

**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
(697 WEST SAN CARLOS)**

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (the “**Agreement**”), is dated as of December 4, 2018 (“**Effective Date**”), and is entered into by and between the CITY OF SAN JOSE, a California municipal corporation (“**Seller**”) and GOOGLE LLC, a Delaware limited liability company (“**Buyer**”).

RECITALS

A. Seller is the owner of the land described on Exhibit “A” attached hereto (the “**Property**”).

B. Buyer wishes to acquire the Property, and Seller is willing to sell the Property to Buyer, upon and subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. CERTAIN DEFINITIONS

The following capitalized terms as used in this Agreement shall have the respective meanings set forth below:

Section 1.1 Escrow Holder and Title Company shall mean First American Title Company located at 1737 North First Street, Suite 500, San Jose, CA 95112.

Section 1.2 Grant Deed shall mean a grant deed in the form attached hereto as Exhibit “B”.

Section 1.3 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

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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.

ARTICLE 2. PURCHASE AND SALE OF PROPERTY.

Section 2.1 Sale of the Property by the Seller to the Buyer; Purchase Price. The Seller hereby agrees to sell the Property to Buyer, and Buyer hereby agrees to buy the Property, for the sum of One Million Six Hundred Nine Thousand Three Hundred and No/100 Dollars (\$1,609,300.00) less _____ (\$_____) for each day between the date of Close of Escrow and June 30, 2019 (the "**Purchase Price**"). The foregoing deduction constitutes a credit for prepaid rent for another property being sold by Seller to Buyer concurrently with the Close of Escrow.

Section 2.2 Escrow.

Section 2.2.1 Opening of Escrow. Within five (5) business days after the Effective Date, the Buyer and the Seller shall deliver a copy of this executed Agreement to Escrow Holder and will open an escrow (the "**Escrow**") with the Escrow Holder for the conveyance of the Property to the Buyer.

Section 2.2.2 Close of Escrow; Holdbacks. "**Close of Escrow**" or "**Closing**" means the date Escrow Holder causes the Grant Deed to be recorded in the Official Records of the County of Santa Clara. Close of Escrow shall occur on or before December 31, 2018 (the "**Outside Date**"). If for any reason other than a default by the Seller or Buyer the Closing does not occur on or before the Outside Date, this Agreement shall automatically terminate, unless extended in writing by both parties (the "**Parties**"), and all documents and monies previously deposited into the Escrow shall be promptly returned to the appropriate Party, and each Party shall pay one-half (1/2) of any Escrow charges and fees in connection with such termination. If the Closing does not occur due to a default by a Party, the defaulting party shall pay all escrow and title cancellation changes.

Upon the Close of Escrow, Escrow Holder shall hold back from the proceeds of the Purchase Price a total amount of Six Hundred Thousand Dollars (\$600,000.00) ("**Holdback Funds**"), in an interest bearing account (with interest becoming part of the Holdback Funds) approved by the parties in order to secure the performance of the Seller Post Closing Obligations (as defined below) as further described below:

(i) 645 Park Easement. One Hundred Thousand and No/100 Dollars (\$100,000.00) ("**Park Holdback**"), which shall not be released to Seller unless and until that certain Indenture dated October 26, 1951 recorded on November 2, 1951 in Book 2310, Page 287

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of Official Records of Santa Clara County (affecting 645 Park Avenue in San Jose) is terminated of record or is otherwise resolved to the satisfaction of Buyer ("**Easement Relinquishment**"), and

(ii) Lot D Deed Restriction. An additional Five Hundred Thousand and No/100 Dollars (\$500,000.00) ("**Restriction Holdback**"), which shall not be released to Seller until that certain Amended and Restated Notice of Environmental Restrictions document previously delivered to Seller by counsel to Buyer affecting the document recorded as Document No. 15805175 in said Official Records has been executed, acknowledged and recorded in said Official Records, or such existing recorded notice is otherwise resolved to the satisfaction of Buyer ("**Deed Restriction Modification**").

