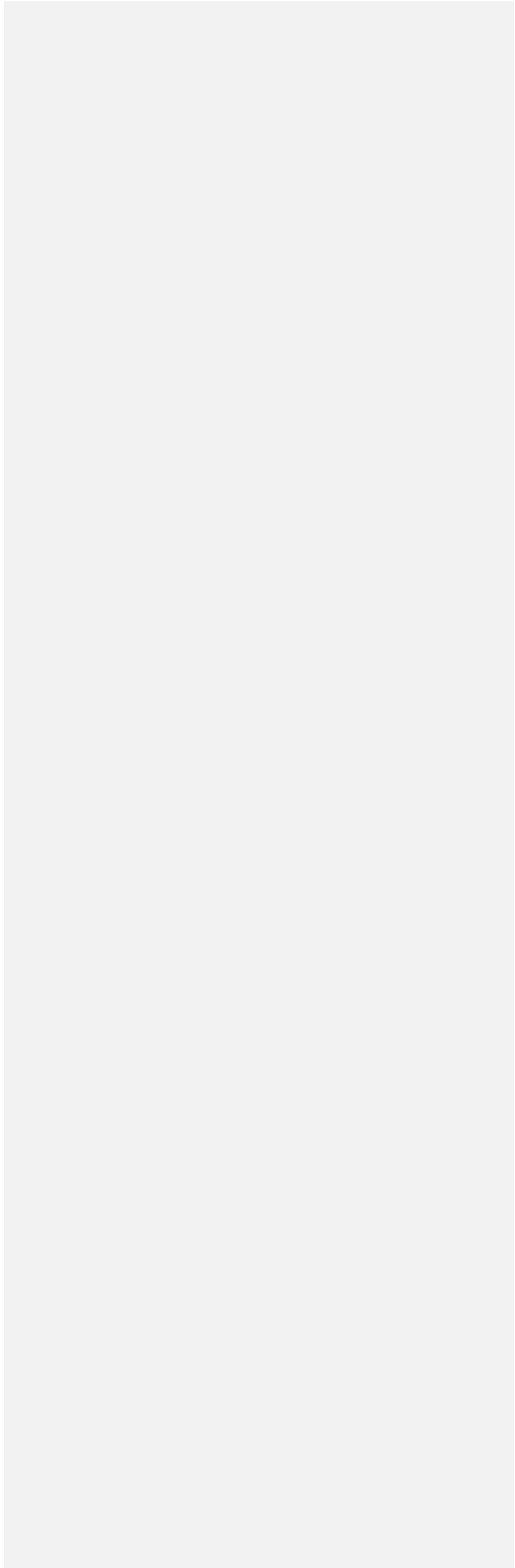
Personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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 \_\_\_\_\_ (Seal)

**Exhibit 1 to Grant Deed  
Legal Description**



[USE ONLY IF CITY IS GRANTEE]  
Deed Acceptance  
APN:

**DEED ACCEPTANCE**

This is to certify that the interest in real property conveyed by *Grant Deed*, dated \_\_\_\_\_, 202\_, from \_\_\_\_\_, a corporation under a holding agreement to the City of San Jose, a municipal corporation of the State of California, is hereby accepted by the undersigned officer of said City on behalf of the City Council of the City of San Jose, pursuant to authority conferred by the City Council of the City of San Jose on April 4, 1995 (shown as Item 9o on the April 4, 1995 City Council Agenda). The Grantee consents to recordation thereof by its duly authorized officer.

CITY OF SAN JOSE,  
A Municipal Corporation of the State of California

By: \_\_\_\_\_ Date: \_\_\_\_\_  
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.

**ACKNOWLEDGEMENT**

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me,  
\_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
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 \_\_\_\_\_ (Seal)

**EXHIBIT "C"**

**TRANSFEROR'S WORK**

1. As used in this Agreement, "Transferor's Work" shall mean that certain work described on Schedule 1 attached hereto.
2. Following the date that Transferor reasonably anticipates that the condition in Section 4.5.1.2 will be satisfied, if at all, Transferor shall promptly prepare plans and specifications for Transferor's Work (the "Plans").
3. Upon finalizing the Plans, Transferor shall promptly and diligently pursue obtaining all permits necessary for Transferor's Work, subject to delays caused by Transferee or Force Majeure (as defined below) (the "Permitted Plans"). Transferor shall provide Transferee with a copy of the Permitted Plans. Upon receipt of the Permitted Plans, Transferor shall diligently perform Transferor's Work to Completion, subject to delays caused by Transferee or Force Majeure.
4. As used herein, "Completion" or "Completed" shall mean that Transferor's Work has been completed in accordance with the building permit(s) issued with respect to Transferor's Work and the City Building Division has completed its final inspection of Transferor's Work. Transferee shall diligently and in good faith process all submissions and requests from Transferor necessary for Transferor to perform Transferor's Work to Completion.
5. Notwithstanding anything in this Agreement to the contrary, in no event shall Transferor be obligated to commence or continue preparing the Plans or performing Transferor's Work if Transferor reasonably anticipates that the condition set forth in Section 4.5.1.2 will not be satisfied.
6. As used herein, "Force Majeure" shall mean any event or condition that: (i) is beyond Transferor's control; (ii) prevents Transferor's performance of this Agreement; (iii) Transferor could not have reasonably foreseen; and (iv) arises from one or more of the following: (1) naturally occurring events constituting an act of God; (2) unusually severe and abnormal climactic conditions (as compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Property); (3) strikes, stoppages or boycotts that affect a specific trade on a national or regional level, to the extent not caused by the acts or omissions of Transferor; (4) the unavailability of construction materials for projects similar to Transferor's project as contemplated in the DA (i.e. a large scale mixed-use project) that causes significant construction delays, or significant construction delays resulting from such materials being unusually difficult or impossible to obtain, or from defects, tariffs, embargoes, or trade disputes, where, in each case, Transferor is unable to obtain alternative or replacement materials, within the same or substantially similar time period at substantially the same cost (and without having to forfeit any significant deposits or advance payments); (5) acts of terrorism or war; (6) riots or other civil unrest; (7) a local, state or federal declaration of emergency based on an epidemic or pandemic, including any quarantine or other health-related orders, directives, regulations, laws or other requirements implemented in response to such epidemic or pandemic; (8) orders issued by any other governmental body having jurisdiction over the Project; (9) casualty; or (10) condemnation unrelated to DISC or other transit project(s). Neither the inability of Transferor to obtain construction financing for Transferor's

project nor the condition of, or changes in, the real estate market shall constitute a Force Majeure event, except to the extent such inability or changes result from a Force Majeure event.

**SCHEDULE 1 TO EXHIBIT “C”**

**SCOPE OF TRANSFEROR’S WORK**

1. Establish erosion and sediment controls on the boundary of the Property (the “Erosion Controls”) and fence off the Property on all street frontages (the “Fence”)
2. Disconnect and cap all utilities on the Property, and furnish a survey to Transferee of the terminated locations
3. Abate any hazardous materials contained within the buildings to the extent required by law prior to demolishing such buildings, and demolish any buildings
4. Remove slabs, footings, piles to a depth of 4 feet below the surface and asphalt parking lots
5. Rough grade the Property without imported fill or compaction, except in areas of the site where removal is required in accordance with Item 6 below and Exhibit “D”
6. Remove existing contaminated soil pursuant to the RAP (as defined in Exhibit “D” attached hereto)
7. Backfill areas removed pursuant to Item 6 above with clean (per DTSC's "Information Advisory Clean Imported Fill Material", dated October 2001) engineered fill, and compact to provide a free draining surface
8. Realign West San Carlos and South Montgomery Streets adjacent to the Property in accordance with the “Downtown West Design Standards and Guidelines” (as defined in the DA), including street improvements to the center line, curbs, gutters sidewalks, street furnishings, signage & street trees in accordance with the Downtown West Design Standards and Guidelines (the “Realignment Work”)

## **EXHIBIT “D”**

### **ENVIRONMENTAL WORK**

1. Transferor will retain an outside environmental consultant (“**Transferor’s Environmental Consultant**”) with suitable experience in reviewing and overseeing the remediation work to be undertaken on the Property. Transferor will contract with this consultant and be solely responsible for the work of this consultant.
2. Transferor will seek approval of a new Remedial Action Plan (“**RAP**”) from the Department of Environmental Health or other environmental regulatory agency(ies) with jurisdiction that Transferor may be referred to by the Department of Environmental Health (“**DEH**”) to address the volatile organic compounds (“**VOCs**”) and any other contaminants of concern to the DEH (“**COCs**”) currently present in soil, soil vapor and groundwater at the Property (“**Environmental Conditions**”), including, but not limited to, those which are the subject of open Geotracker case FORMER TRUE DRIVE-IN CLEANERS (T10000011874).
3. The RAP will be designed to address the Environmental Conditions to allow construction of a concrete foundation structure without an occupiable basement on the entirety of the Property, with a passive vapor intrusion mitigation system integrated into the foundation system which has the capability of being activated, if needed (“**VIMS**”) (collectively, the “**Intended Design**”) with the ground floor limited to parking and/or commercial uses and/or resident support/offices/community space only and with residential uses allowed only on the second floor and above (the “**Intended Use**”). On or before the Closing, the Property will be restricted to the Intended Design and Intended Use in a Land Use Covenant for the Property and/or the Grant Deed.
4. The RAP will provide that Transferor will excavate and dispose of VOCs and COCs impacted soil, to the extent required by DEH for the Intended Design and the Intended Use, at an appropriate disposal facility (“**Soil Removal Work**”). The RAP will also include remedial actions to be implemented by Transferor to address DEH requirements for the groundwater (“**Groundwater Work**”). The RAP will be designed to meet all applicable environmental regulatory requirements to allow for the Intended Use in combination with the Intended Design. Any ongoing work of Transferor (after the Closing) shall not interfere with Transferee’s planned Affordable Housing Development and shall be accessed from outside the property line and not disturb the vapor barrier or the other elements of the VIMS. The RAP will also provide that Transferee or the Designee that builds the building on the Property will install, maintain and monitor the passive VIMS (with the ability to convert to an active VIMS through the addition of a fan or motor and shall activate it if and when required by DEH) (collectively, “**VIMS OMM**”).
5. Transferor will be responsible for implementing at its cost the Soil Removal Work in a commercially reasonable manner and timeframe, subject to the Catastrophic Cost Increase

provisions below. If the costs of implementing the Soil Removal Work are equal to or greater than Six Million One Hundred Thirty Thousand Dollars (\$6,130,000) (such amount being a “**Catastrophic Cap**” and such event being a “**Catastrophic Cost Increase**”), then, Transferor may decide not to transfer the Property to Transferee. If a Catastrophic Cost Increase occurs, then Transferor shall not be in default under this Agreement and instead Transferor shall satisfy its IHO obligations by (a) identifying a site or sites in the Diridon Station Area Plan which can accommodate at least three hundred (300) affordable housing units as anticipated on the Property, (b) paying one hundred fifty percent (150%) of the IHO Fees due, or (c) upon mutual agreement of Transferor and Transferee, Transferor shall work with Transferee to maintain yield by condominium-izing a portion of a high rise residential project for affordable housing. Transferor shall be solely responsible for completing the Groundwater Work after the Closing, at Transferor’s sole cost and expense, and for obtaining a no further action letter (“**NFA**”) from the DEH, except as to the responsibility of Transferee or the Designee for the VIMS and the VIMS OMM as set forth herein.

6. As a condition to the Closing, Transferor’s Environmental Consultant shall have issued a report, which may be relied upon by both Transferor and Transferee, confirming that the Soil Removal Work has been completed as required by the RAP for the Intended Design and Intended Use.
7. Transferor shall provide the NFA to Transferee (or then owner of the building) after receipt, which will occur after the Groundwater Work is complete.
8. Transferee will pay a maximum of Five Hundred Thousand Dollars (\$500,000) for the VIMS and VIMS OMM (“**Baseline Costs**”). If the costs of the VIMS and VIMS OMM for the Intended Design and Intended Use, any ongoing monitoring, as well as without limitation, DEH oversight and permitting costs, in the approved final RAP (or associated documents) are in excess of Baseline Costs (“**Excess Costs**”), as determined immediately prior to the Closing by an independent consultant retained by Transferor and acceptable to Transferee (“**RAP Consultant**”) then the following provisions shall apply. The RAP Consultant will estimate costs (both operational and installation hard costs) based on unescalated dollars.
  1. If the Excess Costs, plus the costs of (A) the Soil Removal Work costs and (B) the other anticipated Transferor clean-up costs ((A) and (B) collectively, “**Transferor Remediation Costs**”), are equal to or more than the Catastrophic Cap, then Transferor may elect to follow the procedures provided in subsection (e) above for Catastrophic Cost Increases.
  2. If the Excess Costs, plus the Transferor Remediation Costs, are less than the Catastrophic Cap, Transferor shall fund the Excess Costs to Transferee at the Closing and Transferee shall hold and invest the Excess Costs in trust to pay the Excess Costs as they accrue over time.

9. Transferor will keep Transferee informed of the timing and status throughout the RAP approval process, including providing Transferee with the draft and final RAP.
10. Following the Closing, Transferor will respond at its sole cost and expense to any inquiries, orders or actions from any regulatory agency with respect to the Groundwater Work or the Environmental Conditions other than the "Building Conditions". The term "**Building Conditions**" shall mean the conditions inside of the future building and/or parking area in the building, including, without limitation, indoor air conditions.
11. Transferor will pay all agency oversight and permitting costs associated with the RAP and obtaining the NFA.
12. To the fullest extent permitted by law, Transferor shall indemnify, defend and hold harmless Transferee for any and all claims for response costs or response actions or any third party claims associated with the Groundwater Work or the Environmental Conditions but excluding the Building Conditions. Additionally, following the Closing, Transferor shall indemnify, defend, and hold harmless Grantee against any and all third party actions or claims for death or personal injury to the extent such actions or claims are caused by alleged exposure to environmental contamination existing at the Property which exposure occurred prior to the Closing and such actions or claims first accrued prior to the Closing. The indemnity and defense obligations of Transferor shall survive the Closing. Notwithstanding the foregoing, in no event shall such indemnity and defense obligation of Transferor apply to the extent that any actions or claims arise from the negligence or willful misconduct of Transferee or Grantee.
13. Transferor shall have no responsibility or liability for the Building Conditions, VIMS or the VIMS OMM, including, without limitation, its installation, its failure, its maintenance, repair, operation or monitoring and no responsibility for any claims arising out of the Building Conditions, VIMS, the VIMS OMM, soil vapor, indoor air and/or any claims arising from failure of these systems.
14. Transferee and Transferor agree that all cost amounts set forth herein or determined hereafter pursuant to its terms are the cost as of the "Effective Date" of the DA and shall be subject to "Annual Increases" (as such terms are defined in the DA).

Google Comments 5-11-21 **DRAFT**

**PROPERTY TRANSFER AGREEMENT**

**(H1)**

THIS PROPERTY TRANSFER AGREEMENT (this “Agreement”) is dated as of \_\_\_\_\_, 20 \_\_, and is entered into by and between the CITY OF SAN JOSE, a California municipal corporation (“Transferee”), and GOOGLE LLC, a Delaware limited liability company (“Transferor”).

**RECITALS**

A. Transferor is the owner of the land described on Exhibit “A” and any improvements and fixtures thereon (collectively, the “Property”).

B. Exhibit “D” of that certain Development Agreement between Transferor and Transferee adopted by Ordinance No. \_\_\_\_ (the “DA”), contemplates and requires that Transferor and Transferee enter into this Agreement, and the date of this Agreement shall be the Effective Date of the DA, as defined in Section 2.1 thereof.

C. The Property is located within Transferor’s proposed Downtown West Mixed-Use Plan that is the subject of the DA (the “Project”).

D. Transferor is currently seeking “Approvals” (as such term is defined in the DA), including, without limitation, a Vesting Tentative Map (the “Tentative Map”).

E. Transferee intends to develop the Property with an affordable housing development as more particularly described in the DA in accordance with and subject to the DA (the “Affordable Housing Development”).

F. As of the date hereof, the Property consists of approximately 1.0779 acres. Upon receipt of the Approvals, the Property shall consist of approximately 1.06 acres, as shown on Schedule D1 to the DA.

NOW, THEREFORE, in consideration of the foregoing recitals, the DA, and other valuable consideration, the sufficiency of which are hereby acknowledged, Transferee and Transferor hereby agree as follows:

1. **TRANSFER OF PROPERTY.**

1.1 **Closing.** Subject to the terms and conditions of this Agreement, the conveyance of the Property by Transferor to Transferee (the “Closing”) shall occur on the date (the “Closing Date”) selected by Transferor upon at least sixty (60) days’ prior written notice to Transferee (the “Closing Notice”), provided that in no event shall the Closing Date occur later than the issuance of a temporary certificate of occupancy for the next residential unit that triggers payment of the “IHO Fee” (as defined in the DA) after exhaustion of all IHO Fee credits from the transfers of the “H6 Property” and the “H5 Property” (as such terms are defined in the DA) (“Closing Deadline”).



Google Comments 5-11-21 **DRAFT**

Upon delivery of the Closing Notice to Transferee, Transferee shall have the right to further inspect the Property, pursuant to the terms set forth in Section 3.1 below, to determine if the conditions for Transferee's benefit as set forth in Section 4.5.2 below have been satisfied.

Transferee shall have no right to terminate this Agreement or delay the Closing if Transferee is unable to secure funds or other commitments to enable the construction of the Affordable Housing Development. Notwithstanding the foregoing, following Transferor's delivery of the Closing Notice, Transferee shall have the right to extend the Closing Date two (2) times for one hundred eighty (180) days each (each, an "Extension Period" and the first such extension of the Closing Date being the "Extended Closing Date" and the second such extension being the "Outside Closing Date") if Transferee has not identified the "Designee" (as defined in Exhibit D of the DA) by the date that is five (5) business days prior to the originally scheduled Closing Date or Extended Closing Date, as applicable, by providing Transferor with written notice of the status of Transferee's efforts to identify the Designee together with documentation evidencing Transferee's "Good Faith Efforts" (as defined in the DA) to identify and select the Designee, which notice Transferee shall give to Transferor on or before the date that is five (5) business days prior to the originally scheduled Closing Date or the Extended Closing Date, as applicable. If Transferee has not identified and selected the Designee by the scheduled Closing Date, the Extended Closing Date or the Outside Closing Date, as applicable, then Transferee shall take title the Property in Transferee's name or be in default of this Agreement. For the avoidance of doubt, identification and selection of the Designee shall not be a condition to the Closing. If as a result of the foregoing extensions the Extended Closing Date or the Outside Closing Date would occur after the Closing Deadline, then the Closing Deadline shall be extended to coincide with the Extended Closing Date or the Outside Closing Date, as applicable.

If Transferee extends the Closing Date for an Extension Period, then Transferee shall reimburse Transferor for (i) property taxes payable with respect to the Property during such Extension Period ("Taxes"), and (ii) Transferor's costs to light, fence, insure and maintain the Property in a clean and safe manner during such Extension Period ("Operating Expenses"), which reimbursement shall be made within thirty (30) days after request from Transferor (which request shall include reasonable back-up documentation). If Transferee fails to pay such reimbursement to Transferor within such thirty (30) day period, then at Transferor's election, all or a portion of such unpaid amount shall be converted to IHO Fee credits for Transferor's account; provided, however, that in no event shall the IHO Fee credits for the Operating Expenses exceed \$200,000, escalated in accordance with the Engineering News Record (ENR) Construction Cost Index for the San Francisco Urban area published by McGraw Hill on January 1 of every year, or its successor publication. For the avoidance of doubt, such cap on IHO Fee credits shall not apply to Taxes.

For the avoidance of doubt, no extension of the Closing or the Closing Deadline by Transferee pursuant to this Section 1.1 shall delay the issuance of the Temporary Certificate of Occupancy for the next market-rate residential building in the Project.

If Transferee identifies the Designee by the Closing, then concurrently with the Closing (but not before), Transferee and the Designee shall enter into an Assignment and Assumption Agreement in a form reasonably acceptable to Transferor (the "Designee Assignment

Google Comments 5-11-21 **DRAFT**

Agreement”), to be effective as of the Closing, whereby (a) Transferee assigns to the Designee all of Transferee’s rights under Section 19 below and Exhibit “D” that survive the Closing, and (b) the Designee assumes all obligations of Transferee under this Agreement that survive the Closing (including, without limitation, pursuant to Sections 19 and 20 below).

1.2 Consideration. The “Purchase Price” for the Property shall be \$1.00.

In addition, upon the Closing, Transferor shall receive IHO Fee credits for the transfer of the Property to Transferee (or the Designee, if identified by Transferee) as calculated pursuant to the DA, provided that if Transferee extends the Closing for an Extension Period or if Transferor incurs any delays in the performance of any of its obligations under this Agreement or the DA caused by Transferee, then Transferor shall receive such IHO Fee credits as of the originally scheduled date of the Closing as set forth in the Closing Notice (without regard to any Extension Period or the amount of delay caused by Transferee).

Notwithstanding anything in this Agreement to the contrary, upon the execution of this Agreement, Transferee shall pay to Transferor \$1.00 as independent consideration for the Initial Inspection Period (as defined in Section 3.1 below) and Transferee’s rights under this Agreement. Such independent consideration shall be nonrefundable to Transferee in all events.

