

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SAN JOSE
AND GOOGLE LLC**

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), entered into as of December 4, 2018 , is by and between the CITY OF SAN JOSE, a California charter city ("City"), and Google LLC, a Delaware limited liability company ("Developer" or "Google"). The City and Developer shall each be referred to herein as a "Party" and collectively as the "Parties."

The Parties intend that the aspirations set forth herein in this MOU will form the basis for negotiations of a future development agreement regarding Google development in and around the Diridon Station Area.

RECITALS

Whereas, the City Council of the City adopted the Envision San José 2040 General Plan ("General Plan") in 2011 setting forth a vision and comprehensive road map to guide the City's continued growth through the year 2040;

Whereas, the General Plan includes land use policies to shape the transformation of strategically identified "Growth Areas" into higher density, mixed-use, urban districts or "Urban Villages" which can accommodate employment and housing growth and reduce environmental impacts of that growth by promoting transit use and walkability;

Whereas, the Diridon Station Area, located generally within the San José Downtown, is identified as a "Growth Area" and "Urban Village" in the General Plan;

Whereas, the City Council of the City adopted the Diridon Station Area Plan in 2014 to establish a land use plan and policy framework that will guide future development and redevelopment toward land uses that support transit ridership and economic development, and create a world-class urban destination, among many other objectives;

Whereas, the City and Google intend to collaborate on development in and around the Diridon Station Area to aid implementation of the planned expansion of San José's Downtown, the Diridon Station Area Plan, and the General Plan;

Whereas, Google has acquired or controls properties within or proximate to the Diridon Station Area Plan area (hereafter, the "Google Properties") that the Developer intends to develop in conjunction with certain City-owned properties in the Diridon Station Area as a master-planned, cohesive urban development proximate to the Diridon Station;

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Whereas, the City is considering selling to Google certain City properties proximate to the Diridon Station (hereafter, the “City Properties”) because of potential benefits to San José and the South Bay from integrating future development in the Diridon Station Area with improved public transit access, broadly expanding economic opportunity, enhancing the natural and built environment, and creating a transit-oriented urban destination;

Whereas, on June 20, 2017, the City Council of the City adopted a resolution authorizing the City Manager to negotiate and execute an Exclusive Negotiations Agreement (“ENA”) between the Parties, and the executed ENA was fully executed on June 30, 2017;

Whereas, the City and Google aspire to partner in the planning and design of office, retail, residential, and public amenity projects that maximize use and support of public transit;

Whereas, the City and Google have a shared goal of timely implementation of development projects in the Diridon Station Area to maximize integration with planned transit projects and successful implementation of the Diridon Station Area Plan;

Whereas, the City and Google agree that it is imperative that development of City Properties and the Google Properties maximize development density consistent with the General Plan and the Diridon Station Area Plan, as may be amended in conjunction with Google’s future development proposals, integrate development of the property into the urban fabric of the City, and allow for Google to build a work environment that is conducive for its business;

Whereas, the City and Google intend to continue developing a comprehensive approach to identify and deliver community benefits that is informed by input gained from continuation of the community engagement process that is underway;

Whereas, the City and Google contemplate that the ideas and concepts expressed in this MOU will be a basis for negotiating a future Development Agreement to identify elements of future development that are intended to be vested and to memorialize community benefits, the terms and details of which will be determined and refined during the negotiation process;

Whereas, Google understands that by execution of this MOU, the City is not committing to or agreeing to undertake (a) any disposition of land to the Developer; or (b) any other acts requiring the subsequent independent exercise of discretion by the City or its departments, and this MOU does not imply any obligation on the part of City or the

Developer to enter into any agreement that may result from the aspirations and intentions set forth herein;

Whereas, this MOU does not commit City to a definite course of action with regard to any project, including approval of any project that may be proposed, the execution and approval of this MOU is not a "project" under the California Environmental Quality Act ("CEQA");

NOW, THEREFORE, based on the recitals set forth above, the Parties hereby agree as follows:

SCOPE OF AGREEMENT

I. Effective Date; Term

This MOU shall become effective on the date on which a) City Council approves this MOU, and b) the Parties execute an agreement for the sale of at least one of the City Properties to Google ("Effective Date"). The term of this MOU shall begin on the Effective Date and shall terminate upon the Parties' execution of a Development Agreement approved by the City Council of the City or on December 31, 2022, whichever occurs first.

II. Vision

The Parties' shared vision is to create a vibrant, welcoming, and accessible urban destination consisting of a mix of land uses and that are well-integrated with the intermodal transit station, adjacent neighborhoods, and Downtown. This shared vision embodies a commitment to place making, social equity, economic development, environmental sustainability, and financially-viable private development.

The Parties intend to collaborate and innovate in the development of this urban destination to bring opportunity to the local community and create new models for urban and workplace design and development.

III. Shared Goals

In the development of the Diridon Station Area, the City and Google aspire to:

A. **Create a Balanced Development.** Balance and address the objectives of the City, Google and the community in creating a vibrant urban destination advancing economic opportunity, social equity, and environmental sustainability with a financially-viable private development.

B. Capitalize on Transit Synergy. Create a “whole greater than the sum of the parts” in the Diridon Station Area with new urban development, expanded transit service, and a new intermodal station in conjunction with transit partners Valley Transportation Authority, Caltrain, and the California High Speed Rail Authority.

C. Optimize Density and Mix of Uses. Optimize development density and create a complementary mix of uses in order to create a vibrant, transit-oriented urban neighborhood and destination.

D. Grow and Preserve Housing. Grow and preserve housing in the City to help address rising housing costs and displacement. Housing in the Diridon Station Area should include on-site units affordable to low-income households and “missing middle” households, and market rate homes in a combination that is financially viable for residential developers to ensure that planned housing is built. Affordable units can be built both integrated into market-rate developments and as stand-alone affordable housing projects.

E. Create Broad Job Opportunities. Promote opportunities for San José residents of all skill and educational levels and diverse backgrounds to prepare for and secure jobs in the Diridon Station Area. Provide opportunities for existing and new small, local businesses to benefit from and/or integrate into the new development.

F. Pursue Equitable Development. Develop the Diridon Station Area with intent to minimize potential negative impacts on people and place, and to maximize opportunity for local youth and adults to participate and benefit from job opportunities in the Diridon Station Area, through partnerships among the City, Google, and others.

G. Design for Human Scale. Design buildings and spaces that are oriented to the human-scale to support an active street life and accessibility for people of all abilities.

H. Enhance and Connect the Public Realm. Develop robust, publicly accessible amenities, including parks, open space, plazas, and trails, and create attractive, vibrant, and safe experiences for pedestrians and bicyclists. Integrate public art and preserve cultural and historical assets. Assure that development provides and enables multi-modal access and connections to the Guadalupe River, Los Gatos Creek, and other public spaces, with an emphasis on ecological restoration and preservation.

I. Pursue Excellence in Design. Create a new-model urban tech workplace that is appropriately open to the public, and well integrated with the surrounding community. Support Google to create workplaces that serve its needs to create healthy, secure and productive workplace for its employees. Explore innovative and replicable

building design, construction, and operation to demonstrate new, scalable models of urban development.

J. **Maximize Use of Public Transit and Minimize Parking.** The City acknowledges and supports Google's desire to minimize parking for its own use and to maximize use of public transit by employees and visitors. Plan and develop parking for the Diridon Station Area that is not visually prominent and is conducive to adaptive re-use as transportation modes change in the future.

K. **Pursue Excellence in Transit Access and Operations.** Collaborate with the transit agencies Caltrain, Valley Transportation Authority, and California High Speed Rail Authority to provide design input for the new Diridon Station that optimizes the traveler experience, demonstrates and incorporates state-of-the-art sustainability features, and enables place making, private development, and investment in the area.

L. **Optimize Sustainability.** Advance the City's sustainability goals as outlined in the City's "Climate Smart San José" Plan, including reducing greenhouse gas emissions aligned with the Paris Agreement to combat climate change. Enhance the wildlife habitat, water quality, public access, and flood protection of the creek corridors.

M. **Be Open to Innovation.** The City and Google envision an open-to-innovation approach for any proposed development plans, review of those plans, and approaches to achieving place making, economic, social equity, and environmental objectives for the community.

N. **Proceed with Timely Implementation.** Implement development projects in a timely manner.

O. **Participate in Fair Share Development.** Ensure that all projects in the Diridon Station Area and adjacent areas contribute their fair share of investment to support amenities, infrastructure, improvements, and mitigations that benefit all properties.

IV. Project Work Product

A. **Applications for Land Use Entitlements.** Following its acquisition of the City Properties, Google intends to prepare plans for its proposed development of the Google Properties and City Properties consistent with the Vision and Shared Goals set forth in Sections II and III above, and submit planning applications in a timely manner to the City for processing.

B. Revisions and Plan Updates. Google and City desire to collaborate on the preparation, review, and ultimate adoption of any and all documents or plans necessary to effectuate the implementation of an agreed upon development project. It is anticipated that review and approval of a development project will likely include at minimum the following legislative acts by the City Council: amendments of the General Plan, Diridon Station Area Plan, and Zoning Code, and the related certification of an Environmental Impact Report ("EIR") prepared pursuant to CEQA. In addition, the Council may consider revisions to the One Engine Inoperable ("OEI") practices regarding allowable building heights in and around the Diridon Station Area.

C. Diridon Station Area Plan Amendment. The City intends to update and amend the Diridon Station Area Plan ("DSAP") adopted in 2014 to reflect changed conditions, including but not limited to a proposed Google development. In addition to preparing plans for its proposed development, Google may prepare masterplan concepts for the Diridon Station Area (250 acres) for consideration by the City. The City will independently review any submitted masterplan concepts for potential inclusion in the DSAP revisions recommended to the City Council.

D. Development Agreement. Google seeks to enter into a Development Agreement with the City to memorialize community benefits and secure vested development rights aligned with any proposed development masterplan. The Parties agree that a primary goal of this MOU is to provide a reference for negotiating a future Development Agreement. The Development Agreement is expected to provide certainty with regard to the rules and regulations that will govern the future development in addition to other terms, a time frame for delivery of development projects, a description of the specific project types and densities, and a schedule of payment or delivery of community benefits.

The Development Agreement should include provisions related to effective date and term of the agreement, vested project approvals, uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, dedications of land, project mitigations, timing and phasing of development, timing and phasing of community benefits, allocation of funds for community benefits by category, applicable laws and requirements, required subsequent City approvals, Developer obligations, City obligations and mutual obligations.

The Parties recognize that the Development Agreement negotiations shall take into account the financial viability of any project developed by Google, and the development-related priorities of the City and community.

E. Community Benefits Plan.

The Parties intend to include a specific Community Benefits Plan in the Development Agreement.

The Parties expect that private investment in new commercial and residential development in the Diridon Station Area—aligned with the Envision 2040 General Plan and DSAP--will bring substantial positive benefits for the City, and that these benefits will outweigh the various impacts accompanying the potential development. The benefits may include substantial contributions to achieving the City's jobs and housing goals for Downtown, positive impact on the City's budget and service provision, improved ability to create affordable housing, serving as a catalyst for broader economic development in the City, significant improvement and investment in the public realm, and substantial increases in transit riders and associated fares.

The City and Google acknowledge that development of the Diridon Station Area may contribute to rising housing costs, potential business and residential displacement, and other impacts on people and place. The Parties intend to develop approaches to equitable development that are effective, replicable, and leverage resources of the City, Google, and other partners.

The City's expectation of a community benefit contribution would be premised on, among other factors, the additional value Google receives as a result of the legislative changes that may be approved by the City Council that enhance the value of both the City Properties and the Google Properties, and the certainty that could be provided to Google through a Development Agreement. The City would expect Google to share a portion of the value created by the City Council's actions with the City through a Community Benefits Plan. The base for estimating the value created would be the price Google paid for both the City Properties and the Google Properties.

In developing the Community Benefits Plan, the parties intend to consider the input provided to date through the City's community engagement process (Diridon Station Area Civic Engagement Report) and subsequent input provided by the community or City Council, as well as addressing the shared goals in this MOU. In developing the Community Benefits Plan, consideration will be given to major categories of community priorities identified to date, including the following:

- Affordable housing, displacement prevention and mitigation
- Education, workforce training, and career opportunities
- Small business opportunity
- Historic and cultural preservation, public art

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- Public space, trails, and mobility
- Community nonprofit support, including homeless services
- Habitat and environmental sustainability

The following costs will not be considered Community Benefits: costs required to mitigate impacts under CEQA; costs associated with project design, project elements, or other improvements proposed by Google as part of its development; and costs incurred to meet City standard requirements, conditions of approval, fees, or taxes.

F. Financing of Shared Infrastructure and Services. The Parties contemplate that Google will participate in the future comprehensive financing plan for the Diridon Station Area Plan and certain surrounding areas in the Downtown (“Diridon Financing Plan”) to fund public improvements, affordable housing, and other amenities and services. The future Diridon Financing Plan may include the creation of (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program; and/or (vi) other financing mechanisms. Google and other affected property owners will be subject to, fully participate in, and pay any and all charge, fee, assessment or tax included in the City Council approved Diridon Financing Plan, as may be amended, which may include one or more of the financing mechanisms identified above.

G. Commercial Linkage Fee. Google supports the City’s study of a potential Commercial Linkage Fee on development in the Downtown, including but not limited to the Diridon Station Area, to support investment in affordable housing and infrastructure.

H. District Utilities. The Parties seek to collaborate in the study and evaluation of a district wide program of shared utilities, such as electricity, data, water, storm water, waste and sewer that allows for necessary City easements.

I. Parking. The City and Google will work to develop a parking plan for the Diridon Station Area that addresses initial and long-term goals in order to balance the need for parking and the desire to minimize parking in the long-term. The parking plan is expected to include elements such as available physical spaces and tools/processes (such as Transportation Management Plan) necessary to support efficient operation of the Diridon Station Area.

J. Consideration of Street Closures/Vacations. The Parties intend to collaborate on a pedestrian friendly masterplan that will consider opportunities that may be created by the closure, narrowing and/or abandonment of certain existing streets to fully optimize the Diridon Station Area redevelopment potential consistent with the General Plan, DSAP, and other City requirements. The Parties will also explore opportunities to

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provide Developer offsets for the use of the vacated streets in exchange for equal areas for publicly accessible open space within the Diridon Station Plan Area.

K. Ongoing Community Engagement. The Parties contemplate that in addition to the public process as may be legally required for specific development applications, at minimum periodic reports will be provided by the City to the Station Area Advisory Group, or its successor, until such time as a Development Agreement is executed.

L. Planned Parkland on Fire Training Site. The General Plan and DSAP currently identify certain open space areas. If the General Plan and DSAP are amended to change the open space allocations, the Parties intend that the total amount of public open space identified in the DSAP would not be decreased.

V. No City Funds or Tax Subsidies for Private Development

A. No Subsidy or Waiver. Google shall fully pay the City all applicable fees, charges, and taxes in accordance to the City's standard payment requirements for any development project that it proposes. Google will purchase the City Properties at fair market value and will not be paid for in whole or in part out of public funds.

B. No City Funds. No City funds shall be expended on private development or private construction any development project that Google proposes.

C. No Tax Dollars. No City tax revenue will be expended by the City directly for private development or private construction of any development project that Google proposes.

VI. General Conditions

A. Nonbinding. This MOU shall not be binding upon the Parties and creates no legal obligations on either Party, including any obligation to negotiate or continue negotiations at any stage. No development applications have been submitted by Google to the City for any possible development referenced herein.

B. Governing Law. The law governing this MOU shall be that of the State of California.

C. Venue. In the event that suit shall be brought by either party, the Parties agree that trial of such action shall be exclusively vested in a state court in the County of Santa Clara, or where appropriate, in the United States District Court for the Northern District of California, San José, California.

D. No Third Party Beneficiaries. This MOU is not intended nor shall it be construed to create any third-party beneficiary rights in any person or entity other than the Parties.

E. No Assignment. The MOU is intended to be between the City and Google. Neither City nor Google may not assign the MOU, or any portion of the MOU to another party.

F. Extension. The City's City Manager shall have the authority to extend the term of this MOU, in one or more extensions, by a maximum total period of no more than one year through December 31, 2023.

G. Counterparts. This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same non-binding instrument.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

THE CITY

DEVELOPER

CITY OF SAN JOSE, a municipal corporation

**GOOGLE LLC
a Delaware Limited Liability Company**

By:

By: _____

**Toni J. Taber, CMC
City Clerk**

**Mark Golan,
VP-REWS Bay Area**

APPROVED AS TO FORM:

By:

**Johnny V. Phan
Senior Deputy City Attorney**

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