

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE (A) FINDING THAT THE AWARD OF THE PROPOSED PRE-DEVELOPMENT AGREEMENT (PDA) FOR THE 10183 - DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN: DIRIDON STATION TO AIRPORT CONNECTOR (PROJECT) WILL RESULT IN LOWER COSTS AND/OR FASTER PROJECT DELIVERY THAN IF THE CITY USED THE TRADITIONAL PUBLICLY FUNDED DESIGN-BID-BUILD METHOD OF PROJECT DELIVERY; (B) AUTHORIZING THE CITY MANAGER OR THEIR DESIGNEE TO NEGOTIATE AND EXECUTE THE PDA WITH THE SAN JOSÉ CONNECTION PARTNERS, LED BY PLENARY AMERICAS US HOLDINGS INC. (PLENARY) TO CONTINUE PROGRESS ON THE PROJECT; AND (C) AUTHORIZING THE CITY ATTORNEY TO NEGOTIATE AND EXECUTE A THIRD AMENDMENT TO THE AGREEMENT WITH ASHURST LLP FOR LEGAL SERVICES RELATED TO THE PROJECT, INCREASING COMPENSATION BY \$100,000 FOR LEGAL SERVICES TO BE PROVIDED THROUGH PDA IMPLEMENTATION FOR A TOTAL AMOUNT NOT TO EXCEED \$375,000**

**WHEREAS**, the City of San José (“City”) owns and operates the San José Mineta International Airport (“Airport”); and

**WHEREAS**, City is proposing to construct a transit solution referred to as the Airport Transit Connector Project (“Project”) that will connect passengers directly from the Diridon Station to the Airport; and

**WHEREAS**, on August 11, 2021, City and Ashurst LLP entered into a Legal Services Agreement, as amended (“Ashurst Agreement”), to support City by devising the optimal commercial, legal and financial structure for the Project and preparing the Project’s Pre-Development Agreement (“PDA”); and

**WHEREAS**, on April 26, 2022, City Council adopted uncoded Ordinance No. 30755, known as the “Airport Transit Connector Procurement Ordinance”, that authorized the use of a design-build-finance-operate-maintain (“DBFOM”) method to procure and deliver the Project, subject to City Council making findings that using such a method will save money or result in faster Project completion; and

**WHEREAS**, on May 10, 2022, City issued the “10183 Design-Build-Finance-Operate-Maintain the Airport to Diridon Station Connector Request for Proposal” (“RFP”); and

**WHEREAS**, the results of City’s evaluation of the proposals to the RFP are summarized in the memorandum Staff has submitted to Council for this item, dated March 27, 2023 (“Council Memorandum”); and

**WHEREAS**, the Council Memorandum also finds that the award of the PDA for the Project using the DBFOM method will result in lower costs and/or faster Project delivery than if City used the traditional publicly funded design-bid-build method of project delivery; and

**WHEREAS**, City desires to authorize City Manager or designee to negotiate and execute the PDA with San José Connection Partners, led by Plenary Americas US Holdings Inc. (“Plenary”) to continue progress on the Project; and

**WHEREAS**, City desires to authorize City Attorney to negotiate and execute a Third Amendment to the Ashurst Agreement for legal services related to the Project, extending the term for a one-year period, expiring on June 30, 2024, and increasing compensation by \$100,000, for a total amount not to exceed \$375,000;

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

- (a) The award of the proposed PDA using the DBFOM method for the Project will result in lower costs and/or faster Project delivery than if the City used the traditional publicly funded design-bid-build method of Project delivery.
- (b) The City Manager or their designee is hereby authorized to negotiate and execute the PDA with Plenary to continue progress on the Project.
- (c) The City Attorney is hereby authorized to negotiate and execute a Third Amendment to the Ashurst Agreement for legal services related to the Project, extending the term for a one-year period, expiring on June 30, 2024, and increasing compensation by \$100,000 for legal services to be provided through PDA implementation for a total amount not to exceed \$375,000.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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MATT MAHAN  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk