

OPTION/NEGOTIATION RIGHTS AGREEMENT
(Lots A-C; SAP Center Parking Lots)

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

RECITALS

- A. Seller owns the land described on Exhibit “A” (“**Property**”).
- B. The Property is encumbered by that certain Second Amended and Restated Arena Management Agreement between the Seller and San Jose Arena Management, LLC (“**SJAM**”) executed as of August 15, 2018 (“**Parking Agreement**”).
- C. Buyer desires to acquire the Property and eventually develop the Property, possibly as part of larger development. Buyer has acquired other property from Seller adjacent to the Property for eventual development.
- D. Under the Parking Agreement, SJAM leases the Property for the operation of parking facilities and other activities associated with the SAP Center located at 525 W. Santa Clara Street in San Jose (“**Arena**”), and has the exclusive right to all revenues from the operation of the Property. In addition, the Parking Agreement prohibits Seller from conveying any interest in the Property during the Term of the Parking Agreement. Thus, unless the Parking Agreement is amended, it would prevent Buyer’s desired development of the Property.
- E. Also under the Parking Agreement, Seller is obligated to take whatever actions may be necessary to ensure that the supply of parking spaces within close proximity to the Arena will continue to be maintained throughout the term of the Parking Agreement, such that a certain minimum number of parking spaces will be available for parking by Arena customers, all as more specifically set forth in the Parking Agreement (“**Seller’s Arena Parking Obligations**”).
- F. Pursuant to the Diridon Station Area Plan adopted by the City Council of San Jose on June 17, 2014, one of the primary objectives was to “ensure the continued vitality of the San Jose Arena, recognizing that the Arena is a major anchor for both Downtown San Jose and the Diridon Station Area, and that sufficient parking and efficient access for Arena customers consistent with the provisions of the Arena Management Agreement, are critical for the Arena’s on-going success.”
- G. Seller and Buyer, along with SJAM, wish to encourage and facilitate Buyer’s plans to develop projects in the Diridon Station Area, while at the same time respecting the above-stated objective, preserving SJAM’s prior rights under the Parking Agreement (including without limitation sufficient parking and efficient access for Arena customers as well as operational and revenue-generating aspects of the parking facilities), and providing a substantial source of funding to ensure that Seller will be able to satisfy Seller’s Arena Parking Obligations, even with the anticipated reduction in parking supply and increase in parking demand due to the BART project.

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

The parties believe that the purchase price for the Property will be sufficient to provide such source of funding.

H. Subject to the terms and conditions of this Agreement, Buyer and Seller desire to enter into this Agreement to give Buyer the option to purchase the Property, for a period of up to five years from and after the Effective Date (the “**Option Period**”), with the effectiveness of the exercise of the option conditioned upon either (i) the execution by SJAM of an amendment to the Parking Agreement that is also acceptable to both Buyer and Seller (“**Parking Agreement Amendment**”) or (ii) the natural expiration or earlier termination of the Parking Agreement for reasons not related to Buyer’s acquisition of the Property.

I. Subject to the terms and conditions of this Agreement, Buyer and Seller further desire to give Buyer the right of first offer to purchase the Property, for a period of time commencing upon the Effective Date and continuing until the later of June 30, 2041, or one year following the date the Parking Agreement has terminated (the “**ROFO Period**”), with the effectiveness of the exercise of the right of first offer conditioned upon either (i) the execution by SJAM of a Parking Agreement Amendment or (ii) the natural expiration or earlier termination of the Parking Agreement for reasons not related to Buyer’s acquisition of the Property; provided, however, that such right of first offer shall not apply in the event of an Arena-Related Sale, as defined in this Agreement.

