

From: Hill, Egan
Sent: Thursday, May 13, 2021 12:54 PM
To: Colli, Garrett J. (Perkins Coie)
Subject: RE: Encroachment Resolution / Agreement / Criteria Checklist
Attachments: 1819118_3.docx

I've accepted all changes except revised the language in Section 26 of the Encroachment Agreement (attached). If you're ok, these will all be final.

From: Colli, Garrett J. (Perkins Coie) <GColli@perkinscoie.com>
Sent: Thursday, May 13, 2021 10:55 AM
To: Hill, Egan <Egan.Hill@sanjoseca.gov>
Cc: Do, Ryan <ryan.do@sanjoseca.gov>; DSnow@rwglaw.com; A-P Hurd <aphurd@skipstonessea.com>; Phan, Johnny <Johnny.Phan@sanjoseca.gov>; Bhavesh Parikh <bhaveshp@google.com>; Sheela Jivan <sheelajivan@google.com>; Alexa Arena <arena@google.com>; Cano, Matt <Matt.Cano@sanjoseca.gov>; Gray, Matthew S. (SFO) <mgray@perkinscoie.com>
Subject: RE: Encroachment Resolution / Agreement / Criteria Checklist

[External Email]

Egan:

Please see attached. I will call you momentarily to discuss.

Garrett Colli | Perkins Coie LLP

PARTNER
505 Howard Street Suite 1000
San Francisco, CA 94105
D. +1.415.344.7160
F. +1.415.344.7260
E. GColli@perkinscoie.com

From: Hill, Egan <Egan.Hill@sanjoseca.gov>
Sent: Thursday, May 13, 2021 7:58 AM
To: Colli, Garrett J. (SFO) <GColli@perkinscoie.com>
Cc: Do, Ryan <ryan.do@sanjoseca.gov>; DSnow@rwglaw.com; A-P Hurd <aphurd@skipstonessea.com>; Phan, Johnny <Johnny.Phan@sanjoseca.gov>; Bhavesh Parikh <bhaveshp@google.com>; Sheela Jivan <sheelajivan@google.com>; Alexa Arena <arena@google.com>; Cano, Matt <Matt.Cano@sanjoseca.gov>; Gray, Matthew S. (SFO) <MGray@perkinscoie.com>
Subject: RE: Encroachment Resolution / Agreement / Criteria Checklist

Thanks, Garrett. Based on our discussion this morning, please find attached the final drafts of the Encroachment Authorization, Agreement and Checklist.

From: Colli, Garrett J. (Perkins Coie) <GColli@perkinscoie.com>
Sent: Wednesday, May 12, 2021 9:51 PM
To: Hill, Egan <Egan.Hill@sanjoseca.gov>

Cc: Do, Ryan <ryan.do@sanjoseca.gov>; DSnow@rwglaw.com; A-P Hurd <aphurd@skipstonesea.com>; Phan, Johnny <Johnny.Phan@sanjoseca.gov>; Bhavesh Parikh <bhaveshp@google.com>; Sheela Jivan <sheelajivan@google.com>; Alexa Arena <arena@google.com>; Cano, Matt <Matt.Cano@sanjoseca.gov>; Gray, Matthew S. (SFO) <mgray@perkinscoie.com>

Subject: RE: Encroachment Resolution / Agreement / Criteria Checklist

[External Email]

Egan:

Thank you for sharing the drafts. Please see attached for proposed final comments. Please let us know when you might be able to meet tomorrow morning to resolve these last edits. A summary of our comments is as follows:

- Encroachment Authorization – Section 2.E.1 should refer to a Resolution approving the PD Permit rather than Ordinance. We need to make a confirming edit to the Encroachment Resolution for District Systems.
- Encroachment Agreement – Two proposed changes that we should discuss briefly tomorrow morning.
- Encroachment Permit Checklist – A proposed change to conform references to insurance requirements consistent with a proposed edit to the Encroachment Agreement and also consistent with the form of the Exhibit for District Systems. Google's in-house counsel is reviewing concurrently.

Thank you,

Garrett Colli | Perkins Coie LLP

PARTNER

505 Howard Street Suite 1000
San Francisco, CA 94105
D. +1.415.344.7160
F. +1.415.344.7260
E. GColli@perkinscoie.com

From: Hill, Egan <Egan.Hill@sanjoseca.gov>

Sent: Wednesday, May 12, 2021 6:02 PM

To: Bhavesh Parikh <bhaveshp@google.com>; Sheela Jivan <sheelajivan@google.com>; Alexa Arena <arena@google.com>

Cc: Colli, Garrett J. (SFO) <GColli@perkinscoie.com>; Do, Ryan <ryan.do@sanjoseca.gov>; DSnow@rwglaw.com; A-P Hurd <aphurd@skipstonesea.com>; Phan, Johnny <Johnny.Phan@sanjoseca.gov>; Cano, Matt <Matt.Cano@sanjoseca.gov>

Subject: RE: Encroachment Resolution / Agreement / Criteria Checklist

Please see Streetscape Encroachment Authorization, Agreement and Checklist attached. These drafts are being reviewed concurrently by the City and subject to their comments. Please let me if you have any final comments.

Thanks.

From: Hill, Egan

Sent: Wednesday, May 12, 2021 8:32 AM

To: Bhavesh Parikh <bhaveshp@google.com>; Sheela Jivan <sheelajivan@google.com>; Alexa Arena <arena@google.com>

Cc: Colli, Garrett J. (Perkins Coie) <GColli@perkinscoie.com>; Do, Ryan <ryan.do@sanjoseca.gov>; DSnow@rwglaw.com; A-P Hurd <aphurd@skipstonesea.com>; Phan, Johnny <Johnny.Phan@sanjoseca.gov>; Cano, Matt

<Matt.Cano@sanjoseca.gov>

Subject: RE: Encroachment Resolution / Agreement / Criteria Checklist

Works for me. Thanks.

From: Bhavesh Parikh <bhaveshp@google.com>

Sent: Wednesday, May 12, 2021 8:30 AM

To: Hill, Egan <Egan.Hill@sanjoseca.gov>; Sheela Jivan <sheelajivan@google.com>; Alexa Arena <arena@google.com>

Cc: Colli, Garrett J. (Perkins Coie) <GColli@perkinscoie.com>; Do, Ryan <ryan.do@sanjoseca.gov>; DSnow@rwglaw.com;

A-P Hurd <aphurd@skipstonesea.com>; Phan, Johnny <Johnny.Phan@sanjoseca.gov>; Cano, Matt

<Matt.Cano@sanjoseca.gov>

Subject: Re: Encroachment Resolution / Agreement / Criteria Checklist

[External Email]

[+Sheela Jivan](#)

[+Alexa Arena](#)

Egan,

Does 10:30 am work?

Bhavesh Parikh | Director, Real Estate Development | 858-750-0060



On Wed, May 12, 2021 at 7:48 AM Hill, Egan <Egan.Hill@sanjoseca.gov> wrote:

Good morning, Garrett and Bhavesh.

Would you please let us know a good time to discuss today so we can finalize the agreement and prepare for posting tomorrow?

Thanks.

-----Original Message-----

From: Hill, Egan

Sent: Tuesday, May 11, 2021 2:00 PM

To: Colli, Garrett J. (Perkins Coie) <GColli@perkinscoie.com>; bhaveshp@google.com

Cc: Do, Ryan <ryan.do@sanjoseca.gov>; DSnow@rwglaw.com; A-P Hurd <aphurd@skipstonesea.com>; Phan, Johnny

<Johnny.Phan@sanjoseca.gov>; Cano, Matt <Matt.Cano@sanjoseca.gov>

Subject: RE: Encroachment Resolution / Agreement / Criteria Checklist

Garrett and Bhavesh,

Attached are the City's drafts of the Streetscape Encroachment Authorization and Agreement. Because the Authorizations become part of the Permits, I've created a new Council resolution for the Streetscape Encroachments to avoid future confusion about the applicable terms for each permit.

Thanks.

-----Original Appointment-----

From: Colli, Garrett J. (Perkins Coie) <GColli@perkinscoie.com>

Sent: Monday, May 10, 2021 10:34 PM

To: Colli, Garrett J. (Perkins Coie); Do, Ryan; DSnow@rwglaw.com; Hill, Egan; A-P Hurd; Phan, Johnny

Subject: Encroachment Resolution / Agreement / Criteria Checklist

When: Tuesday, May 11, 2021 10:00 AM-11:00 AM (UTC-08:00) Pacific Time (US & Canada).

Where: Webex Meeting

[External Email]

From: Colli, Garrett J. (Perkins Coie) <GColli@perkinscoie.com>

Sent: Tuesday, May 11, 2021 2:56:03 PM UTC

To: Colli, Garrett J. (Perkins Coie); A-P Hurd; Phan, Johnny

Subject: FW: Encroachment Resolution / Agreement / Criteria Checklist

When: Tuesday, May 11, 2021 5:00 PM-6:00 PM.

Where: Webex Meeting

[External Email]

-----Original Appointment-----

From: Colli, Garrett J. (SFO)

Sent: Monday, May 10, 2021 10:31 PM

To: Colli, Garrett J. (SFO); Hill, Egan; Do, Ryan; Bhavesh Parikh; Sheela Jivan; Gray, Matthew S. (SFO)

Subject: Encroachment Resolution / Agreement / Criteria Checklist

When: Tuesday, May 11, 2021 10:00 AM-11:00 AM (UTC-08:00) Pacific Time (US & Canada).

Where: Webex Meeting

-- Do not delete or change any of the following text. --

Join Webex meeting at Perkins Coie

LLP<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fperkinscoie.webex.com%2Fperkinscoie%2Fj.php%3FMTID%3Dmde661b4a0d7125f081a41164f03fa301&data=04%7C01%7CJohnny.Phan%40sanjoseca.gov%7C92918da8bb114d89ee0e08d9148ce43f%7C0fe33be061424f969b8d7817d5c26139%7C1%7C0%7C637563417633704276%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=YKvTfPSXvbssvPigLAPhU3T1TYZjOf6MtLdi5anJ7pc%3D&reserved=0>>

Meeting number (access code): 145 922 3107 Meeting password: 942fGZqVGmN

Tap to join from a mobile device (attendees only)

[+1-415-655-0001](tel:+14156550001), 1459223107##<[tel:+1415-655-0001](tel:+14156550001), *01*1459223107%23%2+3*01*> US Toll

Join by phone

[+1-415-655-0001](tel:+14156550001) US Toll

Global call-in

numbers<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fperkinscoie.webex.com%2Fperkinscoie%2Fglobalcallin.php%3FMTID%3Dma78c19244dd789a063d7a92643ce2f28&data=04%7C01%7CJohnny.Phan%40sanjoseca.gov%7C92918da8bb114d89ee0e08d9148ce43f%7C0fe33be061424f969b8d7817d5c26139%7C1%7C0%7C637563417633714228%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=yqH2UOCXpV%2FWlye1yIWD8ONK0JYSCTUAnuHhgBfhLqk%3D&reserved=0>>

Join from a video system or application

Dial [1459223107@perkinscoie.webex.com](https://perkinscoie.webex.com/join/1459223107)<[sip:1459223107@perkinscoie.webex.com](https://perkinscoie.webex.com/join/1459223107)>

You can also dial 173.243.2.68 and enter your meeting number. Can't join the

meeting?<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcollaborationhelp.cisco.com%2Farticle%2FWBX000029055&data=04%7C01%7CJohnny.Phan%40sanjoseca.gov%7C92918da8bb114d89ee0e08d9148ce43f%7C0fe33be061424f969b8d7817d5c26139%7C1%7C0%7C637563417633714228%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=iTSAfU16RQ71RSuKJgBU33ti5ZXdhwMaydkk84z%2F1GA%3D&reserved=0>>

If you are a host, click

here<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fperkinscoie.webex.com%2Fperkinscoie%2Fjoin%3FMTID%3Dm515aa4d219f3b25b16e1a35893dd3bda&data=04%7C01%7CJohnny.Phan%40sanjoseca.gov%7C92918da8bb114d89ee0e08d9148ce43f%7C0fe33be061424f969b8d7817d5c26139%7C1%7C0%7C637563417633724191%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=YBa7slwIMlJKRyeJaiBPFe%2FzBTBotjN18s00dSGs6dA%3D&reserved=0>> to view host information.

IMPORTANT NOTICE: Please note that this Webex service allows audio and other information sent during the session to be recorded, which may be discoverable in a legal matter. By joining this session, you automatically consent to such recordings. If you do not consent to being recorded, discuss your concerns with the host or do not join the session.

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

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

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

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

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

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

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

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

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of San José
Department of Public Works
200 E. Santa Clara St., 5th Floor
Attention: Director of Public Works
File No.:

RECORDED WITHOUT FEE
PER GOVERNMENT CODE
SECTIONS 6103 AND 27383

SPACE ABOVE RESERVED FOR RECORDER'S USE

**ENCROACHMENT AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
GOOGLE LLC**

This Encroachment Agreement ("Agreement") is made and entered into by and between the City of San José, a municipal corporation of the State of California ("City") and Google LLC, a Delaware limited liability company and its successors in interest ("Permittee"), as of DATE ("Effective Date").

RECITALS

WHEREAS, the Permittee is the owner of certain real property in the City of San José, County of Santa Clara, State of California, described as DESCRIPTION ("Property") which is more particularly described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Property is bounded by or subject to those certain public rights-of-way or other public easements owned or controlled by the City that have been expressly or impliedly dedicated to the public, commonly known as PUBLIC PROPERTY NAME ("Public Property"); and

WHEREAS, the Permittee has requested that the City authorize the Permittee to design, install, maintain, repair and replace privately-owned, publicly-accessible non-vehicular transportation and pedestrian access related improvements as described in the DWDSG (as defined below), subject to the provisions in the Development Agreement (as defined below) regarding “Potential Ped/Bike Street” improvements (“Encroachment”), which is intended to reside within portions of PUBLIC PROPERTY NAME (the “Subject Premises”), as more particularly described in Exhibit A attached hereto and incorporated herein by reference and as set forth in the Plans (as defined below); and

WHEREAS, the City Council has approved the Downtown West Mixed-Use Plan, including the Development Agreement by and between the City and Permittee Relative to the Development of Property Located in the Downtown Station Area, approved by Ordinance No. [REDACTED] and dated [REDACTED] for reference purposes (“Development Agreement”), a Planned Development Permit, including the Downtown West Design Standards and Guidelines (“DWDSG”) and related entitlements from the City; and

