

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Autumn
Date: Tuesday, May 18, 2021 12:06:45 PM
Attachments: [Transfer Agreement-Autumn Parcels-Google-Spartan \(4847-2070-8583.4\).docx](#)
[rad16865.pdf](#)

From: Andes, Pam <pandes@allenmatkins.com>
Sent: Tuesday, May 11, 2021 8:28 PM
To: Phan, Johnny <Johnny.Phan@sanjoseca.gov>
Cc: bwillhite@allenmatkins.com; gmiller@coblenzlaw.com
Subject: Autumn

[External Email]

Subject to Contract / Contract Denied

Hi, Johnny. Please find attached the Transfer Agreement for the Autumn Parcels. The PDF is a blackline. Please run your own blacklines since we are all moving fast.

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

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.

From: Andes, Pam
Sent: Tuesday, May 11, 2021 4:30 PM
To: Phan, Johnny <Johnny.Phan@sanjoseca.gov>
Cc: Willhite, Britney <bwillhite@allenmatkins.com>; gmiller@coblenzlaw.com
Subject: FW: Revised Transfer Agreements - H1, H5, H6

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>

Sent: Thursday, May 6, 2021 4:44 PM

To: johnny.phan@sanjoseca.gov

Cc: Andes, Pam <PAandes@allenmatkins.com>; gmliller@coblenzlaw.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)
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Allen Matkins

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PROPERTY TRANSFER AGREEMENT
(Autumn Street Parcels)

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. Section 4.1.2(c) of that certain Development Agreement between Transferor and Transferee adopted by Ordinance No. _____ (the “DA”) contemplates and requires that Transferor shall transfer to Transferee, as a “Community Benefit” (as defined in the DA), Transferor’s fee simple interest in the Property, and the date of this Agreement shall be the Effective Date of the DA, as defined in Section 2.1 thereof.

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”) that is three (3) months after the date that “Final Approval” (as defined in the DA) occurs.

~~For a period of sixty (60) days after the date that Final Approval occurs (“Inspection Period”), Transferee shall have the right to inspect the Property, pursuant to the terms set forth in this Section 1.1, to determine that there has been no material adverse change in the environmental condition of the Property. 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 1.1, 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~~

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~~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 that there has been a material adverse change in the environmental condition of the Property, then Transferee may terminate this Agreement by written notice to Transferor given prior to the end of the sixty (60) day Inspection Period.~~

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 development or use of the Property. The Property may allow for approximately two hundred (200) units of affordable housing, if Transferee approves a rezoning and any necessary project approvals and CEQA review, provided that the foregoing shall not be a condition precedent to the transaction contemplated by this Agreement.

~~Transferee shall have the right to identify a developer for potential development of the Property (a "Designee") by a date that is five (5) business days prior to the Closing Date by providing Transferor with written notice of such Designee. If Transferee identifies a Designee, said Designee shall take title in Designee's name, and Designee shall assume all rights and obligations of Transferee as set forth herein.~~

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

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 caused by the acts or omissions of Transferee, (c) title exceptions set forth on ~~a title/preliminary report dated as of the date of this~~

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~~Agreement~~ Exhibit “C” attached hereto, and (d) title exceptions which Transferee has approved in writing (or is deemed to have approved) pursuant to ~~this Section 2.1~~ Section 2.2 below (which (a) through (d) shall constitute “Approved Title Exceptions”). Notwithstanding the foregoing, Transferor shall cause all Monetary Liens (as defined below) to be released upon and as a condition to Closing.

~~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 sixty (60) days from receipt of complete set of Transferor documents 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 sixty (60) day review period. If Transferee does not elect to terminate this Agreement on or prior to the expiration of the sixty (60) day review 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 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.

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

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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.

3.1 Disclosures.

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.

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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.

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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 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.

In the event any condemnation or eminent domain, 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 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 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 a Designee);~~
a An executed and acknowledged “Certificate of Acceptance” in the form attached to the Grant Deed (attached hereto as Exhibit “B”); and

4.4.2 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.

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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 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 There shall have been no material adverse change in the environmental conditions of the Property after the date of this Agreement. In order to determine that the condition set forth in this Section 4.5.2.4 has been satisfied (i.e., that there has been no material adverse change in the environmental condition of the Property after the date of this Agreement), within forty-five (45) days after the date that Final Approval occurs, Transferor shall provide Transferee with an updated Phase I environmental assessment for the Property (the "Phase I Update"). If the Phase I Update 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; provided, however, that Transferee's consultant for any Phase II environmental assessment shall be subject to Transferor's reasonable approval. However, if the Phase I Update 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.