Notwithstanding anything to the contrary in this Agreement, the Park Holdback and the Restriction Holdback shall not limit in any way Seller's obligation to obtain the Easement Relinquishment and the Deed Restriction Modification, both of which Seller covenants to diligently and continuously pursue after Closing, at Seller's sole cost and expense, until they are obtained ("**Seller Post Closing Obligations**").

The Holdback Funds shall be released as follows:

(i) If Seller accomplishes the Easement Relinquishment, then the parties shall jointly instruct Escrow Holder to release to Seller the Park Holdback.

(ii) If Seller accomplishes the Deed Restriction Modification, then the parties shall jointly instruct Escrow Holder to release to Seller the Restriction Holdback.

Escrow Holder shall not disburse any portion of the Holdback Funds except pursuant to written instruction of both parties, or pursuant to an order of court of competent jurisdiction. The parties agree to execute, deliver and be bound by any reasonable and customary supplementary escrow instructions which Escrow Holder may require in connection with the creation and administration of the Holdback Funds, provided that such supplementary instructions shall not conflict with, amend or supersede the terms and provisions of this Section 2.2.2. Any and all fees and costs that Escrow Holder may charge in connection with the creation and administration of the Holdback Funds shall be shared equally between Seller and Buyer. Seller shall be entitled to any interest which accrues on the Holdback Funds and shall be responsible for any taxes assessed on such interest.

Section 2.3 Conditions of Buyer's Obligations. The following are conditions precedent to Buyer's obligation to purchase the Property (collectively, "**Buyer's Contingencies**"), which may be waived in writing in whole or in part by Buyer:

(i) At the closing, the issuance of the Title Policy (defined in Section 2.5) to Buyer, which will insure Buyer's fee simple interest in the Property in the amount of the Purchase Price and in the form and the owner's pro forma title insurance policy attached hereto as Exhibit "C" (the "**Pro Forma Title Policy**").

(ii) That there shall have no material adverse changes in the physical condition of the Property since _____, 2018 [**DATE OF INSPECTION BY BUYER**].

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(iii) The closing of escrow under that certain Purchase and Sale Agreement (255 S. Montgomery) dated concurrently herewith between Seller and Buyer.

(iv) As of the closing, the absence of an Event of Default by Seller hereunder.

(v) As of the closing, the representations and warranties of Seller set forth in Section 3.1 below shall be true and correct in all material respects.

Section 2.4 Conditions of Seller's Obligations. The following are conditions precedent to Seller's obligation to sell the Property (collectively, "**Seller's Contingencies**"), which may be waived in writing in whole or in part by Seller:

(i) As of the closing, the absence of an Event of Default by Buyer hereunder;

Section 2.5 Title Policy. Escrow Holder shall, following the recording of the Grant Deed, provide Buyer with an ALTA extended coverage policy of title insurance in the amount of the Purchase Price, issued by the Title Company, showing the title to the Property vested in Buyer, subject only to the title exceptions in the Pro Forma Title Policy (the "**Title Policy**"). Seller shall on or before the Close of Escrow remove any liens encumbering the Property except for the lien of ad valorem real property taxes and general and special assessment not yet due and payable and any liens created by Buyer.

Section 2.6 Deposit of Documents and Funds In Escrow. Seller and Buyer, as applicable, hereby covenant and agree to deliver at least one (1) day prior to the Close of Escrow the following instruments, documents, and funds, the delivery of each of which shall be a condition to the Close of Escrow.

Section 2.6.1 Seller shall deliver to Escrow:

(i) an original of the Grant Deed, duly executed by Seller and acknowledged;

(ii) a FIRPTA affidavit and a California form 593-C (indicating that no withholding is required); and

(iii) such proof of Seller's authority and authorization to enter into this transaction as the Title Company may reasonably require in order to issue the Title Policy, including Title Company's standard owner's affidavit.