WHEREAS, the City’s Director of Public Works has approved plans and specifications for the design and construction of the Encroachment, which are on file with the City and are incorporated herein by reference, subject to the additional conditions and terms contained in that approval (collectively, “Plans”); and

WHEREAS, the City Council adopted a resolution authorizing the Encroachment, subject to the conditions set forth therein, a true copy of which is attached hereto as Exhibit B and incorporated herein by reference (“Authorization”); and

WHEREAS, this Agreement, including the Plans and any conditions contained therein, and the Authorization together constitute a revocable permit from the City allowing the Permittee to maintain the Encroachment, subject to the terms and conditions set forth therein (collectively “Permit”);

NOW, THEREFORE, in consideration of the City’s granting revocable permission for the Encroachment, and subject to all of the terms, conditions and restrictions set forth in this

Agreement and the Authorization, the City and Permittee, for itself and all successive owners of the Property, intending to be bound thereby for the benefit of the Public Property, do hereby agree as follows:

1. Incorporation of Recitals. The recitals are true and correct and are incorporated herein as if repeated in their entirety.
2. Revocable License. The Encroachment shall be allowed only as a revocable license, and the City shall not be estopped from ordering removal of the Encroachment or demanding compliance with any of Permittee's obligations under the Permit. The Permit shall not be construed to create any property right in the Subject Premises that the Permittee did not possess prior to receiving the Permit. The Permit shall have no value in any proceeding greater than the Permittee's cost to obtain the Permit. The Permittee shall be solely responsible for all costs of complying with its obligations under the Permit.
3. Term of Permit and Agreement. The term of the Permit shall commence upon the Effective Date and continue for the life of the Encroachment, except if earlier revoked or terminated by the City pursuant to this Agreement. The term of this Agreement shall commence upon the Effective Date and expire upon the City's recordation of a notice of acceptance in accordance with Section 7.
4. Conformance with Permit. The Permittee acknowledges and agrees that the design, construction, maintenance, repair, occupancy, use and removal of the Encroachment shall be in strict conformance with the Plans and the Permit. The Permit has been granted upon each and every condition contained therein and shall be strictly construed against the Permittee. The City grants the Permittee no rights that are not explicitly written in the Permit. The enumeration of the City's rights in the Permit shall not be considered exclusive or as limiting the rights generally reserved to the City under applicable law. Each of the obligations and conditions in the Permit is a material and essential condition to the granting of the Permit.
5. Revocation; Meet and Confer.
 - A. The City Council may revoke any Permit issued under the Authorization if: (i) the

City or a regional, County, State or Federal governmental agency determines to use the Subject Premises for a public purpose; (ii) the City determines that the Encroachment constitutes a public nuisance under state or federal law; (iii) the Encroachment is declared unlawful under state or federal law by a court of competent jurisdiction; or (iv) upon the expiration of the Permit Term (as defined in Section 26 of this Agreement). The City's revocation shall be effective thirty (30) days after the City Council's adoption of a resolution revoking the Permit, except if the City Council should provide a longer period of time in its resolution of revocation. For purposes of the Permit, subsequent encroachments proposed by private property development projects, whether below, at or above-grade shall not constitute a "public purpose" that would merit revocation of the Permit.

- B. If the City determines to use the Subject Premises for a City project that might merit revocation of the Permit or modification of the Encroachment, including temporary removal, the City shall, prior to the City Council's adoption of the resolution revoking the Permit, meet and confer with the Permittee and consider alternatives that would not require revocation of the Permit or modification of the Encroachment and that would ensure continuity of access, programming, and other benefits provided by the Encroachment to the public, residents and businesses both during and after the removal of the Encroachment. If the City determines to use the Subject Premises for a City project, the City will give the Permittee at least three (3) months advance written notice of any proposed City Council action, including any action to revoke the Authorization, that would require any material modification to, or removal in whole or in part of, the Encroachment ("Notice of Public Purpose"); provided, however, that if the nature of the conflict will require either modification of more than one thousand (1000) square feet of the Subject Premises, or removal of the Encroachment for more than six (6) months, the City will provide the Notice of Public Purpose one (1) year in advance. The Notice of Public Purpose will specify, to the extent this information is available to the City at the time of the notice, the nature of the proposed public purpose and the anticipated nature of the conflict with the Encroachment. During this notice period, upon written request of the Permittee, the Director of Public Works or a designee will meet and confer with the Permittee regarding the proposed action and to evaluate alternatives to revocation being considered by the City ("Meet and