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.

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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 a Designee) and such Designee 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) and there are any closing costs charged as a result of the Property being transferred directly to such Designee (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.~~

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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

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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.~~

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.

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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.

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

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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 such uncured default shall be deemed to be a "Default" under the DA, and as Transferee's sole and exclusive remedy, Transferee shall have the rights and remedies set forth in Section 9.4 of the DA for a "Default" under the DA. If Transferee elects to terminate the DA pursuant to Section 9.4.2 of the DA, then this Agreement shall also be deemed to be terminated.

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 be deemed to have satisfied the requirements of Section 4.1.2(c) of the DA.

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,

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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, or (c) any claims to the extent arising from Transferor’s intentional misrepresentation.

19. 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.

20. 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.

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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

[NOTE TO CITY: To be inserted from Exhibit C2 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").

Exhibit "A"

Page 1 of 1

Dated: _____, 202__

"GRANTOR"

By: _____
Name: _____
Dated: _____

Exhibit "A"
Page 2 of 1

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"

APPROVED TITLE EXCEPTIONS

240 N. Montgomery:

1. The fact that the land lies within the boundaries of the Julian-Stockton Redevelopment Project Area, as disclosed by the document recorded November 03, 1980 as Book F704, Page 273 of Official Records.

2. TERMS AND CONDITIONS of that certain Permit

File No.: RH03-004

Disclosed By: Certificate of Permit

Recorded: February 03, 2004 as Document No. 17599606, Official Records

Reference is hereby made to the record for particulars.

3. The following matters disclosed by an ALTA/NSPS survey made by Kier & Wright Civil Engineers & Surveyors, Inc. on March 14, 2018, designated Job No. A16718-29:

a. The fact that the fence extends across the Southeasterly and Northwesterly boundaries of the Land.

260 N. Montgomery & 255 N. Autumn:

1. The fact that the land lies within the boundaries of the Julian-Stockton Redevelopment Project Area, as disclosed by the document recorded November 03, 1980 as Book F704, Page 273 as Instrument No. 6889963 of Official Records.

2. The following matters disclosed by an ALTA/NSPS survey made by Kier & Wright Civil Engineers & Surveyors, Inc. on September 21, 2018, designated Job No. A16718-33:

a. The fact that the chain link fence encroaches over the boundaries of the Land.

b. The fact that overhead lines extend across the Land without the benefit of an easement.

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PROPERTY TRANSFER AGREEMENT
(Autumn Street Parcels)

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. Section 4.1.2(c) of that certain Development Agreement between Transferor and Transferee adopted by Ordinance No. _____ (the “DA”) contemplates and requires that Transferor shall transfer to Transferee, as a “Community Benefit” (as defined in the DA), Transferor’s fee simple interest in the Property, and the date of this Agreement shall be the Effective Date of the DA, as defined in Section 2.1 thereof.

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”) that is three (3) months after the date that “Final Approval” (as defined in the DA) occurs.

~~For a period of sixty (60) days after the date that Final Approval occurs (“Inspection Period”), Transferee shall have the right to inspect the Property, pursuant to the terms set forth in this Section 1.1, to determine that there has been no material adverse change in the environmental condition of the Property. 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 1.1, 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~~

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~~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 that there has been a material adverse change in the environmental condition of the Property, then Transferee may terminate this Agreement by written notice to Transferor given prior to the end of the sixty (60) day Inspection Period.~~

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 development or use of the Property. The Property may allow for approximately two hundred (200) units of affordable housing, if Transferee approves a rezoning and any necessary project approvals and CEQA review, provided that the foregoing shall not be a condition precedent to the transaction contemplated by this Agreement.

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

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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 caused by the acts or omissions of Transferee, (c) title exceptions set forth on ~~a title/preliminary report dated as of the date of this~~

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~~Agreement~~Exhibit “C” attached hereto, and (d) title exceptions which Transferee has approved in writing (or is deemed to have approved) pursuant to ~~this Section 2.1~~Section 2.2 below (which (a) through (d) shall constitute “Approved Title Exceptions”). Notwithstanding the foregoing, Transferor shall cause all Monetary Liens (as defined below) to be released upon and as a condition to Closing.