## 2. TITLE.

2.1 General. Title to the Property shall be conveyed by the Grant Deed and shall be evidenced by an ALTA Standard Coverage Form of Owner’s Policy of Title Insurance (or an ALTA Extended Coverage Form Policy, if Transferee elects such coverage and provides an ALTA Survey to the title company) (“Title Policy”). The Title Policy shall be issued by First American Title Insurance Company; Title Officer(s): Rosalind McCaskill or if unavailable, another Title Officer from First American Title Insurance Company (“Title Company”), with liability in an amount reflective of fair market value at the time of Closing as reasonably determined by Grantee (the “Agreed Value”), insuring title to the Property as vested in Transferee, free and clear of all liens and encumbrances and other matters affecting title to the Property, except (a) the lien for assessments not yet delinquent, (b) any exceptions recorded in connection with obtaining the Approvals or required in order to satisfy the Approvals, (c) any easements, covenants, conditions and restrictions recorded in connection with the development of the Project consistent with the Approvals, (d) any exceptions caused by the acts or omissions of Transferee, and (e) title exceptions which Transferee has approved in writing (or is deemed to have approved) pursuant to this Section 2.1 and Section 2.2 below (which (a) through (e) shall constitute “Approved Title Exceptions”).

Upon the execution hereof, Transferor shall obtain a current title/preliminary report from Title Company and shall email it to Transferee (with hyperlinks to title exception documents) to the Transferee representatives set forth in Section 9 below or to such other representatives as Transferee may designate. Transferee shall have until the expiration of the Initial Inspection Period to review such report and exceptions, and any survey obtained by Transferee. If Transferee disapproves any matter affecting title (except Monetary Liens (as defined below), which shall be released upon and as a condition to Closing), then Transferee may terminate this Agreement by

Google Comments 5-11-21 **DRAFT**

written notice to Transferor given on or prior to the expiration of the Initial Inspection Period. If Transferee does not elect to terminate this Agreement on or prior to the expiration of the Initial Inspection Period, then Transferee shall be deemed to have approved all matters affecting title (except Monetary Liens), which shall constitute Approved Title Exceptions, and Transferee shall have no further right to terminate this Agreement pursuant to this Section 2.1.

As used herein, “Monetary Liens” shall mean all liens secured by deeds of trust securing loans made to Transferor, mechanics’ liens relating to work contracted for by Transferor, judgment liens against Transferor, and delinquent real property taxes, provided that if Transferee is the Grantee, Monetary Liens shall include real property taxes for the property tax period in which the Closing occurs and all prior property tax periods in accordance with Section 4.7 below.

2.2 Acts After Date of Agreement. Subject to Section 4.5 below, during the period from the date of this Agreement through the Closing: (a) Transferor shall not record, or permit to be recorded, any document or instrument relating to the Property without Transferee’s consent, which consent shall not be unreasonably withheld, conditioned or delayed; (b) Transferor shall operate, manage and maintain the Property in the ordinary course and consistent with Transferor’s practices as of the date of this Agreement; and (c) Transferor shall not enter into any new leases for the Property or amend any existing leases for the Property without Transferee’s consent, which consent may be withheld in Transferee’s sole and absolute discretion, provided that Transferee’s consent shall not be required for any lease that has a term expiring on or before the Closing. Additionally, during the period from the date of this Agreement through the Closing, Transferor and Transferee shall comply with those certain terms and conditions set forth in Exhibit “D” attached hereto to be performed prior to the Closing.

2.3 Possession; Termination of Leases. Exclusive possession of the Property shall be delivered to Transferee upon the Closing free of any tenants or occupants (subject to Section 4.5.2.3 below). Transferee shall have no obligations to Transferor or any occupant or prior occupant with respect to any personal property not removed by the Closing.

To the fullest extent permitted by law, Transferor shall defend, indemnify and hold Transferee harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorneys’ fees and costs, and relocation costs and benefits payable by Transferee under California law) solely to the extent filed by a tenant of the Property and arising from Transferor’s termination of any lease of the Property, or any claim by any occupant under such lease regarding its personal property on the Property not removed by the Closing. Transferor’s obligations hereunder shall survive the Closing.

### 3. TRANSFEROR DISCLOSURES; TRANSFEE INSPECTIONS.

3.1 Initial Inspection Period. From the date of execution hereof until the date that is ninety (90) days after the date of this Agreement (the “Initial Inspection Period”), subject to the terms and conditions set forth in this Section 3.1, Transferee may conduct, at Transferee’s sole expense, such inspections, as Transferee may desire or deem appropriate, in Transferee’s sole discretion. In conducting such inspections, Transferee shall endeavor to minimize damage to the Property, and any improvements thereon, and shall, promptly following such inspections and

Google Comments 5-11-21 **DRAFT**

testing (unless otherwise approved by Transferor, in its sole and absolute discretion), return the Property, including the improvements thereon, if any, to its condition prior to Transferee's inspections. Subject to the terms and conditions of this Section 3.1, Transferor hereby grants to Transferee and its authorized employees, representatives, agents and contractors, permission and a license to enter upon the Property for the purpose of conducting such inspections. Transferee shall provide Transferor with at least ten (10) days' prior written notice of its desire to enter the Property for any such inspections, and any such inspections shall be conducted at a time and manner reasonably approved by Transferor. Transferor shall have the right to be present at any such inspections. In the event the Property is occupied by any person(s) other than Transferor, such access by Transferee shall be subject to the rights of such existing occupant(s). Transferor shall endeavor to make arrangements with such person(s) to ensure access by Transferee or its authorized employees, representatives, agents and contractors in order to conduct the inspections, provided that in connection with such inspections, Transferee shall endeavor to minimize interference with such existing occupant(s). Prior to conducting any inspections, Transferee and its third party representatives, agents and contractors shall deliver to Transferor evidence of insurance in form and amount reasonably acceptable to Transferor, covering Transferor as an additional insured. Transferee shall indemnify, protect, defend (with legal counsel reasonably acceptable to Transferor) and hold Transferor harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising from, related to or caused by, Transferee's entry upon the Property or the performance of any inspection conducted by or at the request of Transferee or its contractors or agents (but not the results thereof unless same resulted from the exacerbation of existing conditions by Transferee). In the event Transferee determines the Property is not suitable, then Transferee may terminate this Agreement by written notice to Transferor given prior to the end of the Initial Inspection Period. If Transferee does not elect to terminate this Agreement on or prior to the expiration of the Initial Inspection Period, then Transferee shall be deemed to have approved the Property and Transferee shall have no further right to terminate this Agreement pursuant to this Section 3.1.

Notwithstanding anything in this Section 3.1 to the contrary, Transferee shall not be permitted to undertake any air sampling or any intrusive or destructive testing of the Property, including, without limitation, a "Phase II" environmental assessment, nor will Transferee be entitled to directly contact or communicate with the California Regional Water Quality Control Board, United States or California Environmental Protection Agency or other local, state or federal agency regarding the environmental condition of the Property other than requests for documentation or records relating to the Property, without in each instance first obtaining Transferor's prior written consent thereto, which consent Transferor may give or withhold in Transferor's sole and absolute discretion.

Transferee shall deliver to Transferor copies of any environmental reports and remediation cost estimates obtained by Transferee in the course of its inspections.

Notwithstanding California Civil Code Section 1103.1(a)(9), Transferor shall deliver to Transferee, with reasonable diligence after the execution of this Agreement and at Transferor's cost, a Natural Hazard Disclosure Statement (described in California Civil Code Section 1103.2) prepared by Escrow Holder (as defined in Section 4.1 below) (or its designee) (the

Google Comments 5-11-21 **DRAFT**

“Expert”). Transferee acknowledges and agrees that for purposes of California Civil Code Section 1103.4(c), the Expert is an expert in natural hazard discovery and the Natural Hazard Disclosure Statement is sufficient compliance for application of the exemption provided by Section 1103.4(a) of the California Civil Code.

Transferor has previously delivered to Transferee certain environmental reports with respect to the Property (the “Environmental Reports”). Transferee acknowledges and agrees that Transferor has acted reasonably in relying on the Environmental Reports and the delivery of the Environmental Reports to Transferee constitutes written notice under California Health and Safety Code Section 25359.7.

Prior to the date of this Agreement, Transferor delivered to Transferee the most recent environmental studies, soils studies, and surveys, and plans, specifications, maps, surveys and other similar materials relating to the physical and environmental condition of the Property in Transferor’s possession (collectively, the “Due Diligence Items”). Transferor represents and warrants to Transferee that to Transferor’s actual knowledge, the Due Diligence Items are accurate and complete duplications of the copies or originals thereof in Transferor’s possession. The foregoing representation and warranty of Transferor shall survive the Closing for a period of one (1) year following the Closing.

4. ESCROW.

4.1 Escrow Holder. The escrow shall be opened with First American Title Insurance Company (“Escrow Holder”), within five (5) business days after the date of this Agreement and Transferor depositing a copy of this executed Agreement with Escrow Holder. This document shall be considered as the escrow instructions between the parties, with such further instructions consistent with this Agreement as Transferee, Transferor, or Escrow Holder requires in order to clarify the duties and responsibilities of Escrow Holder.

4.2 Closing. For the purposes of this Agreement, “Closing” shall be the date on which the Grant Deed for the Property in favor of Transferee (or the Designee, if identified by Transferee by such date) is recorded in the Official Records of the Santa Clara County Recorder’s Office, or if the Closing occurs on a gap basis, the date that Escrow Holder is irrevocably committed to record the Grant Deed.

Transferee shall have no right to terminate this Agreement as a result of any loss or damage, or any condemnation or eminent domain, except as expressly set forth in the paragraph below.

Notwithstanding the foregoing, if, due solely to Transferor’s actions, the Property is reduced in size by more than five percent (5%) from its size as shown on Schedule D1 to the DA (i.e., 1.06 acres), then Transferor shall have the right to (a) provide a replacement site to Transferee, which site shall be acceptable to Transferee’s Director of Housing in his or her sole and absolute discretion, or (b) if no such replacement site is available, as reasonably determined by Transferor, or if Transferee rejects such replacement site as set forth above, then either Transferor or Transferee may terminate this Agreement. Transferee shall have the right to conduct

Google Comments 5-11-21 **DRAFT**

due diligence and inspect any replacement site consistent with the provisions in Section 3.1 above, expressly including the right to conduct Phase I and Phase II environmental assessments, as appropriate; provided, however, that Transferee's consultant for any Phase II environmental assessment shall be subject to Transferor's reasonable approval. If Transferee does not reject such replacement site within either ninety (90) days, or if Transferee's Phase I environmental assessment contains a recommendation for Phase II environmental assessment based on Transferee's proposed use of the replacement site, then within one hundred twenty (120) days, after written notice from Transferor and Transferee's receipt of copies of all Due Diligence Items for the replacement site in Transferor's possession, then Transferee shall be deemed to have accepted such replacement site and the term "Property" as used in this Agreement shall be deemed to mean such replacement site. Notwithstanding the foregoing, if, as part of the Due Diligence Information, Transferor provides a Phase I environmental assessment on which Transferee can rely, and that Phase I environmental assessment concludes that a Phase II environmental assessment is not recommended for Transferee's proposed use of the replacement site, then Transferee shall have no right to conduct a Phase II environmental assessment.

In the event any condemnation or eminent domain (that was not initiated by Transferee) occurs prior to the Closing, and provided that the paragraph above does not apply, then upon the Closing, (a) Transferor shall receive IHO Fee credits for the transfer of the Property as calculated pursuant to the DA (without regard to the taking), and (b) Transferor shall assign to Transferee all of Transferor's interest in and to the condemnation or eminent domain proceeds attributable to the value of the Property so taken.

4.3 Transferor Required to Deliver. Before the Closing, Transferor shall deposit into escrow the following:

4.3.1 A grant deed conveying the Property to Transferee (or the Designee, if identified by Transferee), in the form attached hereto as Exhibit "B", duly executed by Transferor and acknowledged (the "Grant Deed"); and

4.3.2

4.3.3 Any other documents reasonably required by Escrow Holder or the Title Company to be deposited by Transferee to carry out this escrow.

4.4 Transferee Required to Deliver. On or before the Closing, Transferee shall deposit into escrow the Purchase Price and the following (properly executed and acknowledged, if applicable):

4.4.1 If Transferee is acquiring title (i.e., has not identified the Designee and has not assigned this Agreement in accordance with Section 6 below), an executed and acknowledged "Certificate of Acceptance" in the form attached to the Grant Deed (attached hereto as Exhibit "B");

4.4.2 The Designee Assignment Agreement, if applicable, pursuant to Section 1.1 above; and

Google Comments 5-11-21 **DRAFT**

4.4.3 Any other documents reasonably required by Escrow Holder to be deposited by Transferee to carry out this escrow.

4.5 Conditions to the Closing. Escrow shall not close unless and until both parties have deposited with Escrow Holder all sums and documents required to be deposited as provided in this Agreement. Additionally:

4.5.1 Transferor's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of the following condition(s) precedent, which is/are for Transferor's benefit and may be waived only by Transferor:

4.5.1.1 Transferee shall have performed all agreements to be performed by Transferee hereunder.

4.5.1.2 Transferor is obligated to transfer the Property in order to obtain IHO Fee Credit for the next residential unit that triggers payment of the IHO Fee after exhaustion of all IHO Fee Credits from the transfers of the "H6 Property" and the "H5 Property" (as such terms are defined in the DA).

4.5.1.3 If this Agreement has been assigned to a Designee, then such Designee shall have certified to Transferor in writing that Designee has obtained commitments to sufficiently fund the Affordable Housing Development on the Property.

4.5.2 Transferee's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of all of the following conditions precedent, which are for Transferee's benefit and may be waived only by Transferee:

4.5.2.1 Transferor shall have performed all agreements to be performed by Transferor hereunder.

4.5.2.2 Title Company shall have issued or shall have committed to issue the Title Policy to Transferee, for the amount of the Agreed Value, showing fee title to the Property to be vested in Transferee (or the Designee, if identified by Transferee) subject only to the Approved Title Exceptions.

4.5.2.3 Transferor shall have: (i) caused any and all leases affecting the Property to have been terminated; (ii) provided Transferee with reasonable evidence of such termination; and (iii) removed any holdover tenants.

4.5.2.4 Transferor shall have caused Transferor's Work to be Completed, subject to the terms and conditions set forth in Exhibit "C" attached hereto. Transferor shall use commercially reasonable efforts to satisfy the condition set forth herein on or before the Closing. Transferor shall not be in default of this Agreement if, despite using its commercially reasonable efforts, Transferor does not satisfy the conditions above on or before the Closing. Notwithstanding anything in this Agreement to the contrary, if despite Transferor using its commercially reasonable efforts, Transferor's Work is not Completed by the Closing as a result of

Google Comments 5-11-21 **DRAFT**

any delays caused by Transferee or Force Majeure (as defined in Exhibit “C”), then the provisions of Section 19.2 shall control.

4.5.2.5 The condition to the Closing set forth in Section 6 of Exhibit “D” attached hereto shall be satisfied. For the avoidance of doubt, no other obligations under Exhibit “D” shall be a condition precedent to the Closing.

If any of the conditions to Closing set forth in this Agreement are not timely satisfied for a reason other than a default of Transferee or Transferor under this Agreement, and this Agreement is terminated, then upon termination of this Agreement, Escrow Holder shall promptly return to Transferee all funds (and all interest accrued thereon) and documents deposited by Transferee in escrow and to return to Transferor all funds and documents deposited by Transferor in escrow and which are held by Escrow Holder on the date of the termination (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party under Section 4.10 below).

4.6 Recordation of Grant Deed; Delivery of Funds and Possession. On the Closing, upon receipt of the funds and instruments described in this Section 4, Escrow Holder shall cause the Grant Deed to be recorded in the office of the County Recorder of Santa Clara County, California. Thereafter, Escrow Holder shall deliver the proceeds of this escrow (less appropriate charges as shown on a preliminary Settlement Statement executed by Transferee and Transferor) to Transferor, and Transferor shall deliver possession of the Property to Transferee free and clear of all occupants, subject to Section 4.5.2.3 above.

4.7 Prorations. Property taxes shall not be prorated as Transferee is exempt from property taxes; Transferor shall pay all property taxes for the six month property tax billing period in which the Closing occurs, and then may apply for a refund of the property taxes that are allocable to the period after the Closing, and Transferee shall cooperate in good faith therewith. All assessments shall be prorated between Transferee and Transferor as of the Closing based on the latest available tax information. All prorations shall be determined on the basis of a 360-day year. Notwithstanding the foregoing, if Transferee is not directly acquiring title (i.e., Transferee has identified the Designee or has assigned this Agreement in accordance with Section 6 below) and such Designee or assignee is not exempt from property taxes, then property taxes shall be prorated at Closing on an accrual basis, and Transferor shall retain the rights to any refunds of the property taxes for periods prior to the Closing.

4.8 Costs. Transferor shall pay the premium for the Title Policy (excluding the cost of extended coverage and any survey obtained by Transferee in connection with such extended coverage, which shall be paid by Transferee), the escrow fees, the recording costs [if any], any documentary transfer taxes, and any other closing costs or charges charged by Escrow Holder or Title Company not expressly provided for herein. Notwithstanding the foregoing, if Transferee is not directly acquiring title (i.e., Transferee has identified the Designee or has assigned this Agreement in accordance with Section 6 below) and there are any closing costs charged as a result of the Property being transferred directly to such Designee or assignee (e.g., documentary transfer tax or recording fees, where there would otherwise be none if the Property was deeded directly to Transferee), then (a) such closing costs shall be determined based on the Agreed Value,



Google Comments 5-11-21 **DRAFT**

notwithstanding that the Purchase Price is \$1.00, and (b) Transferee or such Designee or assignee shall be responsible for such closing costs.

4.9 Brokers. Transferee and Transferor represent to one another that except for any broker engaged by Transferor, no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement, or to its knowledge is in any way connected with such transaction. Transferor shall pay commissions to any broker engaged by Transferor in accordance with the agreement between Transferor and such Broker. Each party covenants and agrees that any other broker fee or commission, which may be due or payable in connection with the closing of the transaction contemplated by this Agreement through its dealings with that party, shall be borne solely by that party.

4.10 Escrow Cancellation Charges. In the event that this escrow shall fail to close by reason of the default of either party hereunder, the defaulting party shall be liable for all escrow and title cancellation charges. In the event that the escrow shall fail to close for any other reason, each party shall pay one-half (1/2) of all escrow and title cancellation charges.

5. NOTICES. All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and sent by first class United States registered or certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized courier service such as Federal Express, duly addressed to the parties as follows:

To Transferor: Google LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Attn: REWS Department / Downtown West SJ Project  
Executive

With Copies to: Google LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Attn: Legal Department / RE Matters  
and  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
1900 Main Street, 5th Floor  
Irvine, CA 92614  
Attn: Britney Willhite

To Transferee: City of San José  
200 E. Santa Clara Street, 17th Floor  
San Jose, California 95113  
Attn: City Manager

With Copy to: City of San José  
200 E. Santa Clara Street, 16th Floor  
San Jose, California 95113

Google Comments 5-11-21 **DRAFT**

Attn: City Attorney

Delivery of any notice or other communication hereunder shall be deemed made on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party as herein provided.

6. ASSIGNMENT. This Agreement may not be assigned by Transferor or Transferee without the prior written consent of the other party (in its sole and absolute discretion); provided, however, that (a) Transferor may assign this Agreement to a "Google Affiliate" or to any allowed or permitted "Transferee" (as such terms are defined in the DA), and (b) Transferee may identify the Designee as the transferee/grantee of the Property at the Closing pursuant to Section 1.1 above. Notwithstanding the foregoing, following the Closing, Transferee may assign all of Transferee's rights under Section 19 below and Exhibit "D" that survive the Closing to any subsequent transferee of the Property without the consent of Transferor, but Transferee shall notify Transferor in writing of such assignment and the name and address of the applicable assignee. The party named in the Grant Deed in accordance with this Section 6 shall be referred to herein as the "Grantee".

7. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

8. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

9. EMAIL DELIVERY. This executed Agreement (and executed counterparts of this Agreement), may be delivered by email to Sallie Lim at Sallie@google.com for Transferor, and to the Director of Housing, with copies to Office of Economic Development and City Attorney for Transferee. Any party may change its recipients for purposes of this Section by giving notice to the other party as provided in Section 5 above.

10. TIME OF THE ESSENCE. Time is of the essence of this Agreement.

11. THIRD PARTIES. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement. Further, nothing contained in this Agreement, expressed or implied, shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Transferor and Transferor (and Grantee, if applicable).

Google Comments 5-11-21 **DRAFT**

12. SEVERABILITY. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13. ADDITIONAL DOCUMENTS. Each party hereto agrees to perform any further reasonable acts and to execute, acknowledge and deliver any further reasonable documents that may be reasonably necessary to carry out the provisions of this Agreement.

14. AUTHORITY OF CITY MANAGER. The City Manager or designee of Transferee may give any and all notices, consents and terminations hereunder on behalf of Transferee provided they are in writing. The City Manager or designee is authorized to execute, on behalf of the Transferee, deeds and all other documents as may be necessary to effectuate this Agreement and the transfer of property rights herein. Further, nothing stated herein in this Agreement shall in any way impinge upon the City's regulatory authority under federal, state, or local laws.

16. NO CONSTRUCTION AGAINST DRAFTER. This Agreement shall not be construed against the drafter hereof, it being acknowledged that each party has had an opportunity to review and negotiate the terms herein.