Section 2.6.2 Buyer shall deliver to Escrow:

(i) the Purchase Price;

(ii) any additional funds that are required to pay for costs and expenses payable by Buyer hereunder;

(iii) such proof of Buyer's authority and authorization to enter into this transaction as the Title Company may reasonably require to issue the Title Policy.

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Section 2.7 Authorization to Record Documents and Disburse Funds. Escrow Holder shall record the Grant Deed, and disburse the funds (subject to the holdbacks described in Section 2.2.2) and distribute the documents called for hereunder upon the Close of Escrow (with the FIRPTA affidavit and California form 593-C) provided each of the following conditions has then been fulfilled:

Section 2.7.1 The Title Company is irrevocably committed to issue in favor of Buyer the Title Policy, with a liability amount equal to the Purchase Price, showing fee simple title to the Property vested in Buyer, subject only to the applicable title exceptions set forth in the Pro Forma Title Policy;

Section 2.7.2 Seller and Buyer shall have deposited in Escrow the documents and funds required to be deposited in Escrow pursuant to Section 2.6.1 and 2.6.2.

Unless otherwise instructed in writing, Escrow Holder is authorized to record at the Close of Escrow any instrument delivered to Escrow Holder if necessary or proper for the issuance of the Title Policy.

Section 2.8 Escrow Charges and Prorations.

Section 2.8.1 Seller shall pay for fifty percent (50%) of all local (City of San Jose) documentary transfer taxes, all County of Santa Clara transfer taxes, all recording fees (if any), fifty percent (50%) of the escrow fees, and the premium for the standard coverage portion of the Title Policy. Buyer shall pay the premiums for all extended title insurance coverage and endorsements, fifty percent (50%) of the local (City of San Jose) documentary transfer taxes, and fifty percent (50%) of the escrow fees.

Section 2.8.2 Assessments shall be apportioned/prorated with respect to the Property as of 12:01 a.m., on the day on which the Close of Escrow occurs, as if Buyer were vested with title during the entire day upon which the Close of Escrow occurs; however, the parties acknowledge that Seller is exempt from property taxes and no property taxes shall be allocated to Seller.

Section 2.9 Brokers' Commissions. Buyer represents and warrants to Seller that except for CBRE, Buyer has used no broker, agent, finder or other person in connection with the transaction contemplated hereby to whom a brokerage or other commission or fee may be payable. Buyer shall be solely responsible for any commissions or fees due CBRE. Seller represents and warrants to Buyer that Seller has used no broker, agent, finder or other person in connection with the transaction contemplated hereby to whom a brokerage or other commission or fee may be payable. Each party indemnifies and agrees to defend and hold the other harmless from any claims, liabilities, damages, losses, costs and expenses resulting from its breach of its representations and warranties in this Section.

ARTICLE 3. PROPERTY CONDITION; HAZARDOUS MATERIALS

Section 3.1 AS-IS. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer, as of the date of this Agreement and as of the close of escrow:

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Section 3.1.1 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 3.1.2 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 3.1.3 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 3.1.4 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 3.1.5 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 3.1.6 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 3.1.7 Replacement Parking Agreement. With respect to the Second Amended and Restated Arena Management Agreement between Seller and San Jose Arena Management, LLC executed as of August 15, 2018 with a commencement date of July 1, 2015 (the "Replacement Parking Agreement"): (i) Seller has provided Buyer with a complete copy of the Replacement Parking Agreement; (ii) the Replacement 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 Replacement 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 Replacement Parking Agreement, except as set forth on Schedule X attached hereto.

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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 3.2 AS IS. Buyer is acquiring the Property in its "AS-IS" condition. Except for the express representations and warranties of Seller 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. The 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 by its invitees, occupants and/or lessees during Buyer's period of ownership of the Property regarding the condition of the Property as of the Closing 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 3.3 Disclosure. Buyer acknowledges that the Seller has delivered to Buyer the documents described on Exhibit "D". 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.

