



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: November 16, 2018

Approved

Date

11/16/18

COUNCIL DISTRICT: 3 and 6

**SUBJECT: ACTIONS RELATED TO THE SALE OF CITY-OWNED PROPERTIES
IN THE DIRIDON STATION AREA TO GOOGLE**

RECOMMENDATION

- a) Approve a Memorandum of Understanding with Google containing the Vision and Shared Goals for a future master planned, mixed-use development in the Diridon Station Area; establishing basic tenets of a future Development Agreement including a Community Benefits Plan; and affirming that no public funds, subsidies, or fee/tax exemptions will be provided to Google.
- b) Approve a Purchase and Sale Agreement with Google for the properties formerly owned by the Successor Agency to the Redevelopment Agency in the Diridon Station Area located at 8 S. Montgomery St., 102 S. Montgomery St., 105 S. Montgomery St., 150 S. Montgomery St., 510 W. San Fernando St., and 645 Park Ave. (APNs: 259-38-130; 259-48-102; 261-35-003; 261-35-006; 261-35-010; 259-48-053; 259-48-011; 259-48-013; and 261-35-014), comprising a total of approximately 275,479 square feet, for the amount of \$67,000,000;
- c) Approve a Purchase and Sale Agreement with Google for the City-owned property containing the Fire Training Center located at 255 S. Montgomery St. (APN: 261-37-025), comprising a total of approximately 180,514 square feet, for the amount of \$42,872,075;
- d) Approve a Ground Lease with Google for the City to continue occupying the property containing the Fire Training Center located at 255 S. Montgomery St. (APN: 261-37-025) for a period of three years following the close of escrow for the amount of \$0;
- e) Approve a Purchase and Sale Agreement with Google for the City-owned property located at 697 W. San Carlos (APNs: 261-37-028 and 261-37-031), comprising a total of approximately 6,776 square feet, for the amount of \$1,609,300.
- f) Approve an Option/Negotiation Rights Agreement with Google for the City-owned property commonly referred to as Lots A/B/C, located at 525 W. Santa Clara St. and 566 W. Julian St. (APNs: 259-28-031; 259-28-041; 259-28-043; and 259-28-044), comprising a total of approximately 469,371 square feet, for a term of five years and for the amount of \$1,100,000 per year as an option payment.

OUTCOME

City Council approval of the Memorandum of Understanding with Google provides City staff and Google with guiding principles to collaborate on a future master planned, mixed-use development in the Diridon Station Area and to negotiate the related Development Agreement, which will include a Community Benefits Plan.

City Council approval of the Purchase and Sale Agreement enables staff to complete the sale of the properties formerly owned by the Successor Agency to the Redevelopment Agency (SARA or Successor Agency) in the Diridon Station Area as required by the Compensation Agreement (fully-executed on August 14, 2018), and according to the State-approved Long Range Property Management Plan. The sale of these properties to Google for \$67 million allows for the distribution of the sale proceeds to the 14 affected taxing entities, as described further in the Background section.

City Council approval of the Purchase and Sale Agreement allows staff to complete the sale of the City-owned property located at 255 S. Montgomery St. used for the Fire Training Center, and to realize revenue to fund the long-anticipated relocation and replacement of the Center. City Council approval of the associated Ground Lease for the same property allows the City to continue occupying the property for three years following close of escrow (for \$0) while the replacement Center is under development.

City Council approval of the Purchase and Sale Agreement allows staff to complete the sale of the vacant City-owned property located at 697 W. San Carlos St.

Finally, City Council approval of the Option/Negotiation Rights Agreement allows the City to enter into an Option/Negotiation Rights Agreement with Google, which provides for Google to potentially purchase Lots A/B/C from the City should Google, the City, and San José Arena Management come to agreement on an alternate parking solution for Lots A/B/C.

EXECUTIVE SUMMARY

The Background section of this memorandum provides information related to the long standing City plans for development in the Diridon Station Area, issues related to implementing the plans, and coming transit investment. This section also contains information related to Google's interest in San José and the publicly-owned lands proposed for sale.