Confer”). As part of the Meet and Confer process, the parties will evaluate the extent to which impacts to the public’s use and enjoyment of the Encroachment and impacts to adjacent properties can be avoided or mitigated through improvements constructed elsewhere in the Subject Premises that would not conflict with the public’s use and enjoyment of the space. In addition, the parties will evaluate whether the Encroachment can be restored as originally constructed and timeframes for such restoration. If the Encroachment cannot be restored (as further described in Section 7.B), the parties will identify alternative improvements of equivalent value that provide similar benefits to the public as the Encroachment considered for removal. If, after the City’s delivery of the Notice of Public Purpose, the City and Permittee agree in good faith that more than three (3) months from the date of the delivery of the Notice of Public Purpose will be required to complete the Meet and Confer process and the environmental review and planning activities necessary to address the removal and/or relocation of the Encroachment, the City will delay the initiation of City Council revocation proceedings by up to one (1) additional year beyond the initial three (3) month Notice of Public Purpose period. In addition, upon written request of the Permittee, not to exceed one meeting every twelve (12) months, the Director of Public Works or a designee will meet with the Permittee to discuss any City public works projects planned or under consideration or construction that may impact the Encroachment. The foregoing Notice of Public Purpose and Meet and Confer obligations shall not apply to any City actions that only plan or consider public uses of the Subject Premises nor shall they apply to actions or plans by any governmental entities other than the City.

6. Termination. The City may terminate the Permit in the event of a Default under this Agreement. The termination shall be effective immediately upon the City’s written notice to the Permittee.
7. Removal and Restoration.
 - A. After revocation or termination of the Permit as a result of a Default by Permittee under Section 8, the Permittee shall remove the Encroachment and restore the Subject Premises to a condition that is safely usable by the City and public, in compliance with City standards and specifications as determined by the City’s

Director of Public Works, all without liability or expense to the City. Prior to commencing any removal or restoration work, the Permittee shall submit to the City plans for the removal and restoration work, which shall be subject to the City's approval. All removal and restoration work shall be performed under the City's direction. The Permittee shall commence removal and restoration within thirty (30) days after the City's approval of the plans and shall complete removal and restoration within thirty (30) days, or such longer period of time as determined by the Director of Public Works, after the City's approval of the removal and restoration plans. The Permittee's obligations under this section shall not be deemed to have been satisfied until the City records a notice on the Property accepting the Permittee's removal and restoration work. The City shall record the notice of acceptance within ten (10) days of the Director's confirmation that the work has been completed. If the Permit has been terminated, the Permittee shall have no opportunity to cure any failure to comply with the foregoing removal and restoration requirements.

- B. Notwithstanding any other provision of this Agreement, if the City determines that any Encroachment must be temporarily removed to accommodate a City project for an alternative public purpose as described in Section 5.A, the Permit shall not be revoked and the City will be responsible for all costs of removing and restoring the Encroachment and the Subject Premises after the completion of construction activities relating to the City project. If the City is unable to restore the Encroachment to the condition existing before the City's project, the City will be responsible for all costs associated with installing alternative improvements as identified by the parties during the Meet and Confer procedure described in Section 5.B. Such alternative improvements shall be of equivalent value and provide similar benefits to the public as the removed Encroachment. If new improvements are installed pursuant to this Section 7.B., the Plans shall be amended to reflect the new improvements, which shall be subject to the rights and obligations otherwise described herein.
- C. In the event that the State or a Federal governmental agency determines to use the Subject Premises for a public purpose or the Encroachment is deemed to be unlawful by a court of competent jurisdiction, the Parties will meet and confer in good faith to determine the disposition of the Encroachment and terms for the

completion of replacement improvements of a similar value and which provide a similar public benefit, to the extent possible.

8. Default. Permittee shall be in default under the Permit if it breaches or fails to timely observe and perform any obligation under the Permit and fails to timely cure such breach or failure in accordance with this Agreement ("Default"). For the avoidance of doubt, a Default under the Permit shall not thereby automatically be considered a Default under any other encroachment permit issued to Permittee pursuant to the Authorization or otherwise. The Director of Public Works shall notify the Permittee in writing of any breach or failure to perform. Except where a different time period is provided in this Agreement for a particular obligation, the Permittee shall, within thirty (30) days of the Director of Public Works' notice, commence, diligently proceed using best efforts and carry out to completion all actions necessary to correct the breach or failure to perform and prevent its recurrence. If the Director of Public Works determines in writing that such breach or failure to perform is incapable of cure within thirty (30) days, the Director shall specify in writing the number of days in which Permittee shall complete its cure, and Permittee shall continue to diligently proceed to cure using its best efforts and carry out to completion all actions necessary to correct the breach or failure to perform and prevent its recurrence. Cure periods in excess of one hundred eighty (180) days from the date of the Director's notice shall require City Council approval; provided, however, that if cure of the breach or failure to perform requires the Permittee to perform construction, the Director may authorize a cure period of up two hundred seventy (270) days, with any longer cure period requiring City Council approval. The foregoing cure periods shall exclude time required for the City to review and approve any required City permit or authorization necessary to cure the Default. If the Permittee does not cure the breach or failure to perform to the City's satisfaction within the foregoing cure periods, the Permittee shall be in Default, and the Permittee hereby grants to the City any consent or right necessary for the City to remedy the Default. The Permittee shall be responsible for all of the City's costs to remedy the Default and shall reimburse the City for its costs within sixty (60) days of the City's invoice therefore. In addition to any other remedies available at law or in equity in the event of a Default, the City shall be entitled to specific performance of Permittee's obligations under this Agreement and to such other injunctive or other equitable relief as may be granted by a

court of competent jurisdiction.

9. Maintenance and Repair of Encroachment. The Permittee shall maintain and repair the Encroachment so that it is in a safe condition and good working order for the intended purpose and in a similar condition to that which was originally constructed, except where a higher standard is required by applicable law, as determined by the Director of Public Works. All replacements, restorations and repairs shall be at least equal in quality to the original, except that such replacements, restorations, and repairs shall comply with all requirements of applicable law and City standards and specifications in effect at the time of the replacement, restoration or repair. The City also shall have the right, but not the obligation, to stop or direct maintenance or repairs of the Encroachment to protect the public health or safety. Additional maintenance and repair requirements are set forth in Exhibit C attached hereto and incorporated herein by reference. For the avoidance of doubt, this Agreement does not obligate the Permittee to perform routine maintenance and repair of the Public Property, except as is required as a direct result of the installation, maintenance, repair or removal of the Encroachment.

10. City's Right to Enter and Cure. Notwithstanding anything to the contrary in this Agreement, the City may repair or remove the Encroachment at the Permittee's expense if the City determines that it represents a dangerous condition or threat of danger to life or property. The Permittee shall make any necessary modifications or repairs within ten (10) days after the City's written notice, or such longer period as specified in the City's written notice, except that in cases of emergency as determined by the City, the City shall only be required to provide Permittee with one (1) day telephone and email notice. Where the necessary modifications or repairs cannot be completed within ten (10) days, the Permittee shall commence the modifications or repairs within ten (10) days and thereafter diligently proceed using best efforts and carry out to completion all actions necessary to eliminate the dangerous condition or threat of danger to life or property. For the avoidance of doubt, all modifications and repairs shall be performed pursuant to applicable laws and regulations and City-approved plans and will also be subject to the City's inspection and approval. The Permittee shall have no right to cure its failure to comply with the obligations in this section.

11. Right-of-Way Work. In accordance with the San José Municipal Code, Permittee shall obtain a Right-of-Way Work Permit prior to performing any work within Public Property, excluding routine maintenance and repair activities within the Encroachment. In addition, except for routine maintenance and repairs to the Encroachment that do not require a building or other permit or approval from the City, Permittee shall notify the City at least seventy-two (72) hours prior to starting any work authorized or required by the Permit to arrange a schedule acceptable to the City. Permittee shall upon completion of any work under the Permit, notify the Director of Public Works in writing. No work shall be deemed complete until such notification is received and the work is approved by the Director of Public Works in writing.
12. City Access and Inspection. The City, and its agents, representatives, officers, employees and other authorized persons shall have the full and free right of ingress and egress under, on, through and over the Subject Premises at all times without notice to the Permittee, including portions covered by the Encroachment, structures, furnishings, materials or equipment, for any lawful purpose for which the Subject Premises may be used.
13. Public Utilities and Facilities. The Permittee's design, construction, maintenance, repair, occupancy, use and removal of the Encroachment shall not interfere with or impede the City's maintenance, and shall not interfere with, impede or make more costly the City's operation or improvement, of the Public Property. The Permittee shall verify the location of all public and quasi-public utilities and facilities that may be affected by work pursuant to the Permit. The Permittee shall assume all responsibility for loss or damage to such utilities or facilities caused directly or indirectly by Permittee or its contractors, agents, employees or invitees, and shall immediately notify the Director of Public Works of any such loss or damage. Any repairs or restoration to public utilities or facilities shall be performed under the direction of the Director of Public Works. After obtaining any required City or third-party approvals, the Permittee shall commence such repairs and restoration within ten (10) days after written demand from the City and shall complete such repairs within thirty (30) days of the City's demand or such longer period as may be approved by the Director of Public Works. If the Permittee fails to commence and complete repairs or restoration within the foregoing time periods, the Permittee shall

have no right to cure, and the City may perform such repairs or restoration and the Permittee shall reimburse the City for its costs within sixty (60) days of the City's invoice therefore. If the design, construction, maintenance, repair, occupancy, use or removal of the Encroachment requires the removal, relocation, or repair of utilities or facilities, Permittee shall coordinate its work with the owner(s) of such utilities or facilities in advance of its performance of the work and shall be responsible for paying the affected owner(s) for any costs incurred due to the Permittee's performance under this Agreement.