Section 3.4 Buyer Indemnification. 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 based on (i) the environmental condition of (i.e., Hazardous Materials on) the Property, except for any Hazardous Materials first released onto the Property by a Seller Party after the Closing and any Hazardous Materials which migrate to or under the Property after the Close of Escrow to the extent originating from any real property owned by Seller from and after the Closing, or (ii) excavation, transportation or disposal of any Hazardous Materials on the Property by Buyer or its contractors or by any entity owned in whole or in part, directly or indirectly, by Buyer, or by such entity's contractors. Notwithstanding anything to the contrary in this Agreement, in no event will Buyer's indemnification obligations include diminution in value claims of Seller.

Section 3.5 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

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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 or warranties set forth in this Agreement, or in any documents delivered by Seller under Section 2.6 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); and (iv) any Hazardous Materials which migrate 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 (collectively, "**Excluded Claims**").

IT IS UNDERSTOOD AND AGREED THAT EXCEPT FOR ANY EXPRESS REPRESENTATIONS AND WARRANTIES 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

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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 investigation of the Property under Article 5 below, excluding the mere discovery of any pre-existing adverse physical or environmental conditions impacting the Property;

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(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 on any claim that the Purchase Price was below the fair market value of the Property as of the Close of Escrow.

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. 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. 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 this Agreement to further inspect the Property for the purpose of confirming that no material adverse change in the physical 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.

ARTICLE 6. EVENTS OF DEFAULT AND REMEDIES

Section 6.1 Events of Default. Any breach of this Agreement by a party which is not cured within twenty (20) days after written notice from the other party setting forth the nature of the default and the actions, if any, required to cure such default shall constitute an "**Event of Default**" by the breaching party.

Section 6.2 Remedies. If any Event of Default by a party occurs, then the other party shall be entitled to all remedies available at law or in equity, including, without limitation, specific performance, it being acknowledged by Seller with respect to a specific performance action that the Property is unique and that monetary damages will not adequately compensate Buyer for its loss of the Property. Nothing contained in this Paragraph shall be deemed to affect or limit defence or indemnity obligations, or rights to attorneys' fees and costs, which shall survive any termination of this Agreement.

Section 6.3 Inaction Not a Waiver of Default. Except as expressly provided in this Agreement to the contrary, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

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ARTICLE 7. GENERAL PROVISIONS

Section 7.1 Construction. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

Section 7.2 Governmental Powers. Nothing contained herein shall be deemed to limit, restrict, amend or modify, or to constitute a waiver or release of, any ordinances, notices, orders, rules, regulations or requirements (now or hereafter enacted or adopted and/or as amended from time to time) of the Seller, or its departments, commissions, agencies and boards and the officers thereof, including, without limitation, any governmental powers, rights, privileges and discretion of the Seller.

Section 7.3 Time of the Essence. Time is of the essence of this Agreement and all Parties' obligations hereunder.

Section 7.4 Notices. Notices, demands and communications between the Seller and the Buyer shall be deemed sufficiently given if addresses as set forth below and (i) sent by certified mail, postage prepaid, return receipt requested, or (ii) sent by nationally-recognized reputable overnight delivery service for overnight delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses or to such other address as any party may from time to time designate by mail as provided in this Section, and shall be deemed received upon delivery or refusal of delivery, as shown on the return receipt, if sent by certified mail, or one (1) business day after deposit of same with a nationally recognized reputable overnight delivery service for overnight delivery if sent by such a delivery service.

To 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.

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

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Section 7.5 Authority of City Manager. The City Manager of Seller is authorized to give all consents and approvals and sign all documents contemplated hereunder on behalf of Seller provided they are in writing, and may extend deadlines, and enter into other, non-substantive amendments provided the extensions and amendments are express and in writing.

Section 7.6 Venue. In the event of any litigation hereunder, all such actions shall be instituted in the Superior Court of the County of Santa Clara, State of California, or in an appropriate municipal court in the County of Santa Clara, State of California or an appropriate District Court in the Northern District of California.