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

ARTICLE 1 GRANT OF OPTION; OPTION CONSIDERATION

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

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

<u>Payment Date</u>	<u>Amount Due</u>	<u>Total Option Payments</u>
Upon Execution of Agreement	\$1,100,000	\$1,100,000

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

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

<u>Payment Date</u>	<u>Amount</u>	<u>Total Option Payments</u>
1 st Anniversary of Effective Date	\$1,100,000	\$2,200,000
2nd Anniversary of Effective Date	\$1,100,000	\$3,300,000
3rd Anniversary of Effective Date	\$1,100,000	\$4,400,000
4th Anniversary of Effective Date	\$1,100,000	\$5,500,000

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

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

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

Section 1.5 Purchase Price for the Property. If Buyer makes the Fixed Price Option Payment, then for each year for which such Fixed Price Option Payment is made (but not after the fifth anniversary of the Effective Date of this Agreement), the purchase price for the Property shall be fixed at One Hundred Eleven Million Four Hundred Seventy-five Thousand Six Hundred

Thirteen and No/100 Dollars (\$111,475,613.00) for the Property (“**Fixed Purchase Price**”), subject to the credits hereinafter described. If Buyer fails to make any Fixed Price Option Payment in accordance with the schedule set forth above, then the Option shall terminate and be of no further force or effect.

If the Fixed Purchase Price applies pursuant to this Section 1.5, then Buyer shall be entitled to credit against the Fixed Purchase Price the following:

(i) an amount equal to the increased costs Buyer will incur to develop the Property as a result of the existing environmental condition of the Property (the “**Estimated Development Remediation Costs**”). The Estimated Development Remediation Costs shall include, without limitation, the cost of any vapor barriers which must be constructed as a result of the presence of Hazardous Materials in the soil, soil gas or ground water and the estimated costs to excavate, transport and dispose of soil containing Hazardous Materials present at the Property as of the Closing Date in connection with Buyer’s proposed development that exceeds the costs that Buyer would incur for such excavation, transportation and disposal if Hazardous Materials were not present in such excavated soil. The parties shall undertake to mutually agree upon the Estimated Development Remediation Costs within thirty (30) days following Buyer’s delivery of the Option Notice. If the parties are unable to mutually agree upon the Estimated Development Remediation Costs within such 30-day period, then within fifteen (15) days following the expiration of such 30-day period, each party shall cause an independent qualified third-party environmental consultant to determine the Estimated Development Remediation Costs (the “**Environmental Consultant Estimate**”). Each party shall submit its Environmental Consultant Estimate to a third independent thirty-party qualified environmental consultant agreed upon by the parties who will determine the Estimated Development Remediation Costs by selecting either Buyer’s or Seller’s Environmental Consultant Estimate as the most representative of the Estimated Development Remediation Costs and shall not be permitted to determine any other amount. The credit against the Fixed Purchase Price based on the Estimated Development Remediation Costs is hereafter referred to as the “**Remediation Credit**”. The parties agree that there will be no adjustment to the Remediation Credit if the actual increased costs are more or less than the Estimated Development Remediation Costs;

(ii) an amount equal to the “**Estimated Increased Development Costs**”, which shall mean the costs that Buyer is required to incur as a result of the Parking Agreement Amendment, including (A) the increased costs to design, permit and construct Buyer’s proposed development of the Property, (B) any increased costs for any onsite or offsite work, (C) any additional payments or obligations Buyer must pay or incur. However, Estimated Increased Development Costs shall not include costs that Buyer incurs in order for Buyer’s proposed development to comply with then-applicable legal requirements (such that the costs are not the result of the Parking Agreement Amendment), including in such excluded costs, without limitation, costs of any and all parking required for Buyer’s development and costs of any parking required by or as the result of any parking district attributable to Buyer’s proposed development. The parties shall undertake to mutually agree upon the Estimated Increased Development Costs within thirty (30) days following Buyer’s delivery of the Option Notice. If the parties are unable to mutually agree upon the Estimated Increased Development Costs within such 30-day period, then within fifteen (15) days following the expiration of such 30-day period, each party shall cause an independent, licensed, qualified third-party general contractor to prepare its estimate of the Estimated Increased