The Background subsections include:

- Envision 2040 General Plan and the Diridon Station Area Plan
- Challenges of Securing a Master Developer
- Ballpark Site in the Diridon Station Area Plan
- Station and Transit Planning
- Google's Interest in San José

- Exclusive Negotiations Agreement Between the City and Google
- Map of the Diridon Station Area and Publicly Owned Properties
- Sites Formerly Owned by the Redevelopment Agency/SARA
- Sites Owned by the City of San José

The Analysis section of this memorandum provides information related to the Civic Engagement process, the Diridon Station Civic Engagement Report, and the top issues raised during the process. This section also contains a preliminary fiscal estimate, and a discussion of staff's considerations and recommendation. Finally, the Analysis section includes descriptions and main terms of the agreements recommended for approval.

The Analysis subsections include:

- Civic Engagement Process
- Preliminary Fiscal Estimate
- Staff's Considerations and Recommendation
- Memorandum of Understanding with Google
- Next Steps

Details on the following agreements are contained in the Appendix of this memorandum:

- Purchase and Sale Agreement for the Former SARA Properties
- Purchase and Sale Agreement for the Fire Training Center Site
- Ground Lease for the Fire Training Center Site
- Purchase and Sale Agreement for 697 W. San Carlos St.
- Option/Negotiation Rights Agreement for Lots A/B/C

BACKGROUND

Envision 2040 General Plan and the Diridon Station Area Plan

In 2011, after three years of extensive community input from more than 5,000 residents and more than 50 public meetings, the City Council unanimously adopted the Envision 2040 General Plan to determine how San José would develop in the next three decades. A critical component of the Envision 2040 Plan focused on creating a vibrant Downtown destination including expansion of the relatively small Downtown to a size and density more appropriate for a city of one million people. The Envision 2040 Plan called for adding 48,500 jobs, along with 10,360 housing units, to Downtown.

Three years later, in 2014, the City Council adopted the Diridon Station Area Plan to transform the 250-acre area of Downtown's western side into a vibrant destination for people to live, work, visit, and play. The Plan was created over five years with extensive involvement from the Diridon Station Area Good Neighbor Committee. Developing the Diridon Station Area according to the Plan would bring new urban style, mixed-use development; improved parks,

trails and public spaces; safe, convenient pedestrian and bike connectivity; many more transit options and users; and new housing, shops, and jobs.

Challenges of Securing a Master Developer

To achieve this vision, the Good Neighbor Committee and City of San José anticipated that at least the central zone of the Diridon Station Area would be designed as a cohesive, master planned development to ensure the kind of high quality, public realm and amenity-rich place that the Plan envisioned. However, approximately half of the property acreage in the central zone is owned by public agencies – the City and, until recently, the Successor Agency; the Santa Clara Valley Transportation Authority; and Caltrain. The balance of the properties were mostly smaller parcels in disparate ownerships.

Assembling a contiguous set of properties conducive to a master planned development is an incredibly costly, time-intensive, and risky endeavor. Few developers have the resources and willingness to undertake such a task without receiving significant government subsidies or incentives. Also, after the end of Redevelopment Agencies in California in 2011, there was no longer a public entity with the authority and resources to purchase properties for purpose of land assembly and contribution to an anchor private development. Due to the fragmented ownership of land parcels the area and the end of redevelopment land assembly powers, it was anticipated that securing a developer to realize the vision would be very difficult without significant public subsidies and incentives.

Ballpark Site in the Diridon Station Area Plan

Between 2006 and 2008, the former Redevelopment Agency purchased property for land banking purposes, which included the possibility of a ballpark and nearby development. Beginning in 2009, the City re-affirmed its interest in supporting the efforts of the Oakland Athletics Major League Baseball team ownership to move the team to San José. To that end, the City and former San José Redevelopment Agency incorporated a ballpark in the Diridon Station Area Plan and entered into an option agreement with the Athletics Investment Group, LLC for the sale of property that had been acquired by the former Redevelopment Agency

Since there is no longer a Major League Baseball stadium under consideration, the site planned for a ballpark is now available for development for other purposes consistent with the City's Envision 2040 and Diridon Station Area Plan goals. Because these properties were purchased by the former Redevelopment Agency, and all redevelopment agencies in California were terminated in 2011 and dissolved by operation of the law effective February 1, 2012, the properties must be sold in the near term through a process specified by the state-approved Long Range Property Management. (This process is explained in greater detail in a later section.)

Station and Transit Planning

Given this history and context, the prospect of Google building a mixed-use development in Downtown San José presents an opportunity to implement the City's plans for the Diridon Station Area and advance Downtown and citywide goals. It also presents a unique opportunity to collaborate and integrate the station and transit improvements with an adjacent master planned, mixed-use development.

For years, Diridon Station has served as an important transit facility for the region - with Amtrak, VTA light rail, Caltrain, Altamont Corridor Express (ACE) commuter rail, and local and regional bus services. Over the next 10 to 20 years, planned transit improvements will significantly expand transit capacity at Diridon Station. These transit improvements include the electrification and modernization of the Caltrain system (which will result in more frequent and faster service), the extension of BART service, and the addition of California High-Speed Rail (HSR) service. The expanded transit will make the Diridon Station one of the most active transit hubs in the Western U.S. It will be the only location in the Bay Area where BART, electrified Caltrain, Amtrak, and High-Speed Rail all converge. Daily passenger levels are projected to grow from 17,000 today to 140,000 by 2040.

The City of San José and the transit agencies recently launched a collaborative planning effort for a new integrated station. This planning process began this fall (2018) and will result in a Diridon Integrated Station Concept Plan. Completion of the first phase of this work is expected to occur by summer 2019.

Given that both the private development and the station planning are in the early stages, cooperation between planning efforts can help optimize the urban design of the entire area, leading to better functionality of the station and surrounding uses, higher ridership, and a more cohesive urban place.

Google's Interest in San José

The San José Mayor and Office of Economic Development staff had been in conversations with Google, encouraging the company to consider expanding into San José and consider locating in Downtown. Google expressed interest in the Diridon Station Area early in 2017 based on the Station Area Plan's vision of a transit rich, amenity rich, pedestrian friendly, mixed-use destination. Consequently, Google began acquiring properties in the area with the goal of assembling sufficient parcels to create a mixed-use office development.

Google approached the City about purchasing the five main sites owned by the Successor Agency. These five sites, made up of nine individual parcels, total about 6.3 acres, and are mostly comprised of the sites that had been acquired for the potential ballpark-related development described above. Currently, these sites are mainly surface parking lots serving

Caltrain users and SAP patrons. The sites also include the Stephen's Meat site (a surface parking lot), Patty's Inn, and a building currently used by San José Taiko.

Google also expressed interest in two sites (made up of seven individual parcels) owned by the City of San José, comprising about 15 acres. One is the Fire Training Center, a 4.1-acre site with several aging buildings used for training firefighters, long targeted for relocation and replacement. The other site is known as Lots A/B/C; it lies to the west of the SAP Center and is currently used for SAP patron parking, totaling approximately 10.8 acres.

Both the former SARA-owned sites and City-owned sites are described in greater detail in later sections.

Exclusive Negotiations Agreement Between the City and Google

Between February and May 2017, Google and City staff explored the company's interest in coming to San José and interest in acquiring the publicly owned properties in the Diridon Station Area. Discussions included the potential to enter into an Exclusive Negotiations Agreement. An Exclusive Negotiation Agreement (ENA) is an agreement between two parties that specifies a period in which the parties will negotiate exclusively on the acquisition of property or a development, and it is a common tool used by municipalities considering a transaction with a private developer.

Early discussions with Google indicated their interest in planning and building a master planned, transit-oriented development that could include between 6 and 8 million square feet of office/R&D space and retail/commercial amenities. This potential development could support more than 20,000 new Downtown employees, significantly aiding the City's critical need for local jobs and supporting ridership on existing and new public transportation investments.

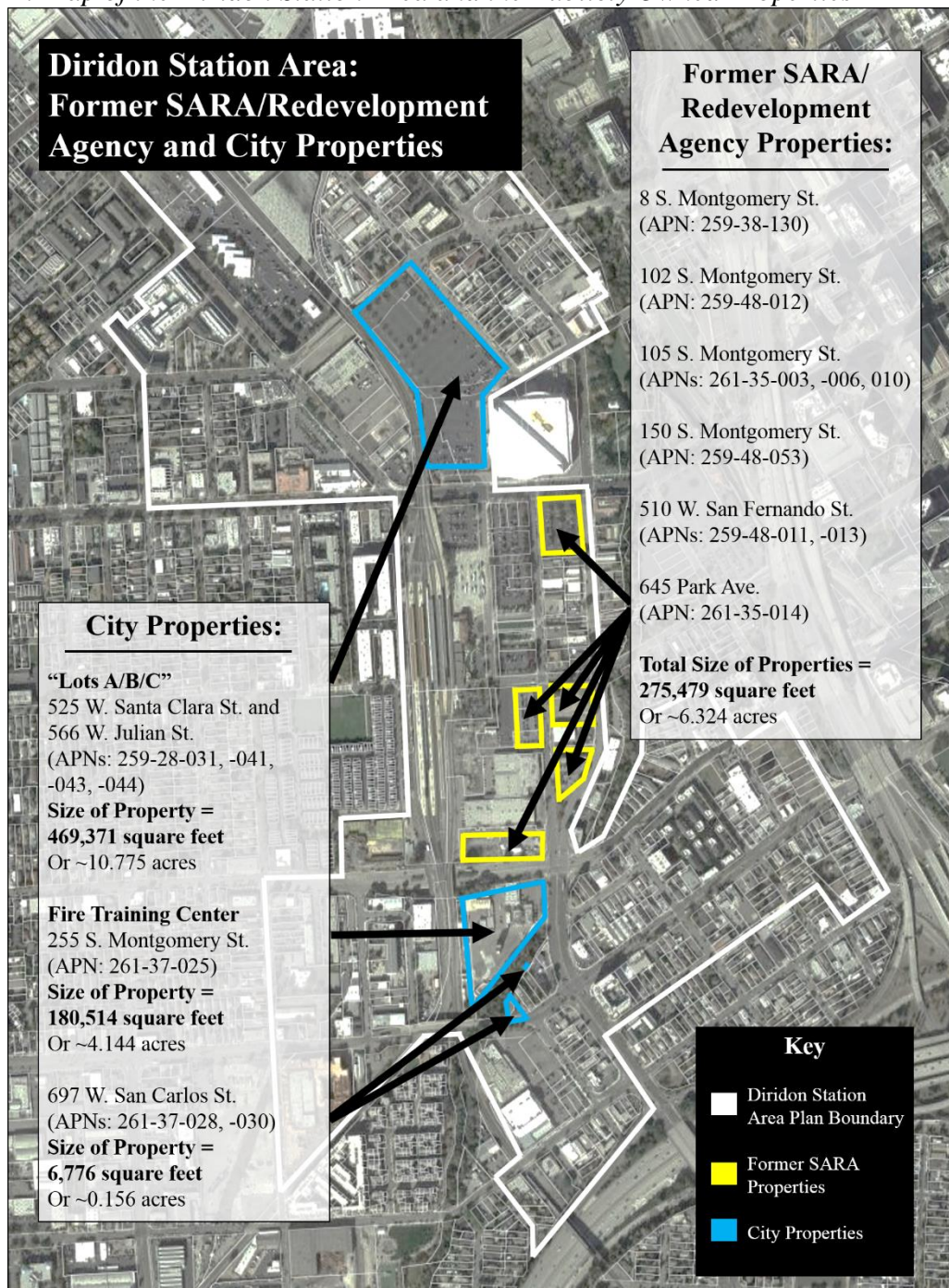
On June 9, 2017, staff released a [Council memorandum](#) recommending an [Exclusive Negotiations Agreement](#) with Google, which included the recommended Agreement as an attachment. City Council considered and adopted this recommendation at its June 20, 2017 meeting.

The ENA states that the City and Google will conduct good faith negotiations regarding the sale of the publicly owned parcels (shown in the map titled "Exhibit 1" below). The Agreement specified a period of one year to negotiate, but anticipated that additional time could be needed to complete the process, giving the City Manager the flexibility to extend the ENA for an additional year if needed.

The ENA also provided for a civic engagement process, which would build upon the extensive community engagement work done with the Good Neighbor Committee and Diridon Station Area Plan, and focus on the prospect of a Google master planned, mixed-use development. (The Civic Engagement process is described in greater detail in the Analysis Section.) To provide sufficient time to engage the community and the taxing entities impacted by the sale of

Successor Agency property in the Diridon Station Area, the City Manager extended the term of the ENA extended to June 20, 2019.

Exhibit 1: Map of the Diridon Station Area and the Publicly Owned Properties



Source: City of San José

Sites Formerly Owned by the Redevelopment Agency/SARA

As stated earlier, the property owned by SARA includes five main sites made up of nine individual parcels, as shown on the map above.

When the State of California terminated redevelopment agencies in 2011, it developed very specific regulations for how local authorities must sell or otherwise dispose of properties owned by local redevelopment agencies. Under these regulations, properties must be disposed according to a State-approved [Long Range Property Management Plan](#). The Plan, approved in 2014 for the former San José Redevelopment Agency, identified that the Diridon Station Area properties were to be retained for development and transferred to the City for redevelopment purposes through a Compensation Agreement. The sales price included in the Compensation Agreement is to be based on an appraisal that establishes the Fair Market Value of the property. The Plan requires that all 14 taxing entities approve the Compensation Agreement. Upon sale of the property, the proceeds are to be distributed to the taxing entities in proportion to their shares of the base property tax.

In January 2018, the City and County determined, using professional appraisers, the Fair Market Value of the Diridon properties to be \$67 million (\$237.50 per square foot). A fair market price is typically determined by looking at the sales of comparable parcels in the area. The purchase prices of all the prior sales of privately owned parcels in the Diridon Station Area, including each of Google's purchases of private parcels, are public and have been widely reported in the San José Mercury News and other media. The valuation of \$237.50 per square foot compares favorably to those other transactions, and exceeds by 2.5 times the valuation of parcels in the Diridon Station Area only a year before Google's interest in the parcels became public, based both on prior sales and appraisals.

Each of the public agencies that will receive revenue from the sale of the SARA-owned parcels, including the City, the County, and several school districts, have reviewed the terms for the land sales. As of August 14, 2018, all 14 affected taxing agencies (13 plus the City), approved and executed the Compensation Agreement reflecting the \$237.50 per square foot price – a total of \$67 million. Per the state-approved plan and terms of the Compensation Agreement, the properties were transferred from SARA to the City on August 24, 2018. The Compensation Agreement states that the City must dispose of the property by December 31, 2018, which staff proposes as part of this memorandum.

Below is a chart ("Exhibit 2") showing the distribution of proceeds of the sale of these properties to the 14 taxing entities.

Exhibit 2: Distribution of Sale Proceeds of SARA Properties in the Diridon Station Area

<i>Entity Name</i>	<i>Approximate Share %</i>	<i>Approximate Share Amount</i>
Santa Clara County	20.53%	\$13,758,249
Educational Revenue Augmentation Fund	15.18%	\$10,172,176
Santa Clara Unified School District	14.24%	\$9,543,670
City of San José	14.14%	\$9,472,337
East Side Union High School District	7.58%	\$5,081,848
San José Unified School District	7.54%	\$5,052,055
West Valley-Mission Community College	4.65%	\$3,113,570
San José-Evergreen Community College	4.14%	\$2,773,119
County School Service	3.36%	\$2,253,735
Santa Clara Valley Water District	3.02%	\$2,023,509
Orchard Elementary School	2.44%	\$1,637,369
Oak Grove Elementary School	2.39%	\$1,602,186
Franklin McKinley Elementary School	0.55%	\$365,892
Bay Area Air Quality Management District	0.22%	\$147,578
Guadalupe Coyote Resource Conservation District	0.004%	\$2,707
Total	100%	\$67,000,000

Source: City of San José

Sites Owned by the City of San José

As stated earlier the City-owned property includes two main sites, the Fire Department Training Center, and Lots A/B/C, which are made up of seven individual parcels, as shown on the map in Exhibit 1.

The Fire Training Center includes aging City facilities used to train firefighters. The City has long envisioned replacing the Center with a modern facility that can better serve the Fire Department's needs. Because the City has intended to replace and relocate the Fire Training Center, the Diridon Station Area Plan identified this site as a potential public park site, chiefly because the City already owned it. Given its proximity to the expanding transit station at Diridon, the site presents a major opportunity for higher-density, transit-oriented development, and inclusion as an integral component of a master planned project. Revenue the City receives from the sale of the property to Google will fund the development of a new Fire Training Center elsewhere in San José, including the Central Service Yard as a potential site. The City anticipates updating the Diridon Station Area Plan to provide the equivalent acreage of park/public space elsewhere in the Diridon Station Area.