Section 7.7 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

Section 7.8 No Right to Assign. Neither party may assign this Agreement without the prior written consent of the other in its sole and absolute discretion.

Section 7.9 Successors and Assigns. Subject to the restrictions on transfers set forth in this Agreement, the provisions hereof shall be binding upon, and shall inure to the benefit of, the Seller and the Buyer and their successors and assigns.

Section 7.10 No Joint Venture. Nothing contained herein shall be construed to render the Seller in any way or for any purpose a partner, joint venture, or associated in any relationship with the Buyer, nor shall this Agreement be construed to authorize either party to act as agent for the other.

Section 7.11 Waiver. The waiver by the Seller or the Buyer of any breach by the other party of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. Either party's acceptance of any performance by the other party after the due date of such performance shall not be deemed to be a waiver by either party of any preceding breach by the other party of any term, covenant, or condition of this Agreement, regardless of such party's knowledge of such preceding breach at the time of acceptance of such performance.

Section 7.12 Entire Agreement; Waivers and Amendments. This Agreement, together with all attachments and exhibits hereto and all documents to be executed and delivered pursuant to this Agreement, constitutes the entire understanding and agreement of the Parties hereto. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. Any waiver, amendment, or modification of any provision of this Agreement must be in writing and signed by both parties.

Section 7.13 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

Section 7.14 Severability. Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of

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this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected hereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

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).

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

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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, 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 hereto have entered into this Agreement as of the day and year first above written.

SELLER:

CITY OF SAN JOSE,
a municipal corporation

By: _____
Toni J. Taber, CMC
City Clerk

BUYER:

GOOGLE LLC

By: _____
Print Name: _____
Title: _____

APPROVED AS TO FORM:

Johnny V. Phan
Senior Deputy City Attorney

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List of Exhibits

<u>Exhibit "A"</u>	Legal Description of Land
<u>Exhibit "B"</u>	Form of Grant Deed
<u>Exhibit "C"</u>	Pro Forma Owner's Title Policy with Endorsements
<u>Exhibit "D"</u>	Documents Delivered/Disclosures to Buyer

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EXHIBIT "A"

LEGAL DESCRIPTION OF THE LAND

The land described herein is situated in the State of California, County of Santa Clara, City of San Jose, described as follows:

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EXHIBIT "B"

FORM OF GRANT DEED

RECORDING REQUESTED BY, AND
WHEN RECORDED MAIL TO AND MAIL
TAX STATEMENTS TO:

Google LLC

APNs: _____

(Space above for Recorder's use only)

This document is exempt from the payment of a recording fee pursuant to Government Code §6103.

City Documentary Transfer Tax: \$_____ ; County Documentary Transfer Tax: \$_____
Property is in the City of San Jose, County of Santa Clara.

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF SAN JOSE, a municipal corporation ("**Grantor**"), hereby GRANTS to GOOGLE LLC, a Delaware limited liability company ("**Grantee**"), that certain real property located in the City of San Jose, County of Santa Clara, State of California, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference including all improvements thereon.

SUBJECT TO, a lien to secure payment of general and special real property taxes and assessments, not delinquent; the lien of supplemental taxes assessed pursuant to Chapter 3.5 commencing with California Revenue and Taxation Code Section 75; and

FURTHER SUBJECT TO, any and all matters of record and all matters apparent from an inspection of the Property.

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IN WITNESS WHEREOF, the Grantor has executed this Grant Deed as of the date set forth below.

GRANTOR:

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

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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)

County of Santa Clara)

On _____, 2018, before me, __,

(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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Exhibit A To Grant Deed

Legal Description

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EXHIBIT "C"

PRO FORMA OWNER'S TITLE POLICY WITH ENDORSEMENTS

(Attached.)

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EXHIBIT "D"

DOCUMENTS DELIVERED/DISCLOSURES TO BUYER

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