Development Costs (the “**Contractor’s Estimate**”). Each party shall submit its Contractor’s Estimate to a third independent, qualified and licensed general contractor agreed upon by the parties who will determine the Estimated Increased Development Costs by selecting either Buyer’s or Seller’s Contractor’s Estimate as the most representative of the Estimated Increased Development Costs and shall not be permitted to determine any other amount. The credit against the Fixed Purchase Price based on the Estimated Increased Development Costs is hereafter referred to as the “**Increased Development Cost Credit**”. The parties agree that there will be no adjustment to the Increased Development Cost Credit if the actual Increased Development Costs are more or less than the Estimated Increased Development Costs;

(iii) the estimated costs to Buyer (including reasonable opportunity cost and loss of potential revenue) of any and all easements, restrictions, covenants, rights to revenue and any other rights required to be granted to SJAM over the Property by the Parking Agreement Amendment that are not included in the Increased Development Cost Credit (collectively, the “**SJAM Interests**”). The parties shall undertake to mutually agree upon such costs of the SJAM Interests within thirty (30) days following Buyer’s delivery of the Option Notice. If the parties are unable to mutually agree upon the costs to Buyer of the SJAM Interests within such 30-day period, then within fifteen (15) days following the expiration of such 30-day period, the costs will be determined through submission by each party of an Appraisal or other written evaluation prepared by an independent, qualified third-party appraiser. Each party shall submit its Appraisal or written evaluation to a third independent, qualified third-party appraiser agreed upon by the parties who will determine the costs only by selecting which Appraisal or written evaluation is the most representative of the costs; such third-party appraiser shall not be permitted to select any other amount. The credit against the Fixed Purchase Price based on the costs is hereafter referred to as the “**SJAM Interests Credit**”. The parties agree that there will be no adjustment to the SJAM Interests Credit if the actual costs of the SJAM Interests are more or less over the SJAM Interests Credit.

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

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

Section 1.6 Buyer ROFO Rights. If Buyer does not exercise its Option, and Seller thereafter elects to sell all or any portion of the Property prior to the expiration of the ROFO Period, then Buyer shall have the right of first offer (the “**Buyer’s Right of First Offer**”) to purchase the Property on the following terms and conditions; provided, however, that the Buyer’s Right of First Offer shall not apply in the event of an Arena-Related Sale (defined below), in which case Seller shall have the right to transfer the Property unencumbered by the Buyer’s Right of First Offer and Buyer’s Right of First Offer shall terminate and be of no further force and effect. Further, when the ROFO Period expires, the provisions of this Section shall automatically terminate and be of no further force and effect.

(a) Seller's Sale Notice. If Seller elects to sell the Property during the ROFO Period, Seller shall notify the Buyer in writing of the terms and conditions upon which Seller is willing to sell the Property ("**Seller's Sale Notice**"). Buyer shall have sixty (60) days after receipt of Seller's Sale Notice ("**Response Period**") to notify Seller in writing of Buyer's desire to purchase the Property on the terms stated in Seller's Sale Notice pursuant to the terms for sale set forth herein and a purchase and sale agreement (the "**Google ROFO PSA**") in substantially the form of purchase and sale provisions set forth in this Option Agreement except to the extent the terms in Seller's Sale Notice differ from the terms in this Option Agreement.

(b) Buyer Election. If Buyer desires to acquire the Property on the terms set forth in Seller's Sale Notice, the Buyer shall notify Seller in writing within the Response Period and the parties shall promptly enter into the Google ROFO PSA. If the Buyer fails to so notify Seller within the Response Period, then subject to Buyer's right of reoffer as set forth below, Buyer shall be deemed to have waived its right to purchase the Property and Seller shall have the right thereafter to offer the Property for sale and to sell the Property to any person or entity without further notice to Buyer.

(c) Seller's Revised Sale Notice. If after the date Buyer waived (or is deemed to have waived) its right to purchase the Property, Seller offers the Property for a purchase price that is less than Ninety-Five Percent (95%) of the purchase price that was set forth in Seller's Sale Notice, Seller shall re-offer the Property to Buyer on such terms ("**Seller's Revised Sale Notice**") and the same procedures shall apply with respect to Seller's Revised Sale Notice as are set forth above with respect to Seller's Sale Notice, except that the sixty (60) day period in Section 1.6 (a) above shall be reduced to thirty (30) days. If Buyer waives (or is deemed to waive) its rights to purchase the Property on the terms offered in Seller's Revised Sale Notice, then Buyer's Right of First Offer and the provisions of this Section shall automatically terminate and be of no force or effect.

(d) Arena-Related Sale. As used in this Agreement, the term "Arena-Related Sale" means any sale, option, or other conveyance of all or any portion of the Property or interest therein to any of the following parties: (i) SJAM or any person or entity that, directly or indirectly, controls, is controlled by, or is under common control with SJAM; (ii) any person or entity that acquires the San Jose Sharks hockey team or another NHL franchise that will play its home games in the City of San Jose; (iii) any other person or entity in connection with the construction, renovation and/or operation of a sports and entertainment facility on or adjacent to the Property; or (iv) any governmental entity, agency or authority.

Section 1.7 Parking Agreement Amendment; SJAM Approval. As long as the Parking Agreement is in effect, it shall be a condition to the closing of any sale of the Property by Seller to Buyer under this Agreement (whether pursuant to the Option or the Buyer's Right of First Offer) that SJAM and Seller shall have entered into the Parking Agreement Amendment (which must include approval by SJAM of this Agreement). If a sale is not closed because of the failure of such condition, Buyer's Right of First Offer shall remain in full force and effect.

(a) No Reliance. Buyer acknowledges agrees as follows:

(i) Nothing in this Agreement obligates either Seller or SJAM to agree

to any Parking Agreement Amendment, or to use good faith efforts to come to any agreement regarding a Parking Agreement Amendment, and any such Parking Agreement Amendment may be approved or disapproved by either of them in their sole and absolute discretion;

(ii) Neither Seller nor SJAM, nor any of their respective representatives, has made any representations or warranties of any type regarding the likelihood that Seller and SJAM will agree to a Parking Agreement Amendment, or that any such Parking Agreement Amendment will be acceptable to Buyer; and

(iii) Buyer understands that its Option Consideration will be “at risk” if Seller and SJAM fail to agree upon a Parking Agreement Amendment acceptable to Buyer, and the failure of such condition precedent to the exercise of the Option or the Buyer’s Right of First Offer shall not give rise to any right on Buyer’s part to a refund of the Option Consideration or to any other legal or equitable claim by Buyer against either Seller or SJAM.

(b) Condition Precedent to Parking Agreement Amendment. As a condition precedent to the effectiveness of any Parking Agreement Amendment, Seller and/or SJAM may in their sole and absolute discretion require that Buyer agree to construct onsite and offsite improvements, pay compensation to SJAM for loss of revenues, and incur other expenses, the aggregate costs of which may exceed any available “SJAM Interests Credit” or other credits against the Fixed Purchase Price as described above. Such condition precedent to the Parking Agreement Amendment shall not be limited by any provisions of this Agreement. However, Buyer shall have the right, in its sole and absolute discretion, to either accept such requirements (if Buyer wishes to proceed to purchase the Property), or reject such requirements (in which case Buyer will not proceed to purchase the Property).

Section 1.8 Subordination to Parking Agreement. This Agreement, and the Option and Buyer’s Right of First Offer granted by this Agreement, are subordinate to the Parking Agreement and the rights of Seller and SJAM under the Parking Agreement. Without limiting the foregoing, the following shall apply:

(i) The rights and obligations of Seller and SJAM under the Parking Agreement shall not be diminished or impaired in any way by this Agreement.

(ii) Nothing in this Agreement shall restrict or affect the right of Seller and SJAM to agree between them to make alterations or improvements to the Property, to extend the term of the Parking Agreement, or to otherwise modify the Parking Agreement as they may desire.

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

with conditions of approval of Buyer's development projects based on then-applicable legal requirements.

ARTICLE 2 CLOSING AND ESCROW

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

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

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

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

Section 2.5 Deposit of Documents and Funds into Escrow.

(a) At least one (1) business day prior to the Closing Date, Seller shall deposit into escrow the following:

- (i) a duly executed and acknowledged Grant Deed conveying the Property to Buyer;
- (ii) a true and correct affidavit, pursuant to Section 1445(b)(2) of the Internal Revenue Code, that Seller is not a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code; and
- (iii) a true and correct California Form 593 certifying that Seller is exempt from withholding.

(b) At least one business day prior to the Closing Date, Buyer shall deposit into escrow the Purchase Price and costs payable by Buyer under Section 2.7(b).

(c) Buyer and Seller shall each deposit such other reasonable documents as are reasonably required by the Title Company to consummate the purchase and sale of the Property.

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

Section 2.7 Prorations; Costs.

(a) Assessments (if any) shall be prorated as of 12:01 a.m. on the date the Grant Deed is recorded. Seller is exempt from property taxes.

(b) Each party shall pay fifty percent (50%) of the escrow fees and local (City of San Jose) transfer taxes. The cost of the standard coverage owner’s title policy and County of Santa Clara transfer taxes shall be paid by Seller. The cost of an ALTA survey and extended coverage (i.e., deletion of survey exception) and any endorsements shall be paid by Buyer.

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

ARTICLE 3
CONDITION OF PROPERTY

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

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

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

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

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

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

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

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

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

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

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

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

Escrow and shall install, to the extent required by law or governmental order, vapor barriers in any new buildings constructed on the Property by Buyer.

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

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

Section 3.7 Seller Retained Environmental Liabilities. Notwithstanding anything to the contrary in this Agreement, except for Buyer's Development Activities and costs that are or would be the basis for determining Estimated Development Remediation Costs and costs of relocating any existing monitoring wells on the Property to accommodate Buyer's development (and Buyer and Seller shall reasonably cooperate as to the new location of such wells to be relocated), Seller retains liability and responsibility for claims and response actions relating to the Pre-Existing Condition of the Property (**"Seller's Retained Environmental Liabilities"**) including, without limitation, ongoing environmental monitoring, new groundwater well installation (excluding costs of relocation of existing wells to accommodate Buyer's development), repair, replacement and monitoring of wells, and removal or remedial actions of any kind (**"Pre-Existing Environmental Work"**) and Seller shall execute manifests for disposal of contaminated soil off-site in connection with Seller's Retained Environmental Liabilities and Buyer's Development Activities. Seller covenants to continue undertaking the Pre-Existing Environmental Work during the Term and following Buyer's acquisition of the Property, at Seller's sole cost and expense. Buyer agrees to provide Seller with reasonable access to the Property to perform the Pre-Existing Environmental Work, and Buyer and Seller shall have the right to further reasonably relocate from time to time, at the relocating party's expense, any monitoring or other wells and any other remediation equipment so long as such relocation has been approved by the applicable governmental agency overseeing the Pre-Existing Environmental Work and is consistent with Buyer's proposed

development of the Property. If the Closing occurs, then Seller agrees to indemnify, protect, defend (with counsel selected and engaged by Seller which counsel does not have a conflict of interest with Buyer in undertaking such defense; if Buyer elects to retain independent counsel, it shall do so at Buyer's own cost and expense) and hold harmless Buyer, including, but not limited to, Buyer's members, employees, agents, representatives, successors, administrators, assigns, and attorneys (collectively, "**Buyer Parties**"), and each of them alone, from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, damage, or expense, arising out of, related to or connected with a third-party claim based on the Pre-Existing Condition except for claims or response actions arising out of the Buyer's Development Activities. The provisions of this Section shall survive the Close of Escrow. Notwithstanding anything to the contrary in this Agreement, in no event will Seller's indemnification obligations include diminution in value claims of Buyer.