17. REMEDIES.

17.1 Default by Transferor. If Transferor fails to perform any of the obligations of Transferor set forth in this Agreement and fails to cure the same within ten (10) days after delivery of written notice from Transferee (provided that no such notice and cure period shall be applicable to Transferor's failure to deliver any documents or funds required for the Closing as set forth in Section 4 above), then as Transferee's sole and exclusive remedy, Transferee may terminate this Agreement upon written notice to Transferor and Escrow Holder. If Transferee elects to terminate this Agreement, then this Agreement shall automatically terminate, Transferor shall reimburse Transferee for the reasonable third party costs and expenses actually incurred by Transferee in performing the inspections and testing set forth in Section 3.1 above, and Transferor would not receive any IHO Fee credits for the Property and instead Transferor shall satisfy its IHO obligations by (a) identifying a site or sites in the Diridon Station Area Plan which can accommodate at least three hundred (300) affordable housing units as anticipated on the Property, (b) paying one hundred fifty percent (150%) of the IHO Fees due (the "IHO Fee Premium"), or (c) upon mutual agreement of Transferor and Transferee, Transferor shall work with Transferee to maintain yield by condominium-izing a portion of a high rise residential project for affordable housing. If Transferor satisfies its IHO obligations by the payment of the IHO Fee Premium pursuant to clause (b) above, the payment of the IHO Fee Premium shall be made in full to Transferee within thirty (30) days after Transferor's election of clause (b) above, and Transferor shall receive IHO Fee credits for that portion of the IHO Fee Premium equal to one hundred percent (100%) of the IHO fees due, but no credit for that portion of the IHO Fee Premium equal to the additional fifty percent (50%) owned as a result of the default.

Google Comments 5-11-21 **DRAFT**

17.2 Default by Transferee. If Transferee fails to perform any of the obligations of Transferee set forth in this Agreement and fails to cure the same within ten (10) days after delivery of written notice from Transferor (provided that no such notice and cure period shall be applicable to Transferee's failure to deliver any documents or funds required for the Closing as set forth in Section 4 above), then as Transferor's sole and exclusive remedy, Transferor may terminate this Agreement upon written notice to Transferee and Escrow Holder. If Transferor elects to terminate this Agreement, then this Agreement shall automatically terminate, and upon such termination, Transferor shall receive IHO Fee credits in the same amount as Transferor would have received under the DA and this Agreement if this Agreement has not been terminated due to Transferee's default and the Closing had occurred.

18. RELEASE. Except as otherwise expressly set forth in this Agreement, Transferee is acquiring the Property in its existing condition, "AS-IS, WHERE-IS, WITH ALL FAULTS", and as of the Closing, Transferee has made or has waived all inspections and investigations of the Property and its vicinity which Transferee believes are necessary to protect its own interest in, and its contemplated use of, the Property.

Except as otherwise expressly set forth in this Agreement, neither Transferor nor any entity associated or affiliated with Transferor, nor the agents, servants, officers, directors, employees, subsidiaries, divisions, affiliates or successors of Transferor, nor each of them, has made any representation, warranty, inducement, promise, agreement, assurance or statement, oral or written, of any kind to Transferee upon which Transferee is relying, or in connection with which Transferee has made or will make any decisions concerning the Property or its vicinity including, without limitation, its use, condition, value, square footage, compliance with applicable laws, existence or absence of hazardous substances, or the permissibility, feasibility, or convertibility of all or any portion of the Property for any particular use or purpose, including, without limitation, its present or future prospects for sale, lease, development, occupancy or suitability as security for financing.

Transferor hereby specifically disclaims all warranties implied by law arising out of or with respect to the execution of this Agreement, any aspect or element of the Property, or the performance of Transferor's obligations hereunder including, without limitation, all implied warranties of merchantability, habitability and/or fitness for a particular purpose.

Except as otherwise expressly set forth in this Agreement, Transferee hereby releases and forever discharge(s) Transferor and each and every entity associated or affiliated with Transferor, and the agents, servants, officers, directors, employees, subsidiaries, divisions, affiliates and successors of Transferor, and each of them, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, liabilities and demands, including without limitation any claim arising from and/or related to the Property (collectively "Claims"), which Claims are related to the physical and environmental condition of the Property, whether known or unknown, disclosed or undisclosed, anticipated or unanticipated, whenever accruing. In connection with the foregoing releases, Transferee acknowledges that it is familiar with and hereby waives the protections of Section 1542 of the California Civil Code, which reads:

Google Comments 5-11-21 **DRAFT**

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Notwithstanding the foregoing, the foregoing release shall not apply to (a) Transferor's default or breach of any obligation of Transferor set forth in this Agreement that survives the Closing, (b) any claims for personal injury, death, or damage to personal property based on events occurring prior to the Closing, (c) any claims to the extent arising from Transferor's intentional misrepresentation, or (d) any claims arising under Section 19 below or under Exhibit "D" that survive the Closing.

19. TRANSFEROR POST-CLOSING COVENANTS.

19.1 Environmental. Following the Closing, Transferor and Transferee (or Grantee, if applicable) shall comply with those certain terms and conditions set forth in Exhibit "D" attached hereto to be performed following the Closing.

19.2 Transferor's Work. Notwithstanding anything in this Agreement to the contrary, if despite Transferor using its commercially reasonable efforts in accordance with Section 4.5.2.4, Transferor's Work (other than Item 6 as set forth in Schedule 1 to Exhibit "C") is not Completed by the Closing as a result of any delays caused by Transferee or Force Majeure, then Transferee shall have no right to terminate this Agreement and the Closing shall occur on the Closing Date, provided that following the Closing, Transferor shall diligently pursue the remaining Transferor's Work to Completion (such remaining portion being the "Remaining Transferor's Work"). Notwithstanding the foregoing, it shall be a condition to the Closing in accordance with Section 4.5.2 above that Item 6 as set forth in Schedule 1 to Exhibit "C" shall be Completed by the Closing in accordance with Section 4.5.2.4 above. As security for the performance of the Remaining Transferor's Work, at the Closing, Transferor shall provide Transferee with a construction completion bond in an amount equal to the 1.5 times the cost to perform the Remaining Transferor's Work. Following the Closing, Grantee shall provide Transferor with reasonable access to the Property as necessary to perform the Remaining Transferor's Work.

19.3 Survival. The provisions of this Section 19 shall survive the Closing.

20. GRANTEE POST-CLOSING COVENANTS.

20.1 Condition of Property. Following the Closing, Grantee shall be responsible to keep the Property in good, clean and safe condition. In connection therewith, Grantee shall be responsible to maintain the Erosion Controls and the Fence (as such terms are defined in Schedule 1 to Exhibit "C" attached hereto) installed as part of Transferor's Work in good condition and repair, and to provide for adequate lighting and security prior to and during development and construction of the Property. The obligations set forth in this Section 20.1 shall also be set forth in the Grant Deed, which obligations shall run with the land of the Property.

Google Comments 5-11-21 **DRAFT**

20.2 Construction Rights-of-Way. Following the Closing, upon request from Transferor from time to time, Grantee shall grant Transferor a commercially reasonable construction right-of-way as may be reasonably necessary for the construction of the Project, provided that such construction rights-of-way do not materially interfere with the development and use of the Property for the Affordable Housing Development.

20.3 Construction Costs. Grantee shall bear all construction costs related to the Affordable Housing Development.

20.4 Realignment Work. During the performance of the Realignment Work (as defined in Schedule 1 to Exhibit “C” attached hereto) and following completion of the Realignment Work, if Grantee shall cause any damage to the Realignment Work, then Grantee shall repair such damage, and if such damage is caused following completion of the Realignment Work, Grantee shall restore the affected area to the condition immediately prior to the damage. All such repair and restoration by Grantee shall be at Grantee’s sole cost and expense.

20.5 Successors and Assigns. The provisions of this Section 20 shall be binding on Grantee and its successors and assigns. Grantee shall cause all such successors and assigns to be bound by the terms and conditions of this Section 20.

20.6 Survival. The provisions of this Section 20 shall survive the Closing.

21. INTENTIONALLY DELETED.

22. ATTORNEYS' FEES. Should legal action be brought by either party against the other for a default under this Agreement or to enforce any provision herein, the prevailing party in such action shall not be entitled to recover its attorneys' fees and costs from the other party. Each party to the legal action shall bear its own attorneys' fees and costs.

23. MEET AND CONFER PROCESS. Before sending a notice of default in accordance with Section 17 above, the party that may assert that the other party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other party to discuss the alleged failure and shall permit such party a reasonable period, but not less than thirty (30) days and not more than sixty (60) days, to respond to or cure such alleged failure. The party asserting such failure shall request that such meeting and conference occur within twenty (20) business days following the request and if, despite the “Good Faith Efforts” (as defined in the DA) of the requesting party, such meeting has not occurred within twenty (20) business days of such request, such party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 17 above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Google Comments 5-11-21 **DRAFT**

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

**TRANSFEROR:**

GOOGLE LLC, a Delaware limited liability  
company

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TRANSFeree:**

CITY OF SAN JOSÉ

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

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

PARCEL ONE:

ALL OF LOTS 12 AND 13, IN BLOCK 1, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF THE KEISER TRACT", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MAY 7, 1914 IN BOOK "O" OF MAPS, AT PAGE 49.

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF LORRAINE AVENUE (60 FEET WIDE) WITH THE NORTHWESTERLY LINE OF SAN CARLOS STREET (60 FEET WIDE) AS SAID AVENUE AND STREET ARE SHOWN UPON THAT CERTAIN MAP ENTITLED "MAP OF THE KEISER TRACT, BEING A SUBDIVISION OF LOTS 7 AND 12 OF SUNOL PARTITION WHICH MAP WAS FILED FOR RECORD ON MAY 7, 1914 IN BOOK "O" OF MAPS, AT PAGE 49, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, SAID POINT OF BEGINNING BEING ALSO THE MOST SOUTHERLY CORNER OF LOT 11 AS SAID LOT 11 IS SHOWN UPON SAID MAP; THENCE ALONG SAID NORTHEASTERLY LINE OF LORRAINE AVENUE NORTH 35 DEG. 55 MIN. 54 SEC. WEST 240.00 FEET TO THE POINT OF INTERSECTION OF SAID NORTHEASTERLY LINE WITH THE SOUTHEASTERLY LINE OF LORRAINE AVENUE, LAST SAID POINT BEING THE MOST WESTERLY CORNER OF LOT 12 AS SAID LOT 12 IS SHOWN UPON SAID MAP AND THE TRUE POINT OF BEGINNING; THENCE ALONG THE SOUTHWESTERLY EXTENSION OF SAID SOUTHEASTERLY LINE OF LORRAINE AVENUE SOUTH 54 DEG. 01 MIN. 47 SEC. WEST 30.00 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT 30.00 FEET, MEASURED AT RIGHT ANGLES, SOUTHWESTERLY FROM SAID NORTHEASTERLY LINE OF LORRAINE AVENUE; THENCE ALONG SAID PARALLEL LINE SOUTH 35 DEG. 55 MIN. 54 SEC. EAST 120.00 FEET; THENCE AT RIGHT ANGLES NORTH 54 DEG. 04 MIN. 06 SEC. EAST 30.00 FEET TO SAID NORTHEASTERLY LINE OF LORRAINE AVENUE, THENCE ALONG SAID NORTHEASTERLY LINE OF LORRAINE AVENUE NORTH 35 DEG. 55 MIN. 54 SEC. WEST 120.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL THREE:

LOTS 10 AND 11 IN BLOCK 1, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF THE KEISER TRACT, BEING A SUBDIVISION OF LOTS 7 AND 12 OF SUNOL PARTITION, SAN JOSE, CALIF.", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MAY 7, 1914 IN VOL. "O" OF MAPS, PAGE 49.



PARCEL FOUR:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF LORRAINE AVENUE (60 FEET WIDE) WITH THE NORTHWESTERLY LINE OF SAN CARLOS STREET (60 FEET WIDE) AS SAID AVENUE AND STREET ARE SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF THE KEISER TRACT BEING A SUBDIVISION OF LOTS 7 AND 12 OF SUNOL PARTITION", WHICH MAP WAS FILED FOR RECORD ON MAY 7, 1914 IN BOOK "O" OF MAPS AT PAGE 49, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, SAID POINT OF BEGINNING BEING ALSO THE MOST SOUTHERLY CORNER OF LOT 11, AS SAID LOT 11 IS SHOWN UPON SAID MAP; THENCE ALONG SAID NORTHEASTERLY LINE OF LORRAINE AVENUE NORTH 35 DEG. 55 MIN. 54 SEC. WEST 120.00 FEET TO THE POINT OF INTERSECTION OF SAID NORTHEASTERLY LINE WITH THE SOUTHEASTERLY LINE OF LOT 12, LAST SAID POINT BEING THE MOST SOUTHERLY CORNER OF LOT 12, AS SAID LOT 12, IS SHOWN UPON SAID MAP; THENCE ALONG THE SOUTHWESTERLY EXTENSION OF SAID LOT 12, SOUTH 54 DEG. 01 MIN. 47 SEC. WEST 30.00 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT 30.00 FEET, MEASURED AT RIGHT ANGLES, SOUTHWESTERLY FROM SAID NORTHEASTERLY LINE OF LORRAINE AVENUE; THENCE ALONG SAID PARALLEL LINE SOUTH 36 DEG. 55 MIN. 54 SEC. EAST 120.00 FEET TO A POINT IN SAID NORTHWESTERLY LINE OF SAN CARLOS STREET AS IT CROSSES LORRAINE AVENUE; THENCE ALONG SAID NORTHWESTERLY LINE OF SAN CARLOS STREET NORTH 54 DEG. 02 MIN. 20 SEC. EAST 30.00 FEET TO THE POINT OF BEGINNING.

PARCEL FIVE:

PORTION OF LOTS 2 THRU 7, BLOCK 3 AND PORTION OF LORRAINE AVENUE (VACATED BY RESOLUTION RECORDED IN BOOK 0643 OF OFFICIAL RECORDS, PAGE 469), MAP OF KEISER TRACT, FILED MAY 7, 1914 IN BOOK "O" OF MAPS, PAGE 49, SANTA CLARA COUNTY RECORDS, AS FOLLOWS:

BEGINNING AT THE EAST CORNER OF SAID LOT 5, BEING THE INTERSECTION OF THE SOUTHWEST LINE OF LORRAINE AVENUE AND NORTHWEST LINE OF SAN CARLOS STREET, AS SHOWN ON SAID MAP; THENCE ALONG SAID NORTHWEST LINE, S. 54° 02' 20" W. 38.13 FEET TO THE MOST SOUTHEAST CORNER OF LAND CONVEYED TO CITY OF SAN JOSE, BY DEED RECORDED IN BOOK 0655 OF OFFICIAL RECORDS, PAGE 35; THENCE ALONG THE GENERALLY NORTH AND EAST LINE OF SAID LAND, ALONG THE ARC OF A CURVE CONCAVE NORTHERLY WITH A RADIUS OF 50.00 FEET, THROUGH A CENTRAL ANGLE OF 107° 20' 06", A DISTANCE OF 93.67 FEET TO A POINT OF COMPOUND CURVATURE; THENCE ALONG THE ARC OF A CURVE CONCAVE EASTERLY WITH A RADIUS OF 550.00 FEET, THROUGH A CENTRAL ANGLE OF 19° 37' 49" A DISTANCE OF 188.44 FEET AND N. 1° 00' 15" W. 0.68 FEET TO A POINT IN THE SOUTHWEST LINE OF SAID LORRAINE AVENUE, DISTANT THEREON S. 35° 55' 54" E. 7.71 FEET FROM THE NORTH CORNER OF SAID LOT 2, BEING THE WEST CORNER OF LAND CONVEYED TO JOHN J. SCHIRO, ET UX, BY DEED RECORDED IN BOOK 0655 OF OFFICIAL RECORDS, PAGE 39; THENCE ALONG THE NORTHWEST, NORTHEAST AND SOUTHEAST LINE THEREOF, ALONG A

TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 18.26 FEET, THROUGH A CENTRAL ANGLE OF  $55^{\circ} 02' 02''$ , FOR AN ARC DISTANCE OF 17.54 FEET, N.  $54^{\circ} 01' 47''$  E. 14.30 FEET TO THE CENTERLINE OF SAID LORRAINE AVENUE, S.  $35^{\circ} 55' 54''$  E. 240 FEET ALONG SAID CENTERLINE TO THE NORTHWEST LINE OF SAID SAN CARLOS STREET AND S.  $54^{\circ} 02' 20''$  W. 30 FEET ALONG SAID LINE TO THE POINT OF BEGINNING.

APN: 259-47-040; 259-47-079; 259-47-038; 259-47-077; 259-47-080

**EXHIBIT "B"**

**FORM OF GRANT DEED**

**RECORDING REQUESTED BY:**

**WHEN RECORDED MAIL TO AND  
MAIL TAX STATEMENTS TO:**

**APN:**

SPACE ABOVE THIS LINE FOR RECORDER

**G R A N T D E E D**

**The Undersigned Grantor Declares: DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0; Recorded for the benefit of the City of San Jose and is exempt from transfer tax per Revenue and Taxation Code Section 11922 and exempt from recording fee per Government Code Section 6103 and/or 27383.**

[ ] computed on the consideration or full value of property conveyed, OR  
[ ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,  
[ ] unincorporated area; [X] **City of San Jose**, and  
[X] Signature of Declarant  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_ ("GRANTOR"), does hereby GRANT to \_\_\_\_\_ "GRANTEE", for valuable consideration, receipt of which is hereby acknowledged, all certain real property situate in the City of San José, County of Santa Clara, State of California, described in Exhibit "1" attached hereto and made a part hereof (the "Property").

By its signature hereon, Grantee, as the owner of the Property, hereby covenants and agrees that Grantee shall be responsible to keep the Property in good, clean and safe condition and to maintain attractive fencing, and to provide for adequate lighting and security prior to and during development and construction of the Property. The foregoing covenants and agreements shall be appurtenant to the Property and be binding on Grantee and each successor-in-interest to Grantee in the Property and every part thereof. It is the intention and understanding of the parties hereto that the foregoing covenants and agreements shall run with the land (as defined in California Civil Code Sections

1460 & 1462) of the Property and every part thereof in accordance with California Civil Code Section 1468.

Dated: \_\_\_\_\_, 202\_\_

**“GRANTOR”**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Dated: \_\_\_\_\_

**“GRANTEE”**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Dated: \_\_\_\_\_

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.

**ACKNOWLEDGEMENT**

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
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 \_\_\_\_\_ (Seal)

**Exhibit 1 to Grant Deed  
Legal Description**

[USE ONLY IF CITY IS GRANTEE]

Deed Acceptance

APN:

**DEED ACCEPTANCE**

This is to certify that the interest in real property conveyed by Grant Deed, dated \_\_\_\_\_, 202\_, from \_\_\_\_\_, a corporation under a holding agreement to the City of San Jose, a municipal corporation of the State of California, is hereby accepted by the undersigned officer of said City on behalf of the City Council of the City of San Jose, pursuant to authority conferred by the City Council of the City of San Jose on April 4, 1995 (shown as Item 9o on the April 4, 1995 City Council Agenda). The Grantee consents to recordation thereof by its duly authorized officer.

CITY OF SAN JOSE,  
A Municipal Corporation of the State of California

By: \_\_\_\_\_ Date: \_\_\_\_\_  
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.

### ACKNOWLEDGEMENT

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me,  
\_\_\_\_\_  
(insert name and title of officer)

Personally appeared  
\_\_\_\_\_,  
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 \_\_\_\_\_ (Seal)



## EXHIBIT "C"

### TRANSFEROR'S WORK

1. As used in this Agreement, "Transferor's Work" shall mean that certain work described on Schedule 1 attached hereto.
2. Following the date that Transferor reasonably anticipates that the condition in Section 4.5.1.2 will be satisfied, if at all, Transferor shall promptly prepare plans and specifications for Transferor's Work (the "Plans").
3. Upon finalizing the Plans, Transferor shall promptly and diligently pursue obtaining all permits necessary for Transferor's Work, subject to delays caused by Transferee or Force Majeure (as defined below) (the "Permitted Plans"). Transferor shall provide Transferee with a copy of the Permitted Plans. Upon receipt of the Permitted Plans, Transferor shall diligently perform Transferor's Work to Completion, subject to delays caused by Transferee or Force Majeure.
4. As used herein, "Completion" or "Completed" shall mean that Transferor's Work has been completed in accordance with the building permit(s) issued with respect to Transferor's Work and the City Building Division has completed its final inspection of Transferor's Work. Transferee shall diligently and in good faith process all submissions and requests from Transferor necessary for Transferor to perform Transferor's Work to Completion.
5. Notwithstanding anything in this Agreement to the contrary, in no event shall Transferor be obligated to commence or continue preparing the Plans or performing Transferor's Work if Transferor reasonably anticipates that the condition set forth in Section 4.5.1.2 will not be satisfied.
6. As used herein, "Force Majeure" shall mean any event or condition that: (i) is beyond Transferor's control; (ii) prevents Transferor's performance of this Agreement; (iii) Transferor could not have reasonably foreseen; and (iv) arises from one or more of the following: (1) naturally occurring events constituting an act of God; (2) unusually severe and abnormal climactic conditions (as compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Property); (3) strikes, stoppages or boycotts that affect a specific trade on a national or regional level, to the extent not caused by the acts or omissions of Transferor; (4) the unavailability of construction materials for projects similar to Transferor's project as contemplated in the DA (i.e. a large scale mixed-use project) that causes significant construction delays, or significant construction delays resulting from such materials being unusually difficult or impossible to obtain, or from defects, tariffs, embargoes, or trade disputes, where, in each case, Transferor is unable to obtain alternative or replacement materials, within the same or substantially similar time period at substantially the same cost (and without having to forfeit any significant deposits or advance payments); (5) acts of terrorism or war; (6) riots or other civil unrest; (7) a local, state or federal declaration of emergency based on an epidemic or pandemic, including any quarantine or other health-related orders, directives, regulations, laws or other requirements implemented in response to such epidemic or pandemic; (8) orders issued by any other governmental body having jurisdiction over the Project; (9) casualty; or (10) condemnation unrelated to DISC or other transit project(s). Neither the inability of Transferor to obtain construction financing for Transferor's

project nor the condition of, or changes in, the real estate market shall constitute a Force Majeure event, except to the extent such inability or changes result from a Force Majeure event.

## **SCHEDULE 1 TO EXHIBIT “C”**

### **SCOPE OF TRANSFEROR’S WORK**

1. Establish erosion and sediment controls on the boundary of the Property (the “Erosion Controls”) and fence off the Property on all street frontages (the “Fence”)
2. Disconnect and cap all utilities on the Property, and furnish a survey to Transferee of the terminated locations
3. Abate any hazardous materials contained within the buildings to the extent required by law prior to demolishing such buildings, and demolish any buildings
4. Remove slabs, footings, piles to a depth of 4 feet below the surface and asphalt parking lots
5. Rough grade the Property without imported fill or compaction, except in areas of the site where removal is required in accordance with Item 6 below and Exhibit “D”
6. Remove existing contaminated soil pursuant to the RAP (as defined in Exhibit “D” attached hereto)
7. Backfill areas removed pursuant to Item 6 above with clean (per DTSC's "Information Advisory Clean Imported Fill Material", dated October 2001) engineered fill, and compact to provide a free draining surface
8. Realign West San Carlos and South Montgomery Streets adjacent to the Property in accordance with the “Downtown West Design Standards and Guidelines” (as defined in the DA), including street improvements to the center line, curbs, gutters sidewalks, street furnishings, signage & street trees in accordance with the Downtown West Design Standards and Guidelines (the “Realignment Work”)

## EXHIBIT “D”

### ENVIRONMENTAL WORK

1. Transferor will retain an outside environmental consultant (“**Transferor’s Environmental Consultant**”) with suitable experience in reviewing and overseeing the remediation work to be undertaken on the Property. Transferor will contract with this consultant and be solely responsible for the work of this consultant.
2. Transferor will seek approval of a new Remedial Action Plan (“**RAP**”) from the Department of Environmental Health or other environmental regulatory agency(ies) with jurisdiction that Transferor may be referred to by the Department of Environmental Health (“**DEH**”) to address the volatile organic compounds (“**VOCs**”) and any other contaminants of concern to the DEH (“**COCs**”) currently present in soil, soil vapor and groundwater at the Property (“**Environmental Conditions**”), including, but not limited to, those which are the subject of open Geotracker case FORMER TRUE DRIVE-IN CLEANERS (T10000011874).
3. The RAP will be designed to address the Environmental Conditions to allow construction of a concrete foundation structure without an occupiable basement on the entirety of the Property, with a passive vapor intrusion mitigation system integrated into the foundation system which has the capability of being activated, if needed (“**VIMS**”) (collectively, the “**Intended Design**”) with the ground floor limited to parking and/or commercial uses and/or resident support/offices/community space only and with residential uses allowed only on the second floor and above (the “**Intended Use**”). On or before the Closing, the Property will be restricted to the Intended Design and Intended Use in a Land Use Covenant for the Property and/or the Grant Deed.
4. The RAP will provide that Transferor will excavate and dispose of VOCs and COCs impacted soil, to the extent required by DEH for the Intended Design and the Intended Use, at an appropriate disposal facility (“**Soil Removal Work**”). The RAP will also include remedial actions to be implemented by Transferor to address DEH requirements for the groundwater (“**Groundwater Work**”). The RAP will be designed to meet all applicable environmental regulatory requirements to allow for the Intended Use in combination with the Intended Design. Any ongoing work of Transferor (after the Closing) shall not interfere with Transferee’s planned Affordable Housing Development and shall be accessed from outside the property line and not disturb the vapor barrier or the other elements of the VIMS. The RAP will also provide that Transferee or the Designee that builds the building on the Property will install, maintain and monitor the passive VIMS (with the ability to convert to an active VIMS through the addition of a fan or motor and shall activate it if and when required by DEH) (collectively, “**VIMS OMM**”).
5. Transferor will be responsible for implementing at its cost the Soil Removal Work in a commercially reasonable manner and timeframe, subject to the Catastrophic Cost Increase

provisions below. If the costs of implementing the Soil Removal Work are equal to or greater than Six Million One Hundred Thirty Thousand Dollars (\$6,130,000) (such amount being a “**Catastrophic Cap**” and such event being a “**Catastrophic Cost Increase**”), then, Transferor may decide not to transfer the Property to Transferee. If a Catastrophic Cost Increase occurs, then Transferor shall not be in default under this Agreement and instead Transferor shall satisfy its IHO obligations by (a) identifying a site or sites in the Diridon Station Area Plan which can accommodate at least three hundred (300) affordable housing units as anticipated on the Property, (b) paying one hundred fifty percent (150%) of the IHO Fees due, or (c) upon mutual agreement of Transferor and Transferee, Transferor shall work with Transferee to maintain yield by condominium-izing a portion of a high rise residential project for affordable housing. Transferor shall be solely responsible for completing the Groundwater Work after the Closing, at Transferor’s sole cost and expense, and for obtaining a no further action letter (“**NFA**”) from the DEH, except as to the responsibility of Transferee or the Designee for the VIMS and the VIMS OMM as set forth herein.

6. As a condition to the Closing, Transferor’s Environmental Consultant shall have issued a report, which may be relied upon by both Transferor and Transferee, confirming that the Soil Removal Work has been completed as required by the RAP for the Intended Design and Intended Use.
7. Transferor shall provide the NFA to Transferee (or then owner of the building) after receipt, which will occur after the Groundwater Work is complete.
8. Transferee will pay a maximum of Five Hundred Thousand Dollars (\$500,000) for the VIMS and VIMS OMM (“**Baseline Costs**”). If the costs of the VIMS and VIMS OMM for the Intended Design and Intended Use, any ongoing monitoring, as well as without limitation, DEH oversight and permitting costs, in the approved final RAP (or associated documents) are in excess of Baseline Costs (“**Excess Costs**”), as determined immediately prior to the Closing by an independent consultant retained by Transferor and acceptable to Transferee (“**RAP Consultant**”) then the following provisions shall apply. The RAP Consultant will estimate costs (both operational and installation hard costs) based on unescalated dollars.
  1. If the Excess Costs, plus the costs of (A) the Soil Removal Work costs and (B) the other anticipated Transferor clean-up costs ((A) and (B) collectively, “**Transferor Remediation Costs**”), are equal to or more than the Catastrophic Cap, then Transferor may elect to follow the procedures provided in subsection (e) above for Catastrophic Cost Increases.
  2. If the Excess Costs, plus the Transferor Remediation Costs, are less than the Catastrophic Cap, Transferor shall fund the Excess Costs to Transferee at the Closing and Transferee shall hold and invest the Excess Costs in trust to pay the Excess Costs as they accrue over time.

9. Transferor will keep Transferee informed of the timing and status throughout the RAP approval process, including providing Transferee with the draft and final RAP.
10. Following the Closing, Transferor will respond at its sole cost and expense to any inquiries, orders or actions from any regulatory agency with respect to the Groundwater Work or the Environmental Conditions other than the "Building Conditions". The term "**Building Conditions**" shall mean the conditions inside of the future building and/or parking area in the building, including, without limitation, indoor air conditions.
11. Transferor will pay all agency oversight and permitting costs associated with the RAP and obtaining the NFA.
12. To the fullest extent permitted by law, Transferor shall indemnify, defend and hold harmless Transferee for any and all claims for response costs or response actions or any third party claims associated with the Groundwater Work or the Environmental Conditions but excluding the Building Conditions. Additionally, following the Closing, Transferor shall indemnify, defend, and hold harmless Grantee against any and all third party actions or claims for death or personal injury to the extent such actions or claims are caused by alleged exposure to environmental contamination existing at the Property which exposure occurred prior to the Closing and such actions or claims first accrued prior to the Closing. The indemnity and defense obligations of Transferor shall survive the Closing. Notwithstanding the foregoing, in no event shall such indemnity and defense obligation of Transferor apply to the extent that any actions or claims arise from the negligence or willful misconduct of Transferee or Grantee.
13. Transferor shall have no responsibility or liability for the Building Conditions, VIMS or the VIMS OMM, including, without limitation, its installation, its failure, its maintenance, repair, operation or monitoring and no responsibility for any claims arising out of the Building Conditions, VIMS, the VIMS OMM, soil vapor, indoor air and/or any claims arising from failure of these systems.
14. Transferee and Transferor agree that all cost amounts set forth herein or determined hereafter pursuant to its terms are the cost as of the "Effective Date" of the DA and shall be subject to "Annual Increases" (as such terms are defined in the DA).

**DRAFT**  
**PROPERTY TRANSFER AGREEMENT**  
**(H5)**

THIS PROPERTY TRANSFER AGREEMENT (this “Agreement”) is dated as of \_\_\_\_\_, 20\_\_, and is entered into by and between the CITY OF SAN JOSE, a California municipal corporation (“Transferee”), and GOOGLE LLC, a Delaware limited liability company (“Transferor”).

**RECITALS**

A. Transferor is the owner of the land depicted on Exhibit “A” and any improvements and fixtures thereon (collectively, the “Property”).

B. Exhibit “D” of that certain Development Agreement between Transferor and Transferee adopted by Ordinance No. \_\_\_\_\_ (the “DA”) contemplates and requires that Transferor and Transferee enter into this Agreement, and the date of this Agreement shall be the Effective Date of the DA, as defined in Section 2.1 thereof.

C. The Property is located within Transferor’s proposed Downtown West Mixed-Use Plan that is the subject of the DA (the “Project”).

D. Transferor is currently seeking “Approvals” (as such term is defined in the DA), including, without limitation, a Vesting Tentative Map (the “Tentative Map”).

E. Transferee intends to develop the Property with an affordable housing development as more particularly described in the DA in accordance with and subject to the DA (the “Affordable Housing Development”).

NOW, THEREFORE, in consideration of the foregoing recitals, the DA, and other valuable consideration, the sufficiency of which are hereby acknowledged, Transferee and Transferor hereby agree as follows:

1. **TRANSFER OF PROPERTY.**

1.1 **Closing.** Subject to the terms and conditions of this Agreement, the conveyance of the Property by Transferor to Transferee (the “Closing”) shall occur on the date (the “Closing Date”) selected by Transferor upon at least sixty (60) days’ prior written notice to Transferee (the “Closing Notice”), provided that in no event shall the Closing Date occur later than date that is twelve (12) months from the date on which Transferor’s obligation to perform the “Early H5 Work” (as defined in the DA) is triggered pursuant to Exhibit D of the DA (“Closing Deadline”).

Upon delivery of the Closing Notice to Transferee, Transferee shall have the right to further inspect the Property, pursuant to the terms set forth in Section 3.1 below, to determine if the conditions for Transferee’s benefit as set forth in Section 4.5.2 below have been satisfied.

## **DRAFT**

Transferee shall have no right to terminate this Agreement or delay the Closing if Transferee is unable to secure funds or other commitments to enable the construction of the Affordable Housing Development. Notwithstanding the foregoing, following Transferor's delivery of the Closing Notice, Transferee shall have the right to extend the Closing Date two (2) times for one hundred eighty (180) days each (each, an "Extension Period" and the first such extension of the Closing Date being the "Extended Closing Date" and the second such extension being the "Outside Closing Date") if Transferee has not identified the "Designee" (as defined in Exhibit D of the DA) by the date that is five (5) business days prior to the originally scheduled Closing Date or Extended Closing Date, as applicable, by providing Transferor with written notice of the status of Transferee's efforts to identify the Designee together with documentation evidencing Transferee's "Good Faith Efforts" (as defined in the DA) to identify and select the Designee, which notice Transferee shall give to Transferor on or before the date that is five (5) business days prior to the originally scheduled Closing Date or the Extended Closing Date, as applicable. If Transferee has not identified and selected the Designee by the scheduled Closing Date, the Extended Closing Date or the Outside Closing Date, as applicable, then Transferee shall take title the Property in Transferee's name or be in default of this Agreement. For the avoidance of doubt, identification and selection of the Designee shall not be a condition to the Closing. If as a result of the foregoing extensions the Extended Closing Date or the Outside Closing Date would occur after the Closing Deadline, then the Closing Deadline shall be extended to coincide with the Extended Closing Date or the Outside Closing Date, as applicable.

If Transferee extends the Closing Date for an Extension Period, then Transferee shall reimburse Transferor for (i) property taxes payable with respect to the Property during such Extension Period ("Taxes"), and (ii) Transferor's costs to light, fence, insure and maintain the Property in a clean and safe manner during such Extension Period ("Operating Expenses"), which reimbursement shall be made within thirty (30) days after request from Transferor (which request shall include reasonable back-up documentation). If Transferee fails to pay such reimbursement to Transferor within such thirty (30) day period, then at Transferor's election, all or a portion of such unpaid amount shall be converted to IHO Fee credits for Transferor's account; provided, however, that in no event shall the IHO Fee credits for the Operating Expenses exceed \$200,000, escalated in accordance with the Engineering News Record (ENR) Construction Cost Index for the San Francisco Urban area published by McGraw Hill on January 1 of every year, or its successor publication. For the avoidance of doubt, such cap on IHO Fee credits shall not apply to Taxes.

For the avoidance of doubt, no extension of the Closing or the Closing Deadline by Transferee pursuant to this Section 1.1 shall delay the issuance of the Temporary Certificate of Occupancy for the next market-rate residential building in the Project.

If Transferee identifies the Designee by the Closing, then concurrently with the Closing (but not before), Transferee and the Designee shall enter into an Assignment and Assumption Agreement in a form reasonably acceptable to Transferor (the "Designee Assignment Agreement"), to be effective as of the Closing, whereby (a) Transferee assigns to the Designee all of Transferee's rights under Section 19 below that survive the Closing, and (b) the Designee



## **DRAFT**

assumes all obligations of Transferee under this Agreement that survive the Closing (including, without limitation, pursuant to Sections 19 and 20 below).

1.2 Consideration. The “Purchase Price” for the Property shall be \$1.00.

In addition, upon the Closing, Transferor shall receive “IHO Fee” (as defined in the DA) credits for the transfer of the Property to Transferee (or the Designee, if identified by Transferee) as calculated pursuant to the DA, provided that if Transferee extends the Closing for an Extension Period or if Transferor incurs any delays in the performance of any of its obligations under this Agreement or the DA caused by Transferee, then Transferor shall receive such IHO Fee credits as of the originally scheduled date of the Closing as set forth in the Closing Notice (without regard to any Extension Period or the amount of delay caused by Transferee).

Notwithstanding anything in this Agreement to the contrary, upon the execution of this Agreement, Transferee shall pay to Transferor \$1.00 as independent consideration for the Initial Inspection Period (as defined in Section 3.1 below) and Transferee’s rights under this Agreement. Such independent consideration shall be nonrefundable to Transferee in all events.

## 2. TITLE.

2.1 General. Title to the Property shall be conveyed by the Grant Deed and shall be evidenced by an ALTA Standard Coverage Form of Owner’s Policy of Title Insurance (or an ALTA Extended Coverage Form Policy, if Transferee elects such coverage and provides an ALTA Survey to the title company) (“Title Policy”). The Title Policy shall be issued by First American Title Insurance Company; Title Officer(s): Rosalind McCaskill or if unavailable, another Title Officer from First American Title Insurance Company (“Title Company”), with liability in an amount reflective of fair market value at the time of Closing as reasonably determined by Grantee (the “Agreed Value”), insuring title to the Property as vested in Transferee, free and clear of all liens and encumbrances and other matters affecting title to the Property, except (a) the lien for assessments not yet delinquent, (b) any exceptions recorded in connection with obtaining the Approvals or required in order to satisfy the Approvals, (c) any easements, covenants, conditions and restrictions recorded in connection with the development of the Project consistent with the Approvals, (d) any exceptions caused by the acts or omissions of Transferee, and (e) title exceptions which Transferee has approved in writing (or is deemed to have approved) pursuant to this Section 2.1 and Section 2.2 below (which (a) through (e) shall constitute “Approved Title Exceptions”).

Upon the execution hereof, Transferor shall obtain a current title/preliminary report from Title Company and shall email it to Transferee (with hyperlinks to title exception documents) to the Transferee representatives set forth in Section 9 below or to such other representatives as Transferee may designate. Transferee shall have until the expiration of the Initial Inspection Period to review such report and exceptions, and any survey obtained by Transferee. If Transferee disapproves any matter affecting title (except Monetary Liens (as defined below), which shall be released upon and as a condition to Closing), then Transferee may terminate this Agreement by written notice to Transferor given on or prior to the expiration of the Initial Inspection Period. If

## **DRAFT**

Transferee does not elect to terminate this Agreement on or prior to the expiration of the Initial Inspection Period, then Transferee shall be deemed to have approved all matters affecting title (except Monetary Liens), which shall constitute Approved Title Exceptions, and Transferee shall have no further right to terminate this Agreement pursuant to this Section 2.1.

As used herein, “Monetary Liens” shall mean all liens secured by deeds of trust securing loans made to Transferor, mechanics’ liens relating to work contracted for by Transferor, judgment liens against Transferor, and delinquent real property taxes, provided that if Transferee is the Grantee, Monetary Liens shall include real property taxes for the property tax period in which the Closing occurs and all prior property tax periods in accordance with Section 4.7 below.

2.2 Acts After Date of Agreement. Subject to Section 4.5 below, during the period from the date of this Agreement through the Closing: (a) Transferor shall not record, or permit to be recorded, any document or instrument relating to the Property without Transferee’s consent, which consent shall not be unreasonably withheld, conditioned or delayed; (b) Transferor shall operate, manage and maintain the Property in the ordinary course and consistent with Transferor’s practices as of the date of this Agreement; and (c) Transferor shall not enter into any new leases for the Property or amend any existing leases for the Property without Transferee’s consent, which consent may be withheld in Transferee’s sole and absolute discretion, provided that Transferee’s consent shall not be required for any lease that has a term expiring on or before the Closing.

2.3 Possession; Termination of Leases. Exclusive possession of the Property shall be delivered to Transferee upon the Closing free of any tenants or occupants (subject to Section 4.5.2.3 below). Transferee shall have no obligations to Transferor or any occupant or prior occupant with respect to any personal property not removed by the Closing.

To the fullest extent permitted by law, Transferor shall defend, indemnify and hold Transferee harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorneys’ fees and costs, and relocation costs and benefits payable by Transferee under California law) solely to the extent filed by a tenant of the Property and arising from Transferor’s termination of any lease of the Property, or any claim by any occupant under such lease regarding its personal property on the Property not removed by the Closing. Transferor’s obligations hereunder shall survive the Closing.

### 3. TRANSFEROR DISCLOSURES; TRANSFEEE INSPECTIONS.

3.1 Initial Inspection Period. From the date of execution hereof until the date that is ninety (90) days after the date of this Agreement (the “Initial Inspection Period”), subject to the terms and conditions set forth in this Section 3.1, Transferee may conduct, at Transferee’s sole expense, such inspections and testing of the Property, including any improvements thereon, soils and ground water, as Transferee may desire or deem appropriate, in Transferee’s sole discretion. In conducting such inspections and testing, Transferee shall endeavor to minimize damage to the Property, and any improvements thereon, and shall, promptly following such inspections and testing (unless otherwise approved by Transferor, in its sole and absolute

## **DRAFT**

discretion), return the Property, including the improvements thereon, if any, to its condition prior to Transferee's inspections and testing. Subject to the terms and conditions of this Section 3.1, Transferor hereby grants to Transferee and its authorized employees, representatives, agents and contractors, permission and a license to enter upon the Property for the purpose of conducting such inspections and testing. Transferee shall provide Transferor with at least ten (10) days' prior written notice of its desire to enter the Property for any such inspections or testing, and any such inspections or testing shall be conducted at a time and manner reasonably approved by Transferor. Transferor shall have the right to be present at any such inspections or testing. In the event the Property is occupied by any person(s) other than Transferor, such access by Transferee shall be subject to the rights of such existing occupant(s). Transferor shall endeavor to make arrangements with such person(s) to ensure access by Transferee or its authorized employees, representatives, agents and contractors in order to conduct the inspections and testing, provided that in connection with such inspections and testing, Transferee shall endeavor to minimize interference with such existing occupant(s). Prior to conducting any inspections or testing, Transferee and its third party representatives, agents and contractors shall deliver to Transferor evidence of insurance in form and amount reasonably acceptable to Transferor, covering Transferor as an additional insured. Transferee shall indemnify, protect, defend (with legal counsel reasonably acceptable to Transferor) and hold Transferor harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising from, related to or caused by, Transferee's entry upon the Property or the performance of any inspection or test conducted by or at the request of Transferee or its contractors or agents (but not the results thereof unless same resulted from the exacerbation of existing conditions by Transferee). In the event Transferee determines the Property is not suitable, then Transferee may terminate this Agreement by written notice to Transferor given prior to the end of the Initial Inspection Period. If Transferee does not elect to terminate this Agreement on or prior to the expiration of the Initial Inspection Period, then Transferee shall be deemed to have approved the Property and Transferee shall have no further right to terminate this Agreement pursuant to this Section 3.1.