As used herein, “Monetary Liens” shall mean all liens secured by deeds of trust
As used herein, “Monetary Liens” shall mean all liens secured by deeds of trust securing loans
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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 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

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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.

3.1 Disclosures.

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.

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~~5.4.~~ ESCROW.

5.14.1 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.

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5.24.2 Closing. For the purposes of this Agreement, “Closing” shall be the date on which the Grant Deed for the Property in favor of Transferee 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.

In the event any condemnation or eminent domain, 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.

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

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

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

5.44.4 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):

5.4.14.4.1 An executed and acknowledged “Certificate of Acceptance” An executed and acknowledged “Certificate of Acceptance” in the form attached to the Grant Deed (attached hereto as Exhibit “B”); and

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

5.54.5 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:

5.5.14.5.1 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:

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

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5.5.24.5.2 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:

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

5.5.2.24.5.2.2 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 subject only to the Approved Title Exceptions.

5.5.2.34.5.2.3 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.

5.5.2.44.5.2.4 There shall have been no material adverse change in the environmental conditions of the Property after the date of this Agreement. In order to determine that the condition set forth in this Section 4.5.2.4 has been satisfied (i.e., that there has been no material adverse change in the environmental condition of the Property after the date of this Agreement), within forty-five (45) days after the date that Final Approval occurs, Transferor shall provide Transferee with an updated Phase I environmental assessment for the Property (the "Phase I Update"). If the Phase I Update 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; provided, however, that Transferee's consultant for any Phase II environmental assessment shall be subject to Transferor's reasonable approval. However, if the Phase I Update 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.

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).

5-64.6 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.

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5.74.7 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.

5.84.8 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.

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5.104.9 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.

5.114.10 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.

6.5. 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

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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.

7.6. 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 Transferor may assign this Agreement to a "Google Affiliate" or to any allowed or permitted "Transferee" (as such terms are defined in the DA)

8.7. 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.

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9.8. 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.

10.9. 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.

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

12.11. 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.

13.12. 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.

14.13. 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.

15.14. 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

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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 such uncured default shall be deemed to be a "Default" under the DA, and as Transferee's sole and exclusive remedy, Transferee shall have the rights and remedies set forth in Section 9.4 of the DA for a "Default" under the DA. If Transferee elects to terminate the DA pursuant to Section 9.4.2 of the DA, then this Agreement shall also be deemed to be terminated.

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 be deemed to have satisfied the requirements of Section 4.1.2(c) of the DA.

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,

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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, or (c) any claims to the extent arising from Transferor’s intentional misrepresentation.

19. 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.

20. 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-~~911~~-21

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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

[NOTE TO CITY: To be inserted from Exhibit C2 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

Dated: _____, 202__

"GRANTOR"

By: _____
Name: _____
Dated: _____

Exhibit "A"
Page 2 of 1

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"

APPROVED TITLE EXCEPTIONS

240 N. Montgomery:

1. The fact that the land lies within the boundaries of the Julian-Stockton Redevelopment Project Area, as disclosed by the document recorded November 03, 1980 as Book F704, Page 273 of Official Records.

2. TERMS AND CONDITIONS of that certain Permit

File No.: RH03-004

Disclosed By: Certificate of Permit

Recorded: February 03, 2004 as Document No. 17599606, Official Records

Reference is hereby made to the record for particulars.

3. The following matters disclosed by an ALTA/NSPS survey made by Kier & Wright Civil Engineers & Surveyors, Inc. on March 14, 2018, designated Job No. A16718-29:

a. The fact that the fence extends across the Southeasterly and Northwesterly boundaries of the Land.

260 N. Montgomery & 255 N. Autumn:

1. The fact that the land lies within the boundaries of the Julian-Stockton Redevelopment Project Area, as disclosed by the document recorded November 03, 1980 as Book F704, Page 273 as Instrument No. 6889963 of Official Records.

2. The following matters disclosed by an ALTA/NSPS survey made by Kier & Wright Civil Engineers & Surveyors, Inc. on September 21, 2018, designated Job No. A16718-33:

a. The fact that the chain link fence encroaches over the boundaries of the Land.

b. The fact that overhead lines extend across the Land without the benefit of an easement.