14. Permittee Responsibility for Encroachment. The Permittee shall be solely responsible for the design, construction, maintenance, repair, occupancy, use and removal of the Encroachment, and the City shall not be liable for its review, approval, inspection, maintenance, repair, restoration or removal of any aspect or portion of the Encroachment.
15. Risk of Loss. The City, its officials, boards, commissions and members thereof, agents, employees and contractors (collectively, "City Indemnitees") shall not be liable for any injury to persons or property arising out of, pertaining to or relating to the Encroachment. The Permittee acknowledges that it bears the full risk of loss or damage to the Encroachment and the Property and hereby waives any right to make or prosecute any claims or demands against the City Indemnitees for any loss or damage arising from or relating to the Encroachment. The City makes no representations or warranties regarding the suitability, condition or fitness of the Subject Premises or any portion of the Public Property and shall not be responsible or liable for any costs or expenses resulting from unknown or unanticipated conditions.
16. Indemnity/Hold Harmless. To the fullest extent permitted by law, Permittee shall indemnify, hold harmless and defend the City Indemnitees from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses, of any kind (including without limitation reasonable attorney's fees and costs) (collectively "Claims"), which arise out of, relate to or result from: (i) any act or omission of the Permittee, its independent contractors, agents, officers, employees or invitees pursuant to or in connection with the Permit or while in or

about the Encroachment or Property for any reason; (ii) the design, construction, maintenance, repair, occupancy, use and removal of the Encroachment; and/or (iii) any breach of this Agreement or violation of applicable law by the Permittee, its independent contractors, agents, officers, employees or invitees, in each case whether or not caused by the negligence of the City Indemnitees, except to the extent such Claims result from the City's gross negligence or willful misconduct. The foregoing obligation applies to all Claims that potentially fall within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligations arise at the time such claim is tendered to Permittee by the City and continues at all times thereafter.

17. Insurance. The Parties shall meet and confer and agree in good faith upon acceptable insurance program limits concurrently with issuance of this Permit. The City Risk Manager's approval shall be required for such insurance program limits, such approval not to be unreasonably withheld. Permittee shall, at Permittee's sole cost and expense and for the full term of this Agreement, obtain and maintain at least all of the minimum insurance requirements described in Exhibit D attached hereto and incorporated herein by reference. Said insurance shall name the City as additional insured by endorsement and shall be filed with and approved by the City's Risk Manager.
18. Liens. Permittee shall not allow or permit to be enforced against the City any mechanic, laborer, materialmen, contractor, subcontractor, or any other liens, claims or demands arising from any work performed under this Permit. Permittee shall discharge or pay all of said liens, claims and demands before any action is brought to enforce the same against the City or the Subject Premises.
19. Sale or Transfer of Property. The Permittee shall notify potential successor owners of the Property of the Encroachment's existence and the obligations under the Permit. At least sixty (60) days prior to the closing of any sale or transfer of the Property, the Permittee shall cause its successors, assigns and transferees to submit a written statement to the City evidencing the sale or transfer, agreeing to the terms and conditions of the Permit and providing updated contact information for purposes of notices under the Agreement.

20. Assignment. The Permit, and any and all rights and obligations arising thereunder may not be assigned, conveyed or otherwise transferred to any other person unless approved in writing by the City Council; provided, however, that Permittee may without the City's pre-approval assign the Permit in whole to: (i) an Affiliate (as defined below), (ii) one or more of the owner(s) of the commercial office building(s) located on the Property, or (iii) a commercial owners' association comprised of owners of office buildings located on the Property. For the purposes of this Section, "Affiliate" means an entity or person that is directly or indirectly controlling, controlled by, or under common control with, Permittee. For the purposes of this definition, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity or a person, whether through the ownership of voting securities, by contract, or otherwise, and the terms "controlling" and "controlled" have the meanings correlative to the foregoing.
21. Exclusive Ownership of Permittee's Improvements. Notwithstanding any other provision of this Agreement, but subject to the public's right of use as specified in the Authorization, all infrastructure and improvements identified in the Plans as part of the Encroachment and constructed and maintained pursuant to the Permit shall be the Permittee's sole and exclusive property. This Agreement shall not be construed as an express or implied public dedication of such improvements.
22. Notices. Unless otherwise specified in this Agreement, all notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this section. Email notices may also be sent in addition to mail or in-person delivery. A notice shall be effective on the date it is delivered in person, or if mailed, on the date of deposit in the United States Mail. Any changes to the notice addresses must be delivered in accordance with this section. Notices shall be addressed as follows:

If to City:

City of San José
200 East Santa Clara Street, 5th Floor
San Jose, CA 95113
Attn: Director of Public Works

With a copy to:

City Attorney
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113

If to Permittee:

Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attn: REWS Department / Downtown West SJ Project Executive
Attn: Duanne Gilmore
Telephone: (650) 237-9657
E-mail: duanne@google.com

With a copy to:
Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
Legal Department/ Real Estate Matters

23. Compliance with Law. Permittee agrees to comply with all applicable laws, ordinances and regulations in its design, construction, maintenance, repair, occupancy, use and removal of the Encroachment.
24. Agreement Binding on Successor Owners. The Permittee consents to the City's recordation of the Permit against title to the Property. The Permit shall be binding upon all successor owners of the Property. Other than by virtue of the sale or transfer of the Property, Permittee shall not assign this Agreement in whole or in part.
25. Severability. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.
26. Term. The Permit shall have a term of fifty (50) years from the date of issuance ("Permit Term"), except if earlier revoked or terminated by the City in accordance with this Agreement, and subject to the events or circumstances described in this Section 26. Provided that the Permit has not been revoked or terminated, Permittee may elect, by delivering a written notice to the City, to extend the Permit Term for a total period of time

not to exceed ninety-nine (99) years from the original date of issuance. If prior to the expiration of the Permit Term, (1) the Permittee acquires the fee interest underlying the Subject Premises, (2) the City abandons all public easements dedicated on the Subject Premises, and (3) the improvements constituting the Encroachment are made accessible to the public as "Covenant Privately-Owned Publicly Accessible Open Space" as described in the Development Agreement, then the Permit shall automatically expire and the City shall record a notice of Permit expiration on the Property. As an alternative, if prior to the expiration of the Permit Term, the Permittee makes an irrevocable offer of dedication for the Encroachment which the City accepts, then (1) the improvements constituting the Encroachment shall become public property, (2) the City shall assume ownership and responsibility therefore, and (3) the Permit shall automatically expire and the City shall record a notice of Permit expiration on the Property.

27. Survival. All provisions of this Agreement shall survive revocation or termination of the Permit. The provisions under Sections 13-16, 18, 29 and 31-32 shall survive the expiration of this Agreement for a period equal to the statute of limitations applicable to the underlying claim or obligation.
28. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.
29. Headings. The headings used in this Agreement are for convenience only and shall not be used in the interpretation of this Agreement.
30. Days. All references to days in this Agreement shall mean calendar days, unless specified otherwise.
31. Time is of the Essence. Time is of the essence in performing each and all obligations under this Agreement.
32. Amendment. Other than Non-Material Amendments, as specified in the Authorization,

this Agreement may be amended only by a written instrument executed by the Permittee, approved by the City Council and recorded on title to the Property.

33. Choice of Law. This Agreement shall be construed according to the laws of the State of California.
34. Venue. Any dispute arising under this Agreement shall be adjudicated in California State Court in and for the County of Santa Clara, or in the Federal Court in and for the Northern District of California, as appropriate.
35. No Precedent. The terms and conditions in this Agreement shall not be construed to establish a precedent or policy for any subsequent City authorizations for encroachments.

IN WITNESS WHEREOF, this Agreement is executed by the parties as of the date first written above.

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

Sr. Deputy City Attorney

By: _____
Name:
Title:

PERMITTEE*

Print Name of Permittee and Type of Entity

By _____
Name:
Title:

By _____
Name:
Title:

* Proof of authorization for Permittee's signatories is required to be submitted concurrently with this Agreement. All Permittee signatures must be accompanied by an attached notary acknowledgement.

EXHIBIT A
**DESCRIPTION OF
SUBJECT PREMISES**

INSERT DESCRIPTION

EXHIBIT A

**MAP SHOWING THE
SUBJECT PREMISES**

EXHIBIT A
DESCRIPTION
OF THE PROPERTY

All that certain real property situate in the City of San José, County of Santa Clara, State of California **DESCRIPTION** filed for record on **DATE** in the official records of the County of Santa Clara in **BOOK #, PAGE #**.

EXHIBIT B

AUTHORIZATION FOR ENCROACHMENT

EXHIBIT C

ADDITIONAL MAINTENANCE/REPAIR REQUIREMENTS

Permittee's maintenance and repair of the Encroachment shall include all of the following requirements, in addition to any additional requirements necessary to comply with applicable law:

- A. All work shall be coordinated through the **ENTER RESPONSIBLE CITY DEPARTMENT/DIVISION**.
- B. All graffiti shall be removed from the Encroachment within five (5) business days of occurrence.
- C. All cosmetic damage (i.e., non-structural, damage posing no harm or threat of harm to life or property) to the Encroachment shall be repaired within ten (10) business days of occurrence.
- D. All structural damage to the Encroachment shall be repaired within thirty (30) days of occurrence, unless the damage represents a dangerous condition or threat of danger to life or property, in which case the Permittee shall repair the Encroachment in accordance with Section 10 of the Agreement.
- E. **INSERT ADDITIONAL REQUIREMENTS**
- F. **INSERT ADDITIONAL REQUIREMENTS**
- G. **INSERT ADDITIONAL REQUIREMENTS**
- H. **INSERT ADDITIONAL REQUIREMENTS**
- I. **INSERT ADDITIONAL REQUIREMENTS**
- J. **INSERT ADDITIONAL REQUIREMENTS**

EXHIBIT D

INSURANCE REQUIREMENTS

[To Be Determined Concurrently with Permit Issuance]