Notwithstanding anything in this Section 3.1 to the contrary, Transferee shall not be permitted to undertake any air sampling or any intrusive or destructive testing of the Property, including, without limitation, a "Phase II" environmental assessment, nor will Transferee be entitled to directly contact or communicate with the California Regional Water Quality Control Board, United States or California Environmental Protection Agency or other local, state or federal agency regarding the environmental condition of the Property other than requests for documentation or records relating to the Property, without in each instance first obtaining Transferor's prior written consent thereto, which consent Transferor may give or withhold in Transferor's sole and absolute discretion. Notwithstanding the foregoing, if Transferee's Phase I environmental assessment contains a recommendation for Phase II environmental assessment based on Transferee's proposed use of the Property, Transferee shall have the right to conduct a Phase II environmental assessment without Transferor's consent; provided, however, that Transferee's consultant for any Phase II environmental assessment shall be subject to Transferor's reasonable approval. Further, if, as part of the Due Diligence Information, Transferor provides a Phase I environmental assessment on which Transferee can rely, and that Phase I environmental assessment concludes that a Phase II environmental assessment is not recommended for

## **DRAFT**

Transferee's proposed use of the Property, then Transferee shall have no right to conduct a Phase II environmental assessment.

Transferee shall deliver to Transferor copies of any environmental reports and remediation cost estimates obtained by Transferee in the course of its inspections.

Notwithstanding California Civil Code Section 1103.1(a)(9), Transferor shall deliver to Transferee, with reasonable diligence after the execution of this Agreement and at Transferor's cost, a Natural Hazard Disclosure Statement (described in California Civil Code Section 1103.2) prepared by Escrow Holder (as defined in Section 4.1 below) (or its designee) (the "Expert"). Transferee acknowledges and agrees that for purposes of California Civil Code Section 1103.4(c), the Expert is an expert in natural hazard discovery and the Natural Hazard Disclosure Statement is sufficient compliance for application of the exemption provided by Section 1103.4(a) of the California Civil Code.

Transferor has previously delivered to Transferee certain environmental reports with respect to the Property (the "Environmental Reports"). Transferee acknowledges and agrees that Transferor has acted reasonably in relying on the Environmental Reports and the delivery of the Environmental Reports to Transferee constitutes written notice under California Health and Safety Code Section 25359.7.

Prior to the date of this Agreement, Transferor delivered to Transferee the most recent environmental studies, soils studies, and surveys, and plans, specifications, maps, surveys and other similar materials relating to the physical and environmental condition of the Property in Transferor's possession (collectively, the "Due Diligence Items"). Transferor represents and warrants to Transferee that to Transferor's actual knowledge, the Due Diligence Items are accurate and complete duplications of the copies or originals thereof in Transferor's possession. The foregoing representation and warranty of Transferor shall survive the Closing for a period of one (1) year following the Closing.

#### 4. ESCROW.

4.1 Escrow Holder. The escrow shall be opened with First American Title Insurance Company ("Escrow Holder"), within five (5) business days after the date of this Agreement and Transferor depositing a copy of this executed Agreement with Escrow Holder. This document shall be considered as the escrow instructions between the parties, with such further instructions consistent with this Agreement as Transferee, Transferor, or Escrow Holder requires in order to clarify the duties and responsibilities of Escrow Holder.

4.2 Closing. For the purposes of this Agreement, "Closing" shall be the date on which the Grant Deed for the Property in favor of Transferee (or the Designee, if identified by Transferee by such date) is recorded in the Official Records of the Santa Clara County Recorder's Office, or if the Closing occurs on a gap basis, the date that Escrow Holder is irrevocably committed to record the Grant Deed.

## **DRAFT**

Transferee shall have no right to terminate this Agreement as a result of any loss or damage, or any condemnation or eminent domain, except as expressly set forth in the paragraph below.

Notwithstanding the foregoing, if, due solely to Transferor's actions, the Property is reduced in size by more than five percent (5%) from its current size as described in Exhibit "A", then Transferor shall have the right to (a) provide a replacement site to Transferee, which site shall be acceptable to Transferee's Director of Housing in his or her sole and absolute discretion, or (b) if no such replacement site is available, as reasonably determined by Transferor, or if Transferee rejects such replacement site as set forth above, then either Transferor or Transferee may terminate this Agreement. Transferee shall have the right to conduct due diligence and inspect any replacement site consistent with the provisions in Section 3.1 above, expressly including the right to conduct Phase I and Phase II environmental assessments, as appropriate; provided, however, that Transferee's consultant for any Phase II environmental assessment shall be subject to Transferor's reasonable approval. If Transferee does not reject such replacement site within either ninety (90) days or if Transferee's Phase I environmental assessment contains a recommendation for Phase II environmental assessment based on Transferee's proposed use of the replacement site, then within one hundred twenty (120) days, after written notice from Transferor and Transferee's receipt of copies of all Due Diligence Items for the replacement site in Transferor's possession, then Transferee shall be deemed to have accepted such replacement site and the term "Property" as used in this Agreement shall be deemed to mean such replacement site. Notwithstanding the foregoing, if, as part of the Due Diligence Information, Transferor provides a Phase I environmental assessment on which Transferee can rely, and that Phase I environmental assessment concludes that a Phase II environmental assessment is not recommended for Transferee's proposed use of the replacement site, then Transferee shall have no right to conduct a Phase II environmental assessment.

In the event any condemnation or eminent domain (that was not initiated by Transferee) occurs prior to the Closing, and provided that the paragraph above does not apply, then upon the Closing, (a) Transferor shall receive IHO Fee credits for the transfer of the Property as calculated pursuant to the DA (without regard to the taking), and (b) Transferor shall assign to Transferee all of Transferor's interest in and to the condemnation or eminent domain proceeds attributable to the value of the Property so taken.

4.3 Transferor Required to Deliver. Before the Closing, Transferor shall deposit into escrow the following:

4.3.1 A grant deed conveying the Property to Transferee (or the Designee, if identified by Transferee), in the form attached hereto as Exhibit "B", duly executed by Transferor and acknowledged (the "Grant Deed"); and

4.3.2

4.3.3 Any other documents reasonably required by Escrow Holder or the Title Company to be deposited by Transferee to carry out this escrow.

## **DRAFT**

4.4 Transferee Required to Deliver. On or before the Closing, Transferee shall deposit into escrow the Purchase Price and the following (properly executed and acknowledged, if applicable):

4.4.1 If Transferee is acquiring title (*i.e.*, has not identified the Designee and has not assigned this Agreement in accordance with Section 6 below), an executed and acknowledged “Certificate of Acceptance” in the form attached to the Grant Deed (attached hereto as Exhibit “B”);

4.4.2 The Designee Assignment Agreement, if applicable, pursuant to Section 1.1 above; and

4.4.3 Any other documents reasonably required by Escrow Holder to be deposited by Transferee to carry out this escrow.

4.5 Conditions to the Closing. Escrow shall not close unless and until both parties have deposited with Escrow Holder all sums and documents required to be deposited as provided in this Agreement. Additionally:

4.5.1 Transferor’s obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of the following condition(s) precedent, which is/are for Transferor’s benefit and may be waived only by Transferor:

4.5.1.1 Transferee shall have performed all agreements to be performed by Transferee hereunder.

4.5.1.2 Transferor is obligated to transfer the Property by the date that is twelve (12) months from the date on which Transferor’s obligation to perform the Early H5 Work is triggered pursuant to Exhibit D of the DA.

4.5.1.3 If this Agreement has been assigned to a Designee, then such Designee shall have certified to Transferor in writing that Designee has obtained commitments to sufficiently fund the Affordable Housing Development on the Property.

4.5.2 Transferee’s obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of all of the following conditions precedent, which are for Transferee’s benefit and may be waived only by Transferee:

4.5.2.1 Transferor shall have performed all agreements to be performed by Transferor hereunder.

4.5.2.2 Title Company shall have issued or shall have committed to issue the Title Policy to Transferee, for the amount of the Agreed Value, showing fee title to the Property to be vested in Transferee (or the Designee, if identified by Transferee) subject only to the Approved Title Exceptions.

## **DRAFT**

4.5.2.3 Transferor shall have: (i) caused any and all leases affecting the Property to have been terminated; (ii) provided Transferee with reasonable evidence of such termination; and (iii) removed any holdover tenants.

4.5.2.4 Transferor shall have caused Transferor's Work to be Completed, subject to the terms and conditions set forth in Exhibit "C" attached hereto. Transferor shall use commercially reasonable efforts to satisfy the condition set forth herein on or before the Closing. Transferor shall not be in default of this Agreement if, despite using its commercially reasonable efforts, Transferor does not satisfy the conditions above on or before the Closing. Notwithstanding anything in this Agreement to the contrary, if despite Transferor using its commercially reasonable efforts, Transferor's Work is not Completed by the Closing as a result of any delays caused by Transferee or Force Majeure (as defined in Exhibit "C"), then the provisions of Section 19.2 shall control.

4.5.2.5 There shall have been no material adverse change in the environmental condition of the Property.

Additionally, Transferor's and Transferee's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of the following condition precedent, which is for both parties' benefit and may not be waived by either party: Transferor shall cause the Property to become a legal parcel for conveyance, at Transferor's sole cost and expense. Transferor shall use commercially reasonable efforts to satisfy the condition set forth herein on or before the Closing. Transferor shall not be in default of this Agreement if, despite using its commercially reasonable efforts, Transferor does not satisfy the conditions above on or before the Closing.

If any of the conditions to Closing set forth in this Agreement are not timely satisfied for a reason other than a default of Transferee or Transferor under this Agreement, and this Agreement is terminated, then upon termination of this Agreement, Escrow Holder shall promptly return to Transferee all funds (and all interest accrued thereon) and documents deposited by Transferee in escrow and to return to Transferor all funds and documents deposited by Transferor in escrow and which are held by Escrow Holder on the date of the termination (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party under Section 4.10 below).

4.6 Recordation of Grant Deed; Delivery of Funds and Possession. On the Closing, upon receipt of the funds and instruments described in this Section 4, Escrow Holder shall cause the Grant Deed to be recorded in the office of the County Recorder of Santa Clara County, California. Thereafter, Escrow Holder shall deliver the proceeds of this escrow (less appropriate charges as shown on a preliminary Settlement Statement executed by Transferee and Transferor) to Transferor, and Transferor shall deliver possession of the Property to Transferee free and clear of all occupants, subject to Section 4.5.2.3 above.

4.7 Prorations. Property taxes shall not be prorated as Transferee is exempt from property taxes; Transferor shall pay all property taxes for the six month property tax billing

## **DRAFT**

period in which the Closing occurs, and then may apply for a refund of the property taxes that are allocable to the period after the Closing, and Transferee shall cooperate in good faith therewith. All assessments shall be prorated between Transferee and Transferor as of the Closing based on the latest available tax information. All prorations shall be determined on the basis of a 360-day year. Notwithstanding the foregoing, if Transferee is not directly acquiring title (*i.e.*, Transferee has identified the Designee or has assigned this Agreement in accordance with Section 6 below) and such Designee or assignee is not exempt from property taxes, then property taxes shall be prorated at Closing on an accrual basis, and Transferor shall retain the rights to any refunds of the property taxes for periods prior to the Closing.

4.8 Costs. Transferor shall pay the premium for the Title Policy (excluding the cost of extended coverage and any survey obtained by Transferee in connection with such extended coverage, which shall be paid by Transferee), the escrow fees, the recording costs [if any], any documentary transfer taxes, and any other closing costs or charges charged by Escrow Holder or Title Company not expressly provided for herein. Notwithstanding the foregoing, if Transferee is not directly acquiring title (*i.e.*, Transferee has identified the Designee or has assigned this Agreement in accordance with Section 6 below) and there are any closing costs charged as a result of the Property being transferred directly to such Designee or assignee (e.g., documentary transfer tax or recording fees, where there would otherwise be none if the Property was deeded directly to Transferee), then (a) such closing costs shall be determined based on the Agreed Value, notwithstanding that the Purchase Price is \$1.00, and (b) Transferee or such Designee or assignee shall be responsible for such closing costs.

4.9 Brokers. Transferee and Transferor represent to one another that except for any broker engaged by Transferor, no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement, or to its knowledge is in any way connected with such transaction. Transferor shall pay commissions to any broker engaged by Transferor in accordance with the agreement between Transferor and such Broker. Each party covenants and agrees that any other broker fee or commission, which may be due or payable in connection with the closing of the transaction contemplated by this Agreement through its dealings with that party, shall be borne solely by that party.

4.10 Escrow Cancellation Charges. In the event that this escrow shall fail to close by reason of the default of either party hereunder, the defaulting party shall be liable for all escrow and title cancellation charges. In the event that the escrow shall fail to close for any other reason, each party shall pay one-half (1/2) of all escrow and title cancellation charges.

5. NOTICES. All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and sent by first class United States registered or certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized courier service such as Federal Express, duly addressed to the parties as follows:

To Transferor: Google LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043



**DRAFT**

Attn: REWS Department / Downtown West SJ Project  
Executive

With Copies to: Google LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Attn: Legal Department / RE Matters  
and  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
1900 Main Street, 5th Floor  
Irvine, CA 92614  
Attn: Britney Willhite

To Transferee: City of San José  
200 E. Santa Clara Street, 17th Floor  
San Jose, California 95113  
Attn: City Manager

With Copy to: City of San José  
200 E. Santa Clara Street, 16th Floor  
San Jose, California 95113  
Attn: City Attorney

Delivery of any notice or other communication hereunder shall be deemed made on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party as herein provided.

6. ASSIGNMENT. This Agreement may not be assigned by Transferor or Transferee without the prior written consent of the other party (in its sole and absolute discretion); provided, however, that (a) Transferor may assign this Agreement to a "Google Affiliate" or to any allowed or permitted "Transferee" (as such terms are defined in the DA), and (b) Transferee may identify the Designee as the transferee/grantee of the Property at the Closing pursuant to Section 1.1 above. Notwithstanding the foregoing, following the Closing, Transferee may assign all of Transferee's rights under Section 19 below that survive the Closing to any subsequent transferee of the Property without the consent of Transferor, but Transferee shall notify Transferor in writing of such assignment and the name and address of the applicable assignee. The party named in the Grant Deed in accordance with this Section 6 shall be referred to herein as the "Grantee".

7. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the parties

## **DRAFT**

hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

8. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

9. **EMAIL DELIVERY.** This executed Agreement (and executed counterparts of this Agreement), may be delivered by email to Sallie Lim at Sallie@google.com for Transferor, and to the Director of Housing, with copies to Office of Economic Development and City Attorney for Transferee. Any party may change its recipients for purposes of this Section by giving notice to the other party as provided in Section 5 above.

10. **TIME OF THE ESSENCE.** Time is of the essence of this Agreement.

11. **THIRD PARTIES.** Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement. Further, nothing contained in this Agreement, expressed or implied, shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Transferor and Transferee (and Grantee, if applicable).

12. **SEVERABILITY.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13. **ADDITIONAL DOCUMENTS.** Each party hereto agrees to perform any further reasonable acts and to execute, acknowledge and deliver any further reasonable documents that may be reasonably necessary to carry out the provisions of this Agreement.

14. **AUTHORITY OF CITY MANAGER.** The City Manager or designee of Transferee may give any and all notices, consents and terminations hereunder on behalf of Transferee provided they are in writing. The City Manager or designee is authorized to execute, on behalf of the Transferee, deeds and all other documents as may be necessary to effectuate this Agreement and the transfer of property rights herein. Further, nothing stated herein in this Agreement shall in any way impinge upon the City's regulatory authority under federal, state, or local laws.

16. **NO CONSTRUCTION AGAINST DRAFTER.** This Agreement shall not be construed against the drafter hereof, it being acknowledged that each party has had an opportunity to review and negotiate the terms herein.

17. **REMEDIES.**

## **DRAFT**

17.1 Default by Transferor. If Transferor fails to perform any of the obligations of Transferor set forth in this Agreement and fails to cure the same within ten (10) days after delivery of written notice from Transferee (provided that no such notice and cure period shall be applicable to Transferor's failure to deliver any documents or funds required for the Closing as set forth in Section 4 above), then as Transferee's sole and exclusive remedy, Transferee may terminate this Agreement upon written notice to Transferor and Escrow Holder. If Transferee elects to terminate this Agreement, then this Agreement shall automatically terminate, Transferor shall reimburse Transferee for the reasonable third party costs and expenses actually incurred by Transferee in performing the inspections and testing set forth in Section 3.1 above, and Transferor would not receive any IHO Fee credits for the Property and instead Transferor shall satisfy its IHO obligations by (a) identifying a site or sites in the Diridon Station Area Plan which can accommodate at least one hundred twenty (120) affordable housing units as anticipated on the Property, (b) paying one hundred fifty percent (150%) of the IHO Fees due (the "IHO Fee Premium"), or (c) upon mutual agreement of Transferor and Transferee, Transferor shall work with Transferee to maintain yield by condominium-izing a portion of a high rise residential project for affordable housing. If Transferor satisfies its IHO obligations by the payment of the IHO Fee Premium pursuant to clause (b) above, the payment of the IHO Fee Premium shall be made in full to Transferee within thirty (30) days after Transferor's election of clause (b) above, and Transferor shall receive IHO Fee credits for that portion of the IHO Fee Premium equal to one hundred percent (100%) of the IHO fees due, but no credit for that portion of the IHO Fee Premium equal to the additional fifty percent (50%) owned as a result of the default.

17.2 Default by Transferee. If Transferee fails to perform any of the obligations of Transferee set forth in this Agreement and fails to cure the same within ten (10) days after delivery of written notice from Transferor (provided that no such notice and cure period shall be applicable to Transferee's failure to deliver any documents or funds required for the Closing as set forth in Section 4 above), then as Transferor's sole and exclusive remedy, Transferor may terminate this Agreement upon written notice to Transferee and Escrow Holder. If Transferor elects to terminate this Agreement, then this Agreement shall automatically terminate, and upon such termination, Transferor shall receive IHO Fee credits in the same amount as Transferor would have received under the DA and this Agreement if this Agreement has not been terminated due to Transferee's default and the Closing had occurred.

18. RELEASE. Except as otherwise expressly set forth in this Agreement, Transferee is acquiring the Property in its existing condition, "AS-IS, WHERE-IS", and as of the Closing, Transferee has made or has waived all inspections and investigations of the Property and its vicinity which Transferee believes are necessary to protect its own interest in, and its contemplated use of, the Property.

Except as otherwise expressly set forth in this Agreement, neither Transferor nor any entity associated or affiliated with Transferor, nor the agents, servants, officers, directors, employees, subsidiaries, divisions, affiliates or successors of Transferor, nor each of them, has made any representation, warranty, inducement, promise, agreement, assurance or statement, oral or written, of any kind to Transferee upon which Transferee is relying, or in connection with which Transferee has made or will make any decisions concerning the Property or its vicinity including,

## **DRAFT**

without limitation, its use, condition, value, square footage, compliance with applicable laws, existence or absence of hazardous substances, or the permissibility, feasibility, or convertibility of all or any portion of the Property for any particular use or purpose, including, without limitation, its present or future prospects for sale, lease, development, occupancy or suitability as security for financing.

Transferor hereby specifically disclaims all warranties implied by law arising out of or with respect to the execution of this Agreement, any aspect or element of the Property, or the performance of Transferor's obligations hereunder including, without limitation, all implied warranties of merchantability, habitability and/or fitness for a particular purpose.

Except as otherwise expressly set forth in this Agreement, Transferee hereby releases and forever discharge(s) Transferor and each and every entity associated or affiliated with Transferor, and the agents, servants, officers, directors, employees, subsidiaries, divisions, affiliates and successors of Transferor, and each of them, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, liabilities and demands, including without limitation any claim arising from and/or related to the Property (collectively "Claims"), which Claims are related to the physical and environmental condition of the Property, whether known or unknown, disclosed or undisclosed, anticipated or unanticipated, whenever accruing. In connection with the foregoing releases, Transferee acknowledges that it is familiar with and hereby waives the protections of Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Notwithstanding the foregoing, the foregoing release shall not apply to (a) Transferor's default or breach of any obligation of Transferor set forth in this Agreement that survives the Closing, (b) any claims for personal injury, death, or damage to personal property based on events occurring prior to the Closing, (c) any claims to the extent arising from Transferor's intentional misrepresentation, or (d) any claims arising under Section 19 below that survive the Closing.

### 19. TRANSFEROR POST-CLOSING COVENANTS.

19.1 Environmental. If the Closing occurs, Transferor shall indemnify, defend, and hold harmless Grantee against any and all third party actions or claims for death or personal injury to the extent such actions or claims are caused by exposure to environmental contamination existing at the Property which exposure occurred prior to the Closing and such actions or claims first accrued prior to the Closing, which indemnity and defense obligation of Transferor shall survive the Closing. Notwithstanding the foregoing, in no event shall such indemnity and defense obligation of Transferor apply to any actions or claims that arise from the negligence or willful misconduct of Transferee or Grantee.

## **DRAFT**

19.2 Transferor's Work. Notwithstanding anything in this Agreement to the contrary:

(a) If despite Transferor using its commercially reasonable efforts in accordance with Section 4.5.2.4, Transferor's Work is not Completed by the Closing as a result of any delays caused by Transferee or Force Majeure, then Transferee shall have no right to terminate this Agreement and the Closing shall occur on the Closing Date, provided that following the Closing, Transferor shall diligently pursue the remaining Transferor's Work to Completion (such remaining portion being the "Remaining Transferor's Work"). As security for the performance of the Remaining Transferor's Work, at the Closing, Transferor shall provide Transferee with a construction completion bond in an amount equal to the 1.5 times the cost to perform the Remaining Transferor's Work. Following the Closing, Transferee (or Grantees applicable) shall provide Transferor with reasonable access to the Property as necessary to perform the Remaining Transferor's Work. For the avoidance of doubt, upon the Closing, Transferor shall receive IHO Fee Credits for the transfer of the land portion of the "H5 Early Work CLF Amount" (as defined in the DA), but not for the relevant "Early H5 / H6 Work Portion of IHO Credits", as described in the third column of the IHO Credit Table in Section III.C.5 of the DA. If Transferor Completes the Remaining Transferor's Work, then Transferor shall receive IHO Fee Credit for the relevant "Early H5 / H6 Work Portion of IHO Credits" (as illustrated in the fourth column of the IHO Credit Table with respect to H5) upon Completion. If Transferee performs the Remaining Transferor's Work, Transferor shall provide Transferee with reasonable access to the adjacent property owned by Transferor and permission as necessary to perform the Remaining Transferor's Work.