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

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

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

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

BUYER'S INITIALS: _____

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

ARTICLE 4
INDEMNITY

Section 4.1 Non-Hazardous Materials Indemnity. From and after the Effective Date with respect to claims covered by subsections (i) and (iii) below, and from and after the Closing with respect to claims covered by subsections (ii) and (iv) below, Buyer shall indemnify, defend, protect, and hold harmless Seller and any and all Seller's board members, council members, officials, agents, employees and representatives ("**Indemnitees**"), from and against all losses, liabilities, claims, damages, penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) and demands of any nature whatsoever (but excluding punitive, consequential and speculative damages), related directly or indirectly to, or arising out of or in connection with:

(i) Buyer's investigations of the Property under Section 3.1 above or otherwise, excluding the mere discovery of any pre-existing adverse physical or environmental conditions impacting the Property;

(ii) any claims for personal injury or damage to personal property based on any acts, occurrences, omissions or other matters that take place on or with respect to the Property after the Close of Escrow and during Buyer's period of ownership or the period of ownership of any entity owned directly or indirectly, in whole or in part, by Buyer (except for acts by Seller);

(iii) third-party challenges to the validity of this Agreement; and

(iv) third-party claims based on any failure to comply with California Labor Code Sections 1720 et seq., with respect to construction on the Property that are based in whole or in part upon any claim that the Purchase Price was below the fair market value of the Property as of the Close of Escrow or that the option consideration or consideration for Buyer's Right of First Offer was inadequate.

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

ARTICLE 5 BROKERS

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

ARTICLE 6 NOTICES

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

SELLER:

City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, California 95113
Attn: City Manager

BUYER:

Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attn: Vice President, Real Estate and Workplace
Services

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

ARTICLE 7 MISCELLANEOUS

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

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

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

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

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

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

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

ARTICLE 8

CITY/SELLER ROFO

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

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

If Google acquires the Property under this Agreement, and then subsequently elects to sell all or any portion of the Property other than as part of an Affiliated Transaction described in subsection (d) below (hereinafter, "**Third Party Transaction**"), whether individually or as part of a portfolio of properties which may include properties other than the Property in the Diridon Station Planning Area (the properties Google elects to sell with the Property being hereinafter referred to as the "**Sale Property**") prior to the date Google obtains a permit to commence grading on the Property (the "**Google Infrastructure Commencement Date**") (hereinafter, "**City ROFO Period**"), then City shall have the right of first offer (the "**City Right of First Offer**") to purchase the Sale Property on the following terms and conditions. The provisions of this Article shall automatically terminate and be of no further force and effect upon the Google Infrastructure Commencement Date.

(a) Google's Sale Notice. If Google elects to sell the Sale Property during the City ROFO Period, Google shall notify the City in writing of the terms and conditions upon which Google is willing to sell the Sale Property ("**Google's Sale Notice**"). City shall have sixty (60) days after receipt of Google's Sale Notice and all non-privileged, material third party prepared documents in Google's possession relating to the Sale Property that was not previously owned by the City, which Google shall provide to the City without representation or warranty, and a reasonably current title report or reports for the Sale Property ("**City Response Period**") to notify Google in writing of City's desire to purchase the Sale Property on the terms stated in Google's Sale Notice pursuant to the purchase and sale agreement in the form attached hereto as Exhibit "H" (the "**City ROFO PSA**"). During such sixty (60) day period, City may enter the Sale Property that was not previously owned by the City to conduct reasonable due diligence inspections (including a reasonable Phase II inspection), and shall defend, indemnify and hold Google harmless from and against any claims, liabilities, losses, damages, costs and expenses arising from such entry or inspections (excluding those that relate to matters discovered during the inspections).

(b) City Election. If City desires to acquire the Sale Property on the terms set forth in Google's Sale Notice, City shall return the executed City ROFO PSA to Google within the City Response Period. If City fails to deliver the executed City ROFO PSA within the City Response Period, then subject to City's right of reoffer as set forth below, City shall be deemed to have waived its right to purchase the Sale Property and Google shall have the right thereafter to offer the Sale Property for sale and to sell the Sale Property to any Third Party without further notice to City. If City delivers the executed City ROFO PSA within the City Response Period and then defaults by failing to close escrow, the provisions of this Article shall automatically terminate and be of no further force and effect.

(c) Google's Revised Sale Notice. If after the date City waived (or is deemed to have waived) its right to purchase the Sale Property, Google offers the Sale Property in a proposed Third Party Transaction for a purchase price that is less than Ninety-Five Percent (95%) of the purchase price that was set forth in Google's Sale Notice, Google shall re-offer the Sale Property to City on the terms offered to such Third Party ("**Google's Revised Sale Notice**") and the same procedures shall apply with respect to Google's Revised Sale Notice as are set forth above with respect to Google's Sale Notice, except that the sixty (60) day period in clause a. above shall be reduced to thirty (30) days. If City waives (or is deemed to waive) its rights to purchase the Sale Property on the terms offered in Google's Revised Sale Notice, then City's Right of First Offer and the provisions of this Section shall automatically terminate and be of no further force or

effect.

(d) Affiliated Transactions. Notwithstanding the foregoing, the City Right of First Offer shall not apply to any sale or contribution of the Property or any portion thereof by Google to an entity, including a joint venture or other entity in which Google (or an affiliate of Google) will be an owner, if the terms of such sale or joint venture require the vertical development of the Property to be sold or contributed within a reasonable period of time; however, the City Right of First Offer shall apply to any subsequent proposed Third Party Transaction sale by such entity.

ARTICLE 9 DEVELOPMENT AGREEMENT; COSTS

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

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

SELLER:

CITY OF SAN JOSE,
a municipal corporation

By: _____
Toni J. Taber, CMC
City Clerk

APPROVED AS TO FORM:

Johnny V. Phan
Senior Deputy City Attorney

BUYER:

GOOGLE LLC

By: _____
Print Name: _____
Title: _____

EXHIBIT “A”

LEGAL DESCRIPTION OF LAND

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT "B"

FORM OF MEMORANDUM OF OPTION AGREEMENT

(Attached.)

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

Attn: _____

With a copy to:

City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, California 95113
Attn: City Clerk
APN's: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF OPTION AGREEMENT

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

1. Optionor and Optionee have entered into that certain Option/Negotiation Rights Agreement dated _____, 2018 (the "**Option Agreement**") in which Optionor has granted to Optionee an option with a duration of up to five (5) years (the "**Option**") to purchase the property described on Exhibit "A" (the "**Property**"), in accordance with the terms and conditions set forth in the Option Agreement.

2. Optionee may exercise the Option for the period and upon the terms, covenants and conditions set forth in the Option Agreement. All of the terms, covenants and conditions of the Option are hereby incorporated into this Memorandum by reference.

3. Owner and Optionee desire to record this Memorandum so that successors-in-interest to Owner as to any portion of or interest in the Property shall have constructive notice of the existence of and be bound by the Option Agreement, which is intended to and shall run with the land and bind any person or entity acquiring any portion of or interest in the Property.

4. Upon the expiration of the Option period without exercise of the Option, Optionee shall promptly execute, acknowledge and deliver to Optionor for recording a reasonable Termination of Memorandum of Option Agreement.

5. In the event of a conflict between this Memorandum and any of the terms and

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

conditions of the Option Agreement, the terms and conditions of the Option Agreement shall govern, and nothing herein contained shall be construed to be a modification of or amendment to any of such terms and conditions.

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

OPTIONOR:

CITY OF SAN JOSE,
a municipal corporation

By: _____
Toni J. Taber, CMC
City Clerk

APPROVED AS TO FORM:

Johnny V. Phan
Senior Deputy City Attorney

OPTIONEE:

GOOGLE LLC

By: _____
Print Name: _____
Title: _____

EXHIBIT “A”
DESCRIPTION OF LAND

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT “C”

GRANT DEED

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT “D”
PRO FORMA TITLE POLICY

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT “E”

DOCUMENTS DELIVERED / DISCLOSURES TO BUYER

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT “F”

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

[Subject to modification in accordance with a Parking Agreement Amendment]

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT “G”
FORM OF CITY ROFO PSA

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

SCHEDULE X
SELLER DISCLOSURES

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

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

State of California)
) ss.
County of Santa Clara)

On _____ before me, Notary Public,

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, and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____ Document Date: November 6, 2018

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

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

State of California)
) ss.
County of Santa Clara)

On _____ before me, _____, Notary Public _____,
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, and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer Is Representing: _____