(b) If at six (6) months before Closing, Transferee determines that Transferor is not exercising commercially reasonable efforts to complete Transferor's Work based on the provisions in (c) below, then Transferee shall have no right to terminate this Agreement and the Closing shall occur on the Closing Date at which time Transferor shall pay to Transferee (and not Grantee, if other than Transferee) an amount equal to 150% of all of the costs to Complete the remaining "Early H5 Work" (as described in Schedule 1 to Exhibit C hereof), subject to "Annual Increases" (as defined in Section III.A of the DA) (the "Remaining H5 Work") without regard to the amounts set forth in the IHO Credits Table in the DA. The 150% amount shall not be entitled to treatment as CLF. However, the costs of the Early H5 Work that Transferor has completed shall not be entitled to treatment as CLF and shall be handled as such as set forth in Exhibit D of the DA. Also, Transferor shall receive IHO Fee Credits for Transfer of Property for the H6 land value as illustrated in the third column of the IHC Credit Table in Section III.C.5 of the DA. Transferee shall promptly Complete the Remaining H5 Work thereafter, using the default payment, and Transferor shall provide Transferee with reasonable access to the adjacent property owned by Transferor and permission as necessary to perform the Remaining Transferor's Work.

(c) The parties agree that every three (3) months from the date of the "H5 Notice" (as defined in the DA) the parties shall meet, and Transferor shall provide an update on the Early H5 Work. If in its reasonable discretion Transferee concludes that there is no way for Transferor to complete the Early H5 Work before issuance of the Temporary Certificate of Occupancy for the Affordable Housing Development on the Property, Transferee shall be able to

## **DRAFT**

exercise the mechanisms described in (a) or (b) above depending on whether Transferor is diligently pursuing the work, or not.

19.3 Mid-Block Crossing. At the Closing, Transferor shall retain ownership of the mid-block crossing between the Property and the “H6 Property” (as defined in the DA). Following the Closing, upon request from Grantee, Transferor shall provide to Grantee a commercially reasonable construction easement over such mid-block crossing for the time period commencing on the later of (a) the Closing, and (b) the commencement of construction on the Property or the “H6 Property” (whichever is sooner), and continuing until the date that is six (6) months following the issuance of the last temporary certificate of occupancy for the Property and the “H6 Property”.

19.4 Survival. The provisions of this Section 19 shall survive the Closing.

### 20. GRANTEE POST-CLOSING COVENANTS.

20.1 Condition of Property. Following the Closing, Grantee shall be responsible to keep the Property in good, clean and safe condition. In connection therewith, Grantee shall be responsible to maintain the Erosion Controls and the Fence (as such terms are defined in Schedule 1 to Exhibit “C” attached hereto) installed as part of Transferor’s Work in good condition and repair, and to provide for adequate lighting and security prior to and during development and construction of the Property. The obligations set forth in this Section 20.1 shall also be set forth in the Grant Deed, which obligations shall run with the land of the Property.

20.2 Construction Rights-of-Way. Following the Closing, upon request from Transferor from time to time, Grantee shall grant Transferor a commercially reasonable construction right-of-way as may be reasonably necessary for the construction of the Project, provided that such construction rights-of-way do not materially interfere with the development and use of the Property for the Affordable Housing Development.

20.3 Construction Costs. Grantee shall bear all construction costs related to the Affordable Housing Development.

20.4 Private Street Work. During the performance of the Private Street Work (as defined in Schedule 1 to Exhibit “C” attached hereto) and following completion of the Private Street Work, if Grantee shall cause any damage to the Private Street Work, then Grantee shall repair such damage, and if such damage is caused following completion of the Private Street Work, Grantee shall restore the affected area to the condition immediately prior to the damage. All such repair and restoration by Grantee shall be at Grantee’s sole cost and expense.

20.5 Successors and Assigns. The provisions of this Section 20 shall be binding on Grantee and its successors and assigns. Grantee shall cause all such successors and assigns to be bound by the terms and conditions of this Section 20.

20.6 Survival. The provisions of this Section 20 shall survive the Closing.

**DRAFT**

21. INTENTIONALLY DELETED.

22. ATTORNEYS' FEES. Should legal action be brought by either party against the other for a default under this Agreement or to enforce any provision herein, the prevailing party in such action shall not be entitled to recover its attorneys' fees and costs from the other party. Each party to the legal action shall bear its own attorneys' fees and costs.

23. MEET AND CONFER PROCESS. Before sending a notice of default in accordance with Section 17 above, the party that may assert that the other party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other party to discuss the alleged failure and shall permit such party a reasonable period, but not less than thirty (30) days and not more than sixty (60) days, to respond to or cure such alleged failure. The party asserting such failure shall request that such meeting and conference occur within twenty (20) business days following the request and if, despite the “Good Faith Efforts” (as defined in the DA) of the requesting party, such meeting has not occurred within twenty (20) business days of such request, such party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 17 above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**DRAFT**

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

**TRANSFEROR:**

GOOGLE LLC, a Delaware limited liability  
company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSFeree:**

CITY OF SAN JOSÉ

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_



**EXHIBIT "A"**

**DEPICTION OF THE PROPERTY**

**[NOTE TO CITY: To be inserted from Schedule D1 to the DA]**

**EXHIBIT "B"**

**FORM OF GRANT DEED**

**RECORDING REQUESTED BY:**

**WHEN RECORDED MAIL TO AND  
MAIL TAX STATEMENTS TO:**

---

**APN:**

SPACE ABOVE THIS LINE FOR RECORDER

G R A N T D E E D

**The Undersigned Grantor Declares: DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0; Recorded for the benefit of the City of San Jose and is exempt from transfer tax per Revenue and Taxation Code Section 11922 and exempt from recording fee per Government Code Section 6103 and/or 27383.**

[ ] computed on the consideration or full value of property conveyed, OR  
[ ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,  
[ ] unincorporated area; [X] **City of San Jose**, and  
[X] Signature of Declarant  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_ ("GRANTOR"), does hereby GRANT to \_\_\_\_\_ "GRANTEE", for valuable consideration, receipt of which is hereby acknowledged, all certain real property situate in the City of San José, County of Santa Clara, State of California, described in Exhibit "1" attached hereto and made a part hereof (the "Property").

By its signature hereon, Grantee, as the owner of the Property, hereby covenants and agrees that Grantee shall be responsible to keep the Property in good, clean and safe condition and to maintain attractive fencing, and to provide for adequate lighting and security prior to and during development and construction of the Property. The foregoing covenants and agreements shall be appurtenant to the Property and be binding on Grantee and each successor-in-interest to Grantee in the Property and every part thereof. It is the intention and understanding of the parties hereto that the foregoing covenants and agreements shall run with the land (as defined in California Civil Code Sections 1460 & 1462) of the Property and every part thereof in accordance with California Civil Code Section 1468.

Dated: \_\_\_\_\_, 202\_\_

**“GRANTOR”**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Dated: \_\_\_\_\_

**“GRANTEE”**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Dated: \_\_\_\_\_

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.

**ACKNOWLEDGEMENT**

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
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 \_\_\_\_\_ (Seal)

**Exhibit 1 to Grant Deed  
Legal Description**

[USE ONLY IF CITY IS GRANTEE]

Deed Acceptance

APN:

### DEED ACCEPTANCE

This is to certify that the interest in real property conveyed by Grant Deed, dated \_\_\_\_\_, 202\_, from \_\_\_\_\_, a corporation under a holding agreement to the City of San Jose, a municipal corporation of the State of California, is hereby accepted by the undersigned officer of said City on behalf of the City Council of the City of San Jose, pursuant to authority conferred by the City Council of the City of San Jose on April 4, 1995 (shown as Item 9o on the April 4, 1995 City Council Agenda). The Grantee consents to recordation thereof by its duly authorized officer.

CITY OF SAN JOSE,  
A Municipal Corporation of the State of California

By: \_\_\_\_\_ Date: \_\_\_\_\_  
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.

**ACKNOWLEDGEMENT**

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me,  
\_\_\_\_\_  
(insert name and title of officer)

Personally appeared  
\_\_\_\_\_,  
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 \_\_\_\_\_ (Seal)

## EXHIBIT "C"

### TRANSFEROR'S WORK

1. As used in this Agreement, "Transferor's Work" shall mean that certain work described on Schedule 1 attached hereto.
2. Transferee shall provide the following written notices to Transferor:
  - (a) When the affordable housing developer for the Affordable Housing Development has been selected and a funding commitment for predevelopment has been made (such notice being the "Developer Selection Notice");
  - (b) Upon the commencement of construction of the affordable housing development on the "H6 Property" (as defined in the DA) (the "H6 Development") (such notice being the "H6 Development Commencement Notice"); and
  - (c) Twelve (12) months prior to the date that Transferee reasonably expects to receive the temporary certificate of occupancy for the H6 Development (such notice being the "H6 Development Anticipated TCO Notice").

The date that is the later of Transferor's receipt of the Developer Selection Notice and the H6 Development Commencement Notice, but in all events no later than the date of Transferor's receipt of the H6 Development Anticipated TCO Notice, is referred to herein as the "Transferor's Work Commencement Date".
3. Following the Transferor's Work Commencement Date, Transferor shall promptly procure and mobilize relevant consultants and prepare plans and specifications for Transferor's Work (the "Plans").
4. Upon finalizing the Plans, Transferor shall promptly and diligently pursue obtaining all permits necessary for Transferor's Work, subject to delays caused by Transferee or Force Majeure (as defined below) (the "Permitted Plans"). Transferor shall provide Transferee with a copy of the Permitted Plans. Upon receipt of the Permitted Plans, Transferor shall diligently perform Transferor's Work to Completion, subject to delays caused by Transferee or Force Majeure.
5. As used herein, "Completion" or "Completed" shall mean that Transferor's Work has been completed in accordance with the building permit(s) issued with respect to Transferor's Work and the City Building Division has completed its final inspection of Transferor's Work. Transferee shall diligently and in good faith process all submissions and requests from Transferor necessary for Transferor to perform Transferor's Work to Completion.
6. As used herein, "Force Majeure" shall mean any event or condition that: (i) is beyond Transferor's control; (ii) prevents Transferor's performance of this Agreement; (iii) Transferor could not have reasonably foreseen; and (iv) arises from one or more of the following: (1) naturally occurring events constituting an act of God; (2) unusually severe and abnormal climactic conditions (as compared with the five-year average weather statistics compiled by the United



States National Oceanic and Atmospheric Administration for the time of year and locality of the Property); (3) strikes, stoppages or boycotts that affect a specific trade on a national or regional level, to the extent not caused by the acts or omissions of Transferor; (4) the unavailability of construction materials for projects similar to Transferor's project as contemplated in the DA (i.e. a large scale mixed-use project) that causes significant construction delays, or significant construction delays resulting from such materials being unusually difficult or impossible to obtain, or from defects, tariffs, embargoes, or trade disputes, where, in each case, Transferor is unable to obtain alternative or replacement materials, within the same or substantially similar time period at substantially the same cost (and without having to forfeit any significant deposits or advance payments); (5) acts of terrorism or war; (6) riots or other civil unrest; (7) a local, state or federal declaration of emergency based on an epidemic or pandemic, including any quarantine or other health-related orders, directives, regulations, laws or other requirements implemented in response to such epidemic or pandemic; (8) orders issued by any other governmental body having jurisdiction over the Project; (9) casualty; or (10) condemnation unrelated to DISC or other transit project(s). Neither the inability of Transferor to obtain construction financing for Transferor's project nor the condition of, or changes in, the real estate market shall constitute a Force Majeure event, except to the extent such inability or changes result from a Force Majeure event.

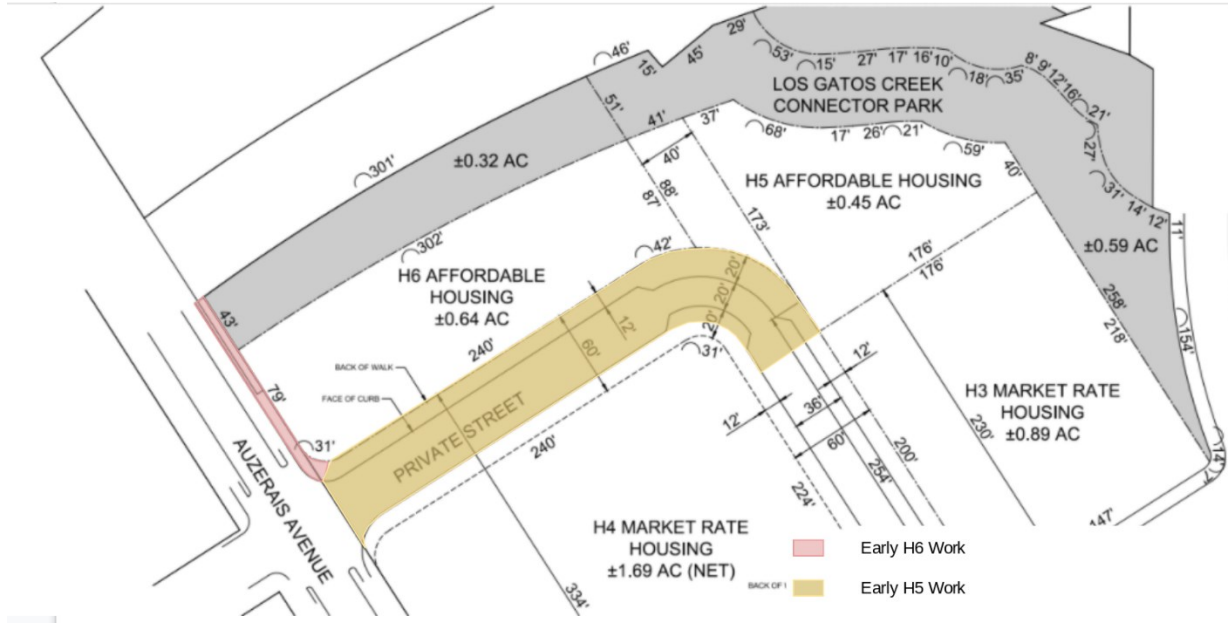
## **SCHEDULE 1 TO EXHIBIT “C”**

### **SCOPE OF TRANSFEROR’S WORK**

- Establish erosion and sediment controls on the boundary of the Property (the “Erosion Controls”) and fence off the Property on all sides (the “Fence”)
- Disconnect and cap all utilities on the Property, and furnish a survey to Transferee of the terminated locations
- Abate any hazardous materials contained within the buildings to the extent required by law prior to demolishing such buildings, and demolish any buildings, including offsite buildings (partially or totally) necessary to complete the work
- Remove slabs, footings, piles to a depth of 4 feet below the surface and asphalt parking lots
- Rough grade the Property without imported fill or compaction, in order to provide a free draining surface
- Perform the “Private Street Work”, as follows:
  - Construct the entire private street from Auzerais Avenue to the Property boundary in the area depicted as “Early H5 Work” on Figure 1.0 attached hereto, including curb and gutter (the “Private Street”)
  - Complete sidewalks, street trees & planting, street furnishings, signage and lighting to those portions of the Property (identified as “H5 Affordable Housing” on Figure 1.0 attached hereto) and the property identified as “H6 Affordable Housing” on Figure 1.0 attached hereto) that have frontage on the Private Street in accordance with the “Downtown West Design Standards and Guidelines” (as defined in the DA)
  - Install water, sewer, storm drain lines and an electrical conduit bank in a joint trench from existing services in Auzerais Avenue to the Property boundary in the Private Street (excluding any electrical wire or equipment)
  - Submit and obtain Transferee’s approval of a Private Improvement Plan for the Private Street Work (which approval shall not be unreasonably withheld, conditioned or delayed), which includes a variance to allow the street trees (and sidewalk) on that portion of the property identified as “H4 Market Rate Housing” on Figure 1.0 attached hereto to be deferred until completion of the H4 development (which term “H4” is described in the DA)

**SCHEDULE 1**

**FIGURE 1.0**



**DRAFT**  
**PROPERTY TRANSFER AGREEMENT**  
**(H6)**

THIS PROPERTY TRANSFER AGREEMENT (this “Agreement”) is dated as of \_\_\_\_\_, 20\_\_, and is entered into by and between the CITY OF SAN JOSE, a California municipal corporation (“Transferee”), and GOOGLE LLC, a Delaware limited liability company (“Transferor”).

**RECITALS**

A. Transferor is the owner of the land depicted on Exhibit “A” and any improvements and fixtures thereon (collectively, the “Property”).

B. Exhibit “D” of that certain Development Agreement between Transferor and Transferee adopted by Ordinance No. \_\_\_\_\_ (the “DA”) contemplates and requires that Transferor and Transferee enter into this Agreement, and the date of this Agreement shall be the Effective Date of the DA, as defined in Section 2.1 thereof.

C. The Property is located within Transferor’s proposed Downtown West Mixed-Use Plan that is the subject of the DA (the “Project”).

D. Transferor is currently seeking “Approvals” (as such term is defined in the DA), including, without limitation, a Vesting Tentative Map (the “Tentative Map”).

E. Transferee intends to develop the Property with an affordable housing development as more particularly described in the DA in accordance with and subject to the DA (the “Affordable Housing Development”).

NOW, THEREFORE, in consideration of the foregoing recitals, the DA, and other valuable consideration, the sufficiency of which are hereby acknowledged, Transferee and Transferor hereby agree as follows:

1. **TRANSFER OF PROPERTY.**

1.1 **Closing.** Subject to the terms and conditions of this Agreement, the conveyance of the Property by Transferor to Transferee (the “Closing”) shall occur on the date (the “Closing Date”) selected by Transferor upon at least sixty (60) days’ prior written notice to Transferee (the “Closing Notice”), provided that in no event shall the Closing Date occur later than the date that is fifteen (15) months from the date on which Transferor’s obligation to perform the “Early H6 Work” (as defined in the DA) is triggered pursuant to Exhibit D of the DA (“Closing Deadline”).

Upon delivery of the Closing Notice to Transferee, Transferee shall have the right to further inspect the Property, pursuant to the terms set forth in Section 3.1 below, to determine if the conditions for Transferee’s benefit as set forth in Section 4.5.2 below have been satisfied.

## **DRAFT**

Transferee shall have no right to terminate this Agreement or delay the Closing if Transferee is unable to secure funds or other commitments to enable the construction of the Affordable Housing Development. Notwithstanding the foregoing, following Transferor's delivery of the Closing Notice, Transferee shall have the right to extend the Closing Date two (2) times for one hundred eighty (180) days each (each, an "Extension Period" and the first such extension of the Closing Date being the "Extended Closing Date" and the second such extension being the "Outside Closing Date") if Transferee has not identified the "Designee" (as defined in Exhibit D of the DA) by the date that is five (5) business days prior to the originally scheduled Closing Date or Extended Closing Date, as applicable, by providing Transferor with written notice of the status of Transferee's efforts to identify the Designee together with documentation evidencing Transferee's "Good Faith Efforts" (as defined in the DA) to identify and select the Designee, which notice Transferee shall give to Transferor on or before the date that is five (5) business days prior to the originally scheduled Closing Date or the Extended Closing Date, as applicable. If Transferee has not identified and selected the Designee by the scheduled Closing Date, the Extended Closing Date or the Outside Closing Date, as applicable, then Transferee shall take title the Property in Transferee's name or be in default of this Agreement. For the avoidance of doubt, identification and selection of the Designee shall not be a condition to the Closing. If as a result of the foregoing extensions the Extended Closing Date or the Outside Closing Date would occur after the Closing Deadline, then the Closing Deadline shall be extended to coincide with the Extended Closing Date or the Outside Closing Date, as applicable.

If Transferee extends the Closing Date for an Extension Period, then Transferee shall reimburse Transferor for (i) property taxes payable with respect to the Property during such Extension Period ("Taxes"), and (ii) Transferor's costs to light, fence, insure and maintain the Property in a clean and safe manner during such Extension Period ("Operating Expenses"), which reimbursement shall be made within thirty (30) days after request from Transferor (which request shall include reasonable back-up documentation). If Transferee fails to pay such reimbursement to Transferor within such thirty (30) day period, then at Transferor's election, all or a portion of such unpaid amount shall be converted to IHO Fee credits for Transferor's account; provided, however, that in no event shall the IHO Fee credits for the Operating Expenses exceed \$200,000, escalated in accordance with the Engineering News Record (ENR) Construction Cost Index for the San Francisco Urban area published by McGraw Hill on January 1 of every year, or its successor publication. For the avoidance of doubt, such cap on IHO Fee credits shall not apply to Taxes.

For the avoidance of doubt, no extension of the Closing or the Closing Deadline by Transferee pursuant to this Section 1.1 shall delay the issuance of the Temporary Certificate of Occupancy for the first market-rate residential building in the Project.

If Transferee identifies the Designee by the Closing, then concurrently with the Closing (but not before), Transferee and the Designee shall enter into an Assignment and Assumption Agreement in a form reasonably acceptable to Transferor (the "Designee Assignment Agreement"), to be effective as of the Closing, whereby (a) Transferee assigns to the Designee all of Transferee's rights under Section 19 below and Section 21 below that survive the Closing, and

## **DRAFT**

(b) the Designee assumes all obligations of Transferee under this Agreement that survive the Closing (including, without limitation, pursuant to Sections 19, 20 and 21 below).

1.2 Consideration. The “Purchase Price” for the Property shall be \$1.00.

In addition, upon the Closing, Transferor shall receive “IHO Fee” (as defined in the DA) credits for the transfer of the Property to Transferee (or the Designee, if identified by Transferee) as calculated pursuant to the DA, provided that if Transferee extends the Closing for an Extension Period or if Transferor incurs any delays in the performance of any of its obligations under this Agreement or the DA caused by Transferee, then Transferor shall receive such IHO Fee credits as of the originally scheduled date of the Closing as set forth in the Closing Notice (without regard to any Extension Period or the amount of delay caused by Transferee).

Notwithstanding anything in this Agreement to the contrary, upon the execution of this Agreement, Transferee shall pay to Transferor \$1.00 as independent consideration for the Initial Inspection Period (as defined in Section 3.1 below) and Transferee’s rights under this Agreement. Such independent consideration shall be nonrefundable to Transferee in all events.

## 2. TITLE.

2.1 General. Title to the Property shall be conveyed by the Grant Deed and shall be evidenced by an ALTA Standard Coverage Form of Owner’s Policy of Title Insurance (or an ALTA Extended Coverage Form Policy, if Transferee elects such coverage and provides an ALTA Survey to the title company) (“Title Policy”). The Title Policy shall be issued by First American Title Insurance Company; Title Officer(s): Rosalind McCaskill or if unavailable, another Title Officer from First American Title Insurance Company (“Title Company”), with liability in an amount reflective of fair market value at the time of Closing as reasonably determined by Grantee (the “Agreed Value”), insuring title to the Property as vested in Transferee, free and clear of all liens and encumbrances and other matters affecting title to the Property, except (a) the lien for assessments not yet delinquent, (b) any exceptions recorded in connection with obtaining the Approvals or required in order to satisfy the Approvals, (c) any easements, covenants, conditions and restrictions recorded in connection with the development of the Project consistent with the Approvals, (d) any exceptions caused by the acts or omissions of Transferee, and (e) title exceptions which Transferee has approved in writing (or is deemed to have approved) pursuant to this Section 2.1 and Section 2.2 below (which (a) through (e) shall constitute “Approved Title Exceptions”).

Upon the execution hereof, Transferor shall obtain a current title/preliminary report from Title Company and shall email it to Transferee (with hyperlinks to title exception documents) to the Transferee representatives set forth in Section 9 below or to such other representatives as Transferee may designate. Transferee shall have until the expiration of the Initial Inspection Period to review such report and exceptions, and any survey obtained by Transferee. If Transferee disapproves any matter affecting title (except Monetary Liens (as defined below), which shall be released upon and as a condition to Closing), then Transferee may terminate this Agreement by written notice to Transferor given on or prior to the expiration of the Initial Inspection Period. If

## **DRAFT**

Transferee does not elect to terminate this Agreement on or prior to the expiration of the Initial Inspection Period, then Transferee shall be deemed to have approved all matters affecting title (except Monetary Liens), which shall constitute Approved Title Exceptions, and Transferee shall have no further right to terminate this Agreement pursuant to this Section 2.1.

As used herein, “Monetary Liens” shall mean all liens secured by deeds of trust securing loans made to Transferor, mechanics’ liens relating to work contracted for by Transferor, judgment liens against Transferor, and delinquent real property taxes, provided that if Transferee is the Grantee, Monetary Liens shall include real property taxes for the property tax period in which the Closing occurs and all prior property tax periods in accordance with Section 4.7 below.

2.2 Acts After Date of Agreement. Subject to Section 4.5 below, during the period from the date of this Agreement through the Closing: (a) Transferor shall not record, or permit to be recorded, any document or instrument relating to the Property without Transferee’s consent, which consent shall not be unreasonably withheld, conditioned or delayed; (b) Transferor shall operate, manage and maintain the Property in the ordinary course and consistent with Transferor’s practices as of the date of this Agreement; and (c) Transferor shall not enter into any new leases for the Property or amend any existing leases for the Property without Transferee’s consent, which consent may be withheld in Transferee’s sole and absolute discretion, provided that Transferee’s consent shall not be required for any lease that has a term expiring on or before the Closing.

2.3 Possession; Termination of Leases. Exclusive possession of the Property shall be delivered to Transferee upon the Closing free of any tenants or occupants (subject to Section 4.5.2.3 below). Transferee shall have no obligations to Transferor or any occupant or prior occupant with respect to any personal property not removed by the Closing.

To the fullest extent permitted by law, Transferor shall defend, indemnify and hold Transferee harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorneys’ fees and costs, and relocation costs and benefits payable by Transferee under California law) solely to the extent filed by a tenant of the Property and arising from Transferor’s termination of any lease of the Property, or any claim by any occupant under such lease regarding its personal property on the Property not removed by the Closing. Transferor’s obligations hereunder shall survive the Closing.

### 3. TRANSFEROR DISCLOSURES; TRANSFEREE INSPECTIONS.

3.1 Initial Inspection Period. From the date of execution hereof until the date that is ninety (90) days after the date of this Agreement (the “Initial Inspection Period”), subject to the terms and conditions set forth in this Section 3.1, Transferee may conduct, at Transferee’s sole expense, such inspections and testing of the Property, including any improvements thereon, soils and ground water, as Transferee may desire or deem appropriate, in Transferee’s sole discretion. In conducting such inspections and testing, Transferee shall endeavor to minimize damage to the Property, and any improvements thereon, and shall, promptly following such inspections and testing (unless otherwise approved by Transferor, in its sole and absolute

## **DRAFT**

discretion), return the Property, including the improvements thereon, if any, to its condition prior to Transferee's inspections and testing. Subject to the terms and conditions of this Section 3.1, Transferor hereby grants to Transferee and its authorized employees, representatives, agents and contractors, permission and a license to enter upon the Property for the purpose of conducting such inspections and testing. Transferee shall provide Transferor with at least ten (10) days' prior written notice of its desire to enter the Property for any such inspections or testing, and any such inspections or testing shall be conducted at a time and manner reasonably approved by Transferor. Transferor shall have the right to be present at any such inspections or testing. In the event the Property is occupied by any person(s) other than Transferor, such access by Transferee shall be subject to the rights of such existing occupant(s). Transferor shall endeavor to make arrangements with such person(s) to ensure access by Transferee or its authorized employees, representatives, agents and contractors in order to conduct the inspections and testing, provided that in connection with such inspections and testing, Transferee shall endeavor to minimize interference with such existing occupant(s). Prior to conducting any inspections or testing, Transferee and its third party representatives, agents and contractors shall deliver to Transferor evidence of insurance in form and amount reasonably acceptable to Transferor, covering Transferor as an additional insured. Transferee shall indemnify, protect, defend (with legal counsel reasonably acceptable to Transferor) and hold Transferor harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising from, related to or caused by, Transferee's entry upon the Property or the performance of any inspection or test conducted by or at the request of Transferee or its contractors or agents (but not the results thereof unless same resulted from the exacerbation of existing conditions by Transferee). In the event Transferee determines the Property is not suitable, then Transferee may terminate this Agreement by written notice to Transferor given prior to the end of the Initial Inspection Period. If Transferee does not elect to terminate this Agreement on or prior to the expiration of the Initial Inspection Period, then Transferee shall be deemed to have approved the Property and Transferee shall have no further right to terminate this Agreement pursuant to this Section 3.1.

Notwithstanding anything in this Section 3.1 to the contrary, Transferee shall not be permitted to undertake any air sampling or any intrusive or destructive testing of the Property, including, without limitation, a "Phase II" environmental assessment, nor will Transferee be entitled to directly contact or communicate with the California Regional Water Quality Control Board, United States or California Environmental Protection Agency or other local, state or federal agency regarding the environmental condition of the Property other than requests for documentation or records relating to the Property, without in each instance first obtaining Transferor's prior written consent thereto, which consent Transferor may give or withhold in Transferor's sole and absolute discretion. Notwithstanding the foregoing, if Transferee's Phase I environmental assessment contains a recommendation for Phase II environmental assessment based on Transferee's proposed use of the Property, Transferee shall have the right to conduct a Phase II environmental assessment without Transferor's consent; provided, however, that Transferee's consultant for any Phase II environmental assessment shall be subject to Transferor's reasonable approval. Further, if, as part of the Due Diligence Information, Transferor provides a Phase I environmental assessment on which Transferee can rely, and that Phase I environmental assessment concludes that a Phase II environmental assessment is not recommended for



## **DRAFT**

Transferee's proposed use of the Property, then Transferee shall have no right to conduct a Phase II environmental assessment.

Transferee shall deliver to Transferor copies of any environmental reports and remediation cost estimates obtained by Transferee in the course of its inspections.

Notwithstanding California Civil Code Section 1103.1(a)(9), Transferor shall deliver to Transferee, with reasonable diligence after the execution of this Agreement and at Transferor's cost, a Natural Hazard Disclosure Statement (described in California Civil Code Section 1103.2) prepared by Escrow Holder (as defined in Section 4.1 below) (or its designee) (the "Expert"). Transferee acknowledges and agrees that for purposes of California Civil Code Section 1103.4(c), the Expert is an expert in natural hazard discovery and the Natural Hazard Disclosure Statement is sufficient compliance for application of the exemption provided by Section 1103.4(a) of the California Civil Code.

Transferor has previously delivered to Transferee certain environmental reports with respect to the Property (the "Environmental Reports"). Transferee acknowledges and agrees that Transferor has acted reasonably in relying on the Environmental Reports and the delivery of the Environmental Reports to Transferee constitutes written notice under California Health and Safety Code Section 25359.7.

Prior to the date of this Agreement, Transferor delivered to Transferee the most recent environmental studies, soils studies, and surveys, and plans, specifications, maps, surveys and other similar materials relating to the physical and environmental condition of the Property in Transferor's possession (collectively, the "Due Diligence Items"). Transferor represents and warrants to Transferee that to Transferor's actual knowledge, the Due Diligence Items are accurate and complete duplications of the copies or originals thereof in Transferor's possession. The foregoing representation and warranty of Transferor shall survive the Closing for a period of one (1) year following the Closing.

#### 4. ESCROW.

4.1 Escrow Holder. The escrow shall be opened with First American Title Insurance Company ("Escrow Holder"), within five (5) business days after the date of this Agreement and Transferor depositing a copy of this executed Agreement with Escrow Holder. This document shall be considered as the escrow instructions between the parties, with such further instructions consistent with this Agreement as Transferee, Transferor, or Escrow Holder requires in order to clarify the duties and responsibilities of Escrow Holder.

4.2 Closing. For the purposes of this Agreement, "Closing" shall be the date on which the Grant Deed for the Property in favor of Transferee (or the Designee, if identified by Transferee by such date) is recorded in the Official Records of the Santa Clara County Recorder's Office, or if the Closing occurs on a gap basis, the date that Escrow Holder is irrevocably committed to record the Grant Deed.

## **DRAFT**

Transferee shall have no right to terminate this Agreement as a result of any loss or damage, or any condemnation or eminent domain, except as expressly set forth in the paragraph below.

Notwithstanding the foregoing, if, due solely to Transferor's actions, the Property is reduced in size by more than five percent (5%) from its current size as described in Exhibit "A", then Transferor shall have the right to (a) provide a replacement site to Transferee, which site shall be acceptable to Transferee's Director of Housing in his or her sole and absolute discretion, or (b) if no such replacement site is available, as reasonably determined by Transferor, or if Transferee rejects such replacement site as set forth above, then either Transferor or Transferee may terminate this Agreement. Transferee shall have the right to conduct due diligence and inspect any replacement site consistent with the provisions in Section 3.1 above, expressly including the right to conduct Phase I and Phase II environmental assessments, as appropriate; provided, however, that Transferee's consultant for any Phase II environmental assessment shall be subject to Transferor's reasonable approval. If Transferee does not reject such replacement site within either ninety (90) days or if Transferee's Phase I environmental assessment contains a recommendation for Phase II environmental assessment based on Transferee's proposed use of the replacement site, then within one hundred twenty (120) days, after written notice from Transferor and Transferee's receipt of copies of all Due Diligence Items for the replacement site in Transferor's possession, then Transferee shall be deemed to have accepted such replacement site and the term "Property" as used in this Agreement shall be deemed to mean such replacement site. Notwithstanding the foregoing, if, as part of the Due Diligence Information, Transferor provides a Phase I environmental assessment on which Transferee can rely, and that Phase I environmental assessment concludes that a Phase II environmental assessment is not recommended for Transferee's proposed use of the replacement site, then Transferee shall have no right to conduct a Phase II environmental assessment.

In the event any condemnation or eminent domain (that was not initiated by Transferee) occurs prior to the Closing, and provided that the paragraph above does not apply, then upon the Closing, (a) Transferor shall receive IHO Fee credits for the transfer of the Property as calculated pursuant to the DA (without regard to the taking), and (b) Transferor shall assign to Transferee all of Transferor's interest in and to the condemnation or eminent domain proceeds attributable to the value of the Property so taken.

4.3 Transferor Required to Deliver. Before the Closing, Transferor shall deposit into escrow the following:

4.3.1 A grant deed conveying the Property to Transferee (or the Designee, if identified by Transferee), in the form attached hereto as Exhibit "B", duly executed by Transferor and acknowledged (the "Grant Deed"); and

4.3.2

4.3.3 Any other documents reasonably required by Escrow Holder or the Title Company to be deposited by Transferee to carry out this escrow.

## **DRAFT**

4.4 Transferee Required to Deliver. On or before the Closing, Transferee shall deposit into escrow the Purchase Price and the following (properly executed and acknowledged, if applicable):

4.4.1 If Transferee is acquiring title (*i.e.*, has not identified the Designee and has not assigned this Agreement in accordance with Section 6 below), an executed and acknowledged “Certificate of Acceptance” in the form attached to the Grant Deed (attached hereto as Exhibit “B”);

4.4.2 The Designee Assignment Agreement, if applicable, pursuant to Section 1.1 above; and

4.4.3 Any other documents reasonably required by Escrow Holder to be deposited by Transferee to carry out this escrow.

4.5 Conditions to the Closing. Escrow shall not close unless and until both parties have deposited with Escrow Holder all sums and documents required to be deposited as provided in this Agreement. Additionally:

4.5.1 Transferor’s obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of the following condition(s) precedent, which is/are for Transferor’s benefit and may be waived only by Transferor:

4.5.1.1 Transferee shall have performed all agreements to be performed by Transferee hereunder.

4.5.1.2 Transferor is obligated to transfer the Property by the date that is fifteen (15) months from the date on which Transferor’s obligation to perform the Early H6 Work is triggered pursuant to Exhibit D of the DA.

4.5.1.3 If this Agreement has been assigned to a Designee, then such Designee shall have certified to Transferor in writing that Designee has obtained commitments to sufficiently fund the Affordable Housing Development on the Property.

4.5.2 Transferee’s obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of all of the following conditions precedent, which are for Transferee’s benefit and may be waived only by Transferee:

4.5.2.1 Transferor shall have performed all agreements to be performed by Transferor hereunder.

4.5.2.2 Title Company shall have issued or shall have committed to issue the Title Policy to Transferee, for the amount of the Agreed Value, showing fee title to the Property to be vested in Transferee (or the Designee, if identified by Transferee) subject only to the Approved Title Exceptions.

## **DRAFT**

4.5.2.3 Transferor shall have: (i) caused any and all leases affecting the Property to have been terminated; (ii) provided Transferee with reasonable evidence of such termination; and (iii) removed any holdover tenants.

4.5.2.4 Transferor shall have caused Transferor's Work to be Completed, subject to the terms and conditions set forth in Exhibit "C" attached hereto. Transferor shall use commercially reasonable efforts to satisfy the condition set forth herein on or before the Closing. Transferor shall not be in default of this Agreement if, despite using its commercially reasonable efforts, Transferor does not satisfy the conditions above on or before the Closing. Notwithstanding anything in this Agreement to the contrary, if despite Transferor using its commercially reasonable efforts, Transferor's Work is not Completed by the Closing as a result of any delays caused by Transferee or Force Majeure (as defined in Exhibit "C"), then the provisions of Section 19.2 shall control.

4.5.2.5 There shall have been no material adverse change in the environmental condition of the Property.

Additionally, Transferor's and Transferee's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of the following condition precedent, which is for both parties' benefit and may not be waived by either party: Transferor shall cause the Property to become a legal parcel for conveyance, at Transferor's sole cost and expense. Transferor shall use commercially reasonable efforts to satisfy the condition set forth herein on or before the Closing. Transferor shall not be in default of this Agreement if, despite using its commercially reasonable efforts, Transferor does not satisfy the conditions above on or before the Closing.

If any of the conditions to Closing set forth in this Agreement are not timely satisfied for a reason other than a default of Transferee or Transferor under this Agreement, and this Agreement is terminated, then upon termination of this Agreement, Escrow Holder shall promptly return to Transferee all funds (and all interest accrued thereon) and documents deposited by Transferee in escrow and to return to Transferor all funds and documents deposited by Transferor in escrow and which are held by Escrow Holder on the date of the termination (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party under Section 4.10 below).

4.6 Recordation of Grant Deed; Delivery of Funds and Possession. On the Closing, upon receipt of the funds and instruments described in this Section 4, Escrow Holder shall cause the Grant Deed to be recorded in the office of the County Recorder of Santa Clara County, California. Thereafter, Escrow Holder shall deliver the proceeds of this escrow (less appropriate charges as shown on a preliminary Settlement Statement executed by Transferee and Transferor) to Transferor, and Transferor shall deliver possession of the Property to Transferee free and clear of all occupants, subject to Section 4.5.2.3 above.

4.7 Prorations. Property taxes shall not be prorated as Transferee is exempt from property taxes; Transferor shall pay all property taxes for the six month property tax billing

## **DRAFT**

period in which the Closing occurs, and then may apply for a refund of the property taxes that are allocable to the period after the Closing, and Transferee shall cooperate in good faith therewith. All assessments shall be prorated between Transferee and Transferor as of the Closing based on the latest available tax information. All prorations shall be determined on the basis of a 360-day year. Notwithstanding the foregoing, if Transferee is not directly acquiring title (i.e., Transferee has identified the Designee or has assigned this Agreement in accordance with Section 6 below) and such Designee or assignee is not exempt from property taxes, then property taxes shall be prorated at Closing on an accrual basis, and Transferor shall retain the rights to any refunds of the property taxes for periods prior to the Closing.

4.8 Costs. Transferor shall pay the premium for the Title Policy (excluding the cost of extended coverage and any survey obtained by Transferee in connection with such extended coverage, which shall be paid by Transferee), the escrow fees, the recording costs [if any], any documentary transfer taxes, and any other closing costs or charges charged by Escrow Holder or Title Company not expressly provided for herein. Notwithstanding the foregoing, if Transferee is not directly acquiring title (i.e., Transferee has identified the Designee or has assigned this Agreement in accordance with Section 6 below) and there are any closing costs charged as a result of the Property being transferred directly to such Designee or assignee (e.g., documentary transfer tax or recording fees, where there would otherwise be none if the Property was deeded directly to Transferee), then (a) such closing costs shall be determined based on the Agreed Value, notwithstanding that the Purchase Price is \$1.00, and (b) Transferee or such Designee or assignee shall be responsible for such closing costs.

4.9 Brokers. Transferee and Transferor represent to one another that except for any broker engaged by Transferor, no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement, or to its knowledge is in any way connected with such transaction. Transferor shall pay commissions to any broker engaged by Transferor in accordance with the agreement between Transferor and such Broker. Each party covenants and agrees that any other broker fee or commission, which may be due or payable in connection with the closing of the transaction contemplated by this Agreement through its dealings with that party, shall be borne solely by that party.

4.10 Escrow Cancellation Charges. In the event that this escrow shall fail to close by reason of the default of either party hereunder, the defaulting party shall be liable for all escrow and title cancellation charges. In the event that the escrow shall fail to close for any other reason, each party shall pay one-half (1/2) of all escrow and title cancellation charges.

5. NOTICES. All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and sent by first class United States registered or certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized courier service such as Federal Express, duly addressed to the parties as follows:

To Transferor: Google LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

**DRAFT**

Attn: REWS Department / Downtown West SJ Project  
Executive

With Copies to: Google LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Attn: Legal Department / RE Matters  
and  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
1900 Main Street, 5th Floor  
Irvine, CA 92614  
Attn: Britney Willhite

To Transferee: City of San José  
200 E. Santa Clara Street, 17th Floor  
San Jose, California 95113  
Attn: City Manager

With Copy to: City of San José  
200 E. Santa Clara Street, 16th Floor  
San Jose, California 95113  
Attn: City Attorney

Delivery of any notice or other communication hereunder shall be deemed made on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party as herein provided.

6. ASSIGNMENT. This Agreement may not be assigned by Transferor or Transferee without the prior written consent of the other party (in its sole and absolute discretion); provided, however, that (a) Transferor may assign this Agreement to a "Google Affiliate" or to any allowed or permitted "Transferee" (as such terms are defined in the DA), and (b) Transferee may identify the Designee as the transferee/grantee of the Property at the Closing pursuant to Section 1.1 above. Notwithstanding the foregoing, following the Closing, Transferee may assign all of Transferee's rights under Section 19 below and Section 21 below that survive the Closing to any subsequent transferee of the Property without the consent of Transferor, but Transferee shall notify Transferor in writing of such assignment and the name and address of the applicable assignee. The party named in the Grant Deed in accordance with this Section 6 shall be referred to herein as the "Grantee".

7. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the parties

## **DRAFT**

hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

8. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

9. EMAIL DELIVERY. This executed Agreement (and executed counterparts of this Agreement), may be delivered by email to Sallie Lim at Sallie@google.com for Transferor, and to the Director of Housing, with copies to Office of Economic Development and City Attorney for Transferee. Any party may change its recipients for purposes of this Section by giving notice to the other party as provided in Section 5 above.

10. TIME OF THE ESSENCE. Time is of the essence of this Agreement.

11. THIRD PARTIES. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement. Further, nothing contained in this Agreement, expressed or implied, shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Transferor and Transferee (and Grantee, if applicable).

12. SEVERABILITY. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13. ADDITIONAL DOCUMENTS. Each party hereto agrees to perform any further reasonable acts and to execute, acknowledge and deliver any further reasonable documents that may be reasonably necessary to carry out the provisions of this Agreement.

14. AUTHORITY OF CITY MANAGER. The City Manager or designee of Transferee may give any and all notices, consents and terminations hereunder on behalf of Transferee provided they are in writing. The City Manager or designee is authorized to execute, on behalf of the Transferee, deeds and all other documents as may be necessary to effectuate this Agreement and the transfer of property rights herein. Further, nothing stated herein in this Agreement shall in any way impinge upon the City's regulatory authority under federal, state, or local laws.

16. NO CONSTRUCTION AGAINST DRAFTER. This Agreement shall not be construed against the drafter hereof, it being acknowledged that each party has had an opportunity to review and negotiate the terms herein.

17. REMEDIES.

## **DRAFT**

17.1 Default by Transferor. If Transferor fails to perform any of the obligations of Transferor set forth in this Agreement and fails to cure the same within ten (10) days after delivery of written notice from Transferee (provided that no such notice and cure period shall be applicable to Transferor's failure to deliver any documents or funds required for the Closing as set forth in Section 4 above), then as Transferee's sole and exclusive remedy, Transferee may terminate this Agreement upon written notice to Transferor and Escrow Holder. If Transferee elects to terminate this Agreement, then this Agreement shall automatically terminate, Transferor shall reimburse Transferee for the reasonable third party costs and expenses actually incurred by Transferee in performing the inspections and testing set forth in Section 3.1 above, and Transferor would not receive any IHO Fee credits for the Property and instead Transferor shall satisfy its IHO obligations by (a) identifying a site or sites in the Diridon Station Area Plan which can accommodate at least one hundred eighty (180) affordable housing units as anticipated on the Property, (b) paying one hundred fifty percent (150%) of the IHO Fees due (the "IHO Fee Premium"), or (c) upon mutual agreement of Transferor and Transferee, Transferor shall work with Transferee to maintain yield by condominium-izing a portion of a high rise residential project for affordable housing. If Transferor satisfies its IHO obligations by the payment of the IHO Fee Premium pursuant to clause (b) above, the payment of the IHO Fee Premium shall be made in full to Transferee within thirty (30) days after Transferor's election of clause (b) above, and Transferor shall receive IHO Fee credits for that portion of the IHO Fee Premium equal to one hundred percent (100%) of the IHO fees due, but no credit for that portion of the IHO Fee Premium equal to the additional fifty percent (50%) owned as a result of the default.

17.2 Default by Transferee. If Transferee fails to perform any of the obligations of Transferee set forth in this Agreement and fails to cure the same within ten (10) days after delivery of written notice from Transferor (provided that no such notice and cure period shall be applicable to Transferee's failure to deliver any documents or funds required for the Closing as set forth in Section 4 above), then as Transferor's sole and exclusive remedy, Transferor may terminate this Agreement upon written notice to Transferee and Escrow Holder. If Transferor elects to terminate this Agreement, then this Agreement shall automatically terminate, and upon such termination, Transferor shall receive IHO Fee credits in the same amount as Transferor would have received under the DA and this Agreement if this Agreement has not been terminated due to Transferee's default and the Closing had occurred.

18. RELEASE. Except as otherwise expressly set forth in this Agreement, Transferee is acquiring the Property in its existing condition, "AS-IS, WHERE-IS", and as of the Closing, Transferee has made or has waived all inspections and investigations of the Property and its vicinity which Transferee believes are necessary to protect its own interest in, and its contemplated use of, the Property.

Except as otherwise expressly set forth in this Agreement, neither Transferor nor any entity associated or affiliated with Transferor, nor the agents, servants, officers, directors, employees, subsidiaries, divisions, affiliates or successors of Transferor, nor each of them, has made any representation, warranty, inducement, promise, agreement, assurance or statement, oral or written, of any kind to Transferee upon which Transferee is relying, or in connection with which Transferee has made or will make any decisions concerning the Property or its vicinity including,



## **DRAFT**

without limitation, its use, condition, value, square footage, compliance with applicable laws, existence or absence of hazardous substances, or the permissibility, feasibility, or convertibility of all or any portion of the Property for any particular use or purpose, including, without limitation, its present or future prospects for sale, lease, development, occupancy or suitability as security for financing.

Transferor hereby specifically disclaims all warranties implied by law arising out of or with respect to the execution of this Agreement, any aspect or element of the Property, or the performance of Transferor's obligations hereunder including, without limitation, all implied warranties of merchantability, habitability and/or fitness for a particular purpose.

Except as otherwise expressly set forth in this Agreement, Transferee hereby releases and forever discharge(s) Transferor and each and every entity associated or affiliated with Transferor, and the agents, servants, officers, directors, employees, subsidiaries, divisions, affiliates and successors of Transferor, and each of them, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, liabilities and demands, including without limitation any claim arising from and/or related to the Property (collectively "Claims"), which Claims are related to the physical and environmental condition of the Property, whether known or unknown, disclosed or undisclosed, anticipated or unanticipated, whenever accruing. In connection with the foregoing releases, Transferee acknowledges that it is familiar with and hereby waives the protections of Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Notwithstanding the foregoing, the foregoing release shall not apply to (a) Transferor's default or breach of any obligation of Transferor set forth in this Agreement that survives the Closing, (b) any claims for personal injury, death, or damage to personal property based on events occurring prior to the Closing, (c) any claims to the extent arising from Transferor's intentional misrepresentation, or (d) any claims arising under Section 19 below or Section 21 below that survive the Closing.

### 19. TRANSFEROR POST-CLOSING COVENANTS.

19.1 Environmental. If the Closing occurs, Transferor shall indemnify, defend, and hold harmless Grantee against any and all third party actions or claims for death or personal injury to the extent such actions or claims are caused by exposure to environmental contamination existing at the Property which exposure occurred prior to the Closing and such actions or claims first accrued prior to the Closing, which indemnity and defense obligation of Transferor shall survive the Closing. Notwithstanding the foregoing, in no event shall such indemnity and defense obligation of Transferor apply to any actions or claims that arise from the negligence or willful misconduct of Transferee or Grantee.

## **DRAFT**

19.2 Transferor's Work. Notwithstanding anything in this Agreement to the contrary:

(a) If despite Transferor using its commercially reasonable efforts in accordance with Section 4.5.2.4, Transferor's Work is not Completed by the Closing as a result of any delays caused by Transferee or Force Majeure, then Transferee shall have no right to terminate this Agreement and the Closing shall occur on the Closing Date, provided that following the Closing, Transferor shall diligently pursue the remaining Transferor's Work to Completion (such remaining portion being the "Remaining Transferor's Work"). As security for the performance of the Remaining Transferor's Work, at the Closing, Transferor shall provide Transferee with a construction completion bond in an amount equal to the 1.5 times the cost to perform the Remaining Transferor's Work. Following the Closing, Transferee (or Grantee, as applicable) shall provide Transferor with reasonable access to the Property as necessary to perform the Remaining Transferor's Work. For the avoidance of doubt, upon the Closing, Transferor shall receive IHO Fee Credits for the H6 land value as illustrated in the third column of the IHO Credit Table in Section III.C.5 of the DA. If Transferor Completes the Remaining Transferor's Work, then Transferor shall receive IHO Fee Credits for the "Early H5 / H6 Work Portion of IHO Credits" (as illustrated in the fourth column of the IHO Credit Table with respect to H6) upon Completion. If Transferee performs the Remaining Transferor's Work, Transferor shall provide Transferee with reasonable access to the adjacent property owned by Transferor and permission as necessary to perform the Remaining Transferor's Work.

(b) If at six (6) months before Closing, Transferee determines that Transferor is not exercising commercially reasonable efforts to complete Transferor's Work based on the provisions in (c) below, then Transferee shall have no right to terminate this Agreement and the Closing shall occur on the Closing Date at which time Transferor shall pay to Transferee (and not Grantee, if other than Transferee) an amount equal to 150% of all of the costs to Complete the remaining "Early H6 Work" (as described in Schedule 1 to Exhibit C hereof), subject to "Annual Increases" (as defined in Section III.A of Exhibit D of the DA) (the "Remaining H6 Work") without regard to the amounts set forth in the IHO Credits Table in the DA. The 150% amount shall not be entitled to treatment as CLF and shall be handled as such as set forth in Exhibit D of the DA. Also, Transferor shall receive IHO Fee Credits for Transfer of Property for the H6 land value illustrated in the third column of the IHO Credit Table in Section III.C.5 of the DA. Transferee shall promptly Complete the Remaining H6 Work thereafter, using the default payment, and Transferor shall provide Transferee with reasonable access to the adjacent property owned by Transferor and permission as necessary to perform the Remaining Transferor's Work.

(c) Since the "Early H5 Work" (as defined in the DA) is critical to the successful operation of the Property, the parties agree that every three (3) months from the date of the "H5 Notice" (as defined in the DA) the parties shall meet, and Transferor shall provide an update on the Early H5 Work. If in its reasonable discretion Transferee concludes that there is no way for Transferor to complete the Early H5 Work before issuance of the Temporary Certificate of Occupancy for the Affordable Housing Development on the Property, Transferee shall be able to exercise the mechanisms described in (a) or (b) above depending on whether Transferor is diligently pursuing the work, or not.

## **DRAFT**

19.3 Mid-Block Crossing. At the Closing, Transferor shall retain ownership of the mid-block crossing between the Property and the “H5 Property” (as defined in the DA). Following the Closing, upon request from Grantee, Transferor shall provide to Grantee a commercially reasonable construction easement over such mid-block crossing for the time period commencing on the later of (a) the Closing, and (b) the commencement of construction on the Property or the “H5 Property” (whichever is sooner), and continuing until the date that is six (6) months following the issuance of the last temporary certificate of occupancy for the Property and the “H5 Property”.

19.4 Survival. The provisions of this Section 19 shall survive the Closing.

### 20. GRANTEE POST-CLOSING COVENANTS.

20.1 Condition of Property. Following the Closing, Grantee shall be responsible to keep the Property in good, clean and safe condition. In connection therewith, Grantee shall be responsible to maintain the Erosion Controls and the Fence (as such terms are defined in Schedule 1 to Exhibit “C” attached hereto) installed as part of Transferor’s Work in good condition and repair, and to provide for adequate lighting and security prior to and during development and construction of the Property. The obligations set forth in this Section 20.1 shall also be set forth in the Grant Deed, which obligations shall run with the land of the Property.

20.2 Construction Rights-of-Way. Following the Closing, upon request from Transferor from time to time, Grantee shall grant Transferor a commercially reasonable construction right-of-way as may be reasonably necessary for the construction of the Project, provided that such construction rights-of-way do not materially interfere with the development and use of the Property for the Affordable Housing Development.

20.3 Construction Costs. Grantee shall bear all construction costs related to the Affordable Housing Development.

20.4 Frontage Work. During the performance of the Frontage Work (as defined in Schedule 1 to Exhibit “C” attached hereto) and following completion of the Frontage Work, if Grantee shall cause any damage to the Frontage Work, then Grantee shall repair such damage, and if such damage is caused following completion of the Frontage Work, Grantee shall restore the affected area to the condition immediately prior to the damage. All such repair and restoration by Grantee shall be at Grantee’s sole cost and expense.

20.5 Successors and Assigns. The provisions of this Section 20 shall be binding on Grantee and its successors and assigns. Grantee shall cause all such successors and assigns to be bound by the terms and conditions of this Section 20.

20.6 Survival. The provisions of this Section 20 shall survive the Closing.

21. PRIVATE STREET WORK. Pursuant to the transfer agreement for the “H5 Property” (as defined in the DA) (the “H5 Transfer Agreement”), Transferor shall perform the

## **DRAFT**

“Private Street Work” (as defined in the H5 Transfer Agreement). The following provisions shall apply prior to and following the Closing hereunder, which provisions shall survive the Closing:

21.1 Grantee shall reasonably cooperate with Transferor in connection with the performance of the Private Street Work.

21.2 Following the Closing, upon request from Transferor, Grantee shall provide to Transferor a commercially reasonable construction easement to facilitate the performance of the Private Street Work.

21.3 On completion of the Private Street Work, Transferor will give notice to Grantee that such portion of the Private Street Work is complete and available for access and use.

21.4 During the performance of the Private Street Work and following completion of the Private Street Work, if Grantee shall cause any damage to the Private Street Work, then Grantee shall repair such damage, and if such damage is caused following completion of the Private Street Work, Grantee shall restore the affected area to the condition immediately prior to the damage. All such repair and restoration by Grantee shall be at Grantee’s sole cost and expense.

The provisions of this Section 21 shall be binding on Grantee and its successors and assigns. Grantee shall cause all such successors and assigns to be bound by the terms and conditions of this Section 21.

22. ATTORNEYS' FEES. Should legal action be brought by either party against the other for a default under this Agreement or to enforce any provision herein, the prevailing party in such action shall not be entitled to recover its attorneys' fees and costs from the other party. Each party to the legal action shall bear its own attorneys' fees and costs.

23. MEET AND CONFER PROCESS. Before sending a notice of default in accordance with Section 17 above, the party that may assert that the other party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other party to discuss the alleged failure and shall permit such party a reasonable period, but not less than thirty (30) days and not more than sixty (60) days, to respond to or cure such alleged failure. The party asserting such failure shall request that such meeting and conference occur within twenty (20) business days following the request and if, despite the “Good Faith Efforts” (as defined in the DA) of the requesting party, such meeting has not occurred within twenty (20) business days of such request, such party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 17 above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**DRAFT**

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

**TRANSFEROR:**

GOOGLE LLC, a Delaware limited liability  
company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSFeree:**

CITY OF SAN JOSÉ

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**EXHIBIT "A"**

**DEPICTION OF THE PROPERTY**

**[NOTE TO CITY: To be inserted from Schedule D1 to the DA]**

**EXHIBIT "B"**

**FORM OF GRANT DEED**

**RECORDING REQUESTED BY:**

**WHEN RECORDED MAIL TO AND  
MAIL TAX STATEMENTS TO:**

---

**APN:**

SPACE ABOVE THIS LINE FOR RECORDER

G R A N T D E E D

**The Undersigned Grantor Declares: DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0; Recorded for the benefit of the City of San Jose and is exempt from transfer tax per Revenue and Taxation Code Section 11922 and exempt from recording fee per Government Code Section 6103 and/or 27383.**

[ ] computed on the consideration or full value of property conveyed, OR  
[ ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,  
[ ] unincorporated area; [X] **City of San Jose**, and  
[X] Signature of Declarant  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_ ("GRANTOR"), does hereby GRANT to \_\_\_\_\_ "GRANTEE", for valuable consideration, receipt of which is hereby acknowledged, all certain real property situate in the City of San José, County of Santa Clara, State of California, described in Exhibit "1" attached hereto and made a part hereof (the "Property").

By its signature hereon, Grantee, as the owner of the Property, hereby covenants and agrees that Grantee shall be responsible to keep the Property in good, clean and safe condition and to maintain attractive fencing and to provide for adequate lighting and security prior to and during development and construction of the Property. The foregoing covenants and agreements shall be appurtenant to the Property and be binding on Grantee and each successor-in-interest to Grantee in the Property

Exhibit "A"  
Page 1 of 1

and every part thereof. It is the intention and understanding of the parties hereto that the foregoing covenants and agreements shall run with the land (as defined in California Civil Code Sections 1460 & 1462) of the Property and every part thereof in accordance with California Civil Code Section 1468.

Dated: \_\_\_\_\_, 202\_\_

**“GRANTOR”**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Dated: \_\_\_\_\_

**“GRANTEE”**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Dated: \_\_\_\_\_



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.

**ACKNOWLEDGEMENT**

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
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 \_\_\_\_\_ (Seal)

**Exhibit 1 to Grant Deed  
Legal Description**

[USE ONLY IF CITY IS GRANTEE]

Deed Acceptance

APN:

### DEED ACCEPTANCE

This is to certify that the interest in real property conveyed by *Grant Deed*, dated \_\_\_\_\_, 202\_, from \_\_\_\_\_, a corporation under a holding agreement to the City of San Jose, a municipal corporation of the State of California, is hereby accepted by the undersigned officer of said City on behalf of the City Council of the City of San Jose, pursuant to authority conferred by the City Council of the City of San Jose on April 4, 1995 (shown as Item 9o on the April 4, 1995 City Council Agenda). The Grantee consents to recordation thereof by its duly authorized officer.

CITY OF SAN JOSE,  
A Municipal Corporation of the State of California

By: \_\_\_\_\_ Date: \_\_\_\_\_  
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.

**ACKNOWLEDGEMENT**

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me,  
\_\_\_\_\_  
(insert name and title of officer)

Personally appeared  
\_\_\_\_\_,  
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 \_\_\_\_\_ (Seal)

## EXHIBIT "C"

### TRANSFEROR'S WORK

1. As used in this Agreement, "Transferor's Work" shall mean that certain work described on Schedule 1 attached hereto.
2. Following the date that Transferor receives the vertical improvement superstructure permit associated with the first office building for the Project, Transferor shall promptly procure and mobilize relevant consultants and prepare plans and specifications for Transferor's Work (the "Plans").
3. Upon finalizing the Plans, Transferor shall promptly and diligently pursue obtaining all permits necessary for Transferor's Work, subject to delays caused by Transferee or Force Majeure (as defined below) (the "Permitted Plans"). Transferor shall provide Transferee with a copy of the Permitted Plans. Upon receipt of the Permitted Plans, Transferor shall diligently perform Transferor's Work to Completion, subject to delays caused by Transferee or Force Majeure.
4. As used herein, "Completion" or "Completed" shall mean that Transferor's Work has been completed in accordance with the building permit(s) issued with respect to Transferor's Work and the City Building Division has completed its final inspection of Transferor's Work. Transferee shall diligently and in good faith process all submissions and requests from Transferor necessary for Transferor to perform Transferor's Work to Completion.
5. As used herein, "Force Majeure" shall mean any event or condition that: (i) is beyond Transferor's control; (ii) prevents Transferor's performance of this Agreement; (iii) Transferor could not have reasonably foreseen; and (iv) arises from one or more of the following: (1) naturally occurring events constituting an act of God; (2) unusually severe and abnormal climactic conditions (as compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Property); (3) strikes, stoppages or boycotts that affect a specific trade on a national or regional level, to the extent not caused by the acts or omissions of Transferor; (4) the unavailability of construction materials for projects similar to Transferor's project as contemplated in the DA (i.e. a large scale mixed-use project) that causes significant construction delays, or significant construction delays resulting from such materials being unusually difficult or impossible to obtain, or from defects, tariffs, embargoes, or trade disputes, where, in each case, Transferor is unable to obtain alternative or replacement materials, within the same or substantially similar time period at substantially the same cost (and without having to forfeit any significant deposits or advance payments); (5) acts of terrorism or war; (6) riots or other civil unrest; (7) a local, state or federal declaration of emergency based on an epidemic or pandemic, including any quarantine or other health-related orders, directives, regulations, laws or other requirements implemented in response to such epidemic or pandemic; (8) orders issued by any other governmental body having jurisdiction over the Project; (9) casualty; or (10) condemnation unrelated to DISC or other transit project(s). Neither the inability of Transferor to obtain construction financing for Transferor's project nor the condition of, or changes in, the real estate market shall constitute a Force Majeure event, except to the extent such inability or changes result from a Force Majeure event.



## **SCHEDULE 1 TO EXHIBIT “C”**

### **SCOPE OF TRANSFEROR’S WORK**

- Establish erosion and sediment controls on the boundary of the Property (the “Erosion Controls”) and fence off the Property on all sides (the “Fence”)
- Disconnect and cap any utilities on the Property at its boundary in Auzerais Avenue, and furnish a survey to Transferee of the terminated locations
- Abate any hazardous materials contained within the buildings to the extent required by law prior to demolishing such buildings, and demolish any buildings including offsite buildings (partially or totally) needed to complete the work
- Remove slabs, footings, piles to a depth of 4 feet below the surface and asphalt parking lots
- Rough grade the Property without imported fill or compaction, in order to provide a free draining surface
- Improve the street frontage on Auzerais Avenue in the area depicted as “Early H6 Work” on Figure 1.0 attached hereto (approximately 100 lineal feet), in accordance with the “Downtown West Design Standards and Guidelines” (as defined in the DA), including street sidewalk improvements to Auzerais Avenue, curbs, gutters sidewalks, street furnishings, signage & street trees in accordance with the Downtown West Design Standards and Guidelines (the “Frontage Work”)

**SCHEDULE 1**

**FIGURE 1.0**