Lots A/B/C (about 10.8 acres) are located next to the SAP Center. These sites are currently large surface parking lots, which the SAP Center uses for parking (1,440 spaces). The soil beneath the parking lots is contaminated; the contamination, along with the high cost of its remediation, has been a barrier to redevelopment of this land. In addition, the City's Arena Management Agreement with San José Arena Management (SJAM) provides for certain rights to the parking

facility for the term of the agreement through year 2040. These include rights to the 1,440 parking spaces, to revenue from parking operations, and for SJAM to approve any potential land sale. Ownership by Google could enable development of the site for more uses than parking, and better integration of the site with the station and nearby areas, but would require the authorization of San José Arena Management to amend the Arena Management Agreement with an alternative parking solution.

ANALYSIS

Civic Engagement Process

In recognition of the significant public interest in the Diridon Station Area, the potential sale of public lands, and a potential development by Google, the City launched a community engagement process earlier than is typical for development projects. From February to October 2018, the City of San José managed an extensive civic engagement process to spur community conversation about issues and opportunities, refine the vision for the Diridon Station Area, and help inform the City's negotiations with Google. The goal was to provide a balanced, inclusive, and effective two-way dialogue with a broad range of the San José community.

Engagement Methods. To ensure a broad range of participation, the civic engagement process included a variety of methods to share information and gather input on the community's hopes, issues, and ideas for the Diridon Station Area and potential Google project. This process included:

- The Station Area Advisory Group (SAAG) consisting of 38 community members appointed by City Council, which met 10 times
- 11 Solution Group (SAAG subcommittee) meetings
- 7 Community Forums/Meetings
- 2 Walking Tours
- 6 Pop-up Events
- 5 presentations and feedback sessions with stakeholder groups
- Website with information on the project (www.diridonsj.org)
- Over 600 responses to an online feedback form

Early in the process, the City convened the SAAG to help shape engagement efforts, but also to begin to build long-term community engagement opportunities surrounding the Diridon Station Area. Each meeting offered opportunity for public comment. Google representatives were present, listening at all engagement meetings.

Through these efforts, there were an estimated 1,200 in-person encounters with community members. In addition, the website has nearly 22,000 page views.

Diridon Station Area Civic Engagement Report. Staff documented the community's feedback from the entire process in a comprehensive Diridon Station Area Civic Engagement Report.

On September 20, 2018, staff shared a draft version of the report with the SAAG, along with the general public. Staff solicited feedback from the community and incorporated it into the final version of the report, which was released on October 31, 2018. The [Diridon Station Area Civic Engagement Report](https://www.diridonsj.org/report) is available for download. (If you are reading this on hard copy, or if the link above does not work, type this URL into a web browser: <https://www.diridonsj.org/report>.)

Key Themes. Through the Engagement Process, community members identified a range of “Issues and Opportunities” related to a potential Google development in the Diridon Station Area. Input was also synthesized into “Desired Outcomes” to collectively reflect the most frequent goals and aspirations expressed by community members.

The top 10 Issues and Opportunities (unranked) raised are:

- Housing and Displacement
- Revitalization of Downtown and the Diridon Station Area
- Job Opportunities and Social Equity
- Expectations of Google and Others
- Community Benefits
- Growth Impacts and Public Services
- High-Speed Rail Impacts
- Safety and Homelessness
- Environmental Sustainability
- Effects on San José's identity

The Desired Outcomes for development in the Diridon Station Area are divided into the following six topics:

- Housing and Displacement
- Jobs, Education, and Economic Development
- Land Use, Design, and Parking
- Public Space, Creeks, and Trails
- Transportation and Transit
- Environmental Sustainability

There are also Desired Outcomes for how resources generated by the Google project could be used at the citywide level to minimize impacts and maximize benefits related to Housing and Jobs.

The following subsections summarize the top two Issues and Opportunities raised through the community engagement process: Housing and Displacement; and Revitalization of Downtown and the Diridon Station Area.

Housing and Displacement. Housing and displacement were the dominant topics of SAAG discussions and of public comments. The SAAG talked extensively about the housing crisis currently facing San José and the region, as well as concerns about escalated housing costs for the future if Google were to locate a major office development in the Diridon Station Area. They also discussed the potential for Google to add affordable housing and strategies for reducing displacement. Below are the “Desired Outcomes” – or aspirations – the community identified as they relate to housing and displacement:

- General Principles:
 - Everyone involved takes responsibility to address the housing crisis, including but not limited to the City, Google, and other companies/developers.
 - The City adopts more and stronger tools to help fight displacement, supplementing the existing programs and policies.
 - More affordable housing is generated throughout the city, focusing on high density housing in Urban Villages.
 - The strategy for addressing housing issues integrates homeless services
 - The ultimate goal is no direct/indirect displacement from San José, and no increase in homelessness.
- Development of the Diridon Station Area:
 - The Diridon Station Area has dense, affordable housing across all incomes for current and future residents and workers.
 - At least 25% of housing units are offered at below-market rates for households at extremely low-income, very low-income, low-income, and moderate-income levels.
 - Developers build inclusionary housing units on-site or within the Diridon Station Area, rather than pay in-lieu fees or build outside of the area.
 - There is no direct and indirect displacement of existing lower-income residents from the Diridon Station Area and nearby neighborhoods due to gentrification spurred by this development.
 - New development provides compensation and relocation assistance if redevelopment of existing housing occurs.
- Citywide Impacts and Benefits:
 - New resources generated by Google and other companies/developers go to:
 - Affordable housing development, focusing on areas well- served by transit (including within the Diridon Station Area itself);
 - Acquiring, rehabilitating, and preserving the affordability of existing multi-family housing properties in neighborhoods at the greatest risk of gentrification;
 - Community ownership models to increase homeownership opportunities (e.g., Community Land Trusts, etc.) – when building new housing or preserving existing housing; and
 - Organizations that provide legal assistance and education to tenants, which includes the legal defense of low-income Santa Clara County tenants facing eviction proceedings.

Revitalization of Downtown and the Diridon Station Area. When asked about “hopes” at the initial SAAG meetings, much of the input reflected the desire to think big and do something bold—to design a distinctive, world-class development and to make Diridon a model for sustainable, equitable, and resilient development. Several SAAG members emphasized the potential for supporting local businesses, catalyzing Downtown development, and strengthening Downtown as a desirable place to live and a vibrant, dynamic cultural hub.

The SAAG generally sees a master planned development by Google as a major opportunity to implement the Diridon Station Area Plan and help achieve its vision for transforming the area into a mixed-use, walkable neighborhood—integrated into Downtown and sensitive to adjacent residential uses. The Desired Outcomes for Public Space, Transportation, Creeks/Trails, Land Use, and Design are generally consistent with the adopted Diridon Station Area Plan, as described in the following section.

The opportunity for revitalization could resolve existing issues with “dead zones” (i.e., areas of inactivity that feel unsafe and unwelcoming). The project is an opportunity to activate the neighborhood through redevelopment and new amenities as well as programming such as art, events, and temporary features in the short-term. Also related to place-making are the opportunities for preserving historic resources and culturally significant features, for capitalizing on Los Gatos Creek as a focal point for community gathering and amenities, and for designing new development with environmental stewardship in mind.

Uses of the Input and Report. The input gathered through the engagement process informed, and will continue to inform a variety of decisions related to the Diridon Station Area, including the agreements with Google that are the subject of this memo and (later) the Development Agreement. Other applicable work efforts include:

- Google’s development concepts and design thinking
- Private development proposals by other property owners, companies, and real estate developers
- Implementation of and future updates to the Diridon Station Area Plan, Downtown Strategy, and other applicable plans
- Transit improvements and new station development (including the Diridon Integrated Station Concept community engagement)

Preliminary Fiscal Estimate

The City will realize ongoing fiscal benefits from private ownership and development of the Diridon Station Area by Google and others. City staff hired Applied Development Economics, Inc. (ADE) to perform a preliminary fiscal and economic analysis of a potential Google development, using the fiscal model developed for the Envision 2040 Plan. Staff directed ADE to evaluate two scenarios: development potential under the *current* building height limitation (“Scenario 1”), and development potential under an *increased* height limitation (“Scenario 2”). The direction assumed a mix of land uses including commercial (office, retail, hotel, cultural)

and residential. While site preparation and construction on the first parcels could begin as soon as 2022, we assume that “full buildout” of the development would occur in approximately 16 years, in year 2035.

Exhibit 3: Preliminary Estimate - Annual General Fund Impact at Build-Out

	Scenario 1			Scenario 2		
	Current Height Limitation			Increased Height Limitation		
	Commercial 7M Sq. Ft.	Residential 5,500 Units	Total	Commercial 9M Sq. Ft.	Residential 9,350 Units	Total
City Revenue	\$19.0M	\$9.0M	\$28.0M	\$24.8M	\$15.4M	\$40.2M
City Service Costs	\$12.8M	\$6.7M	\$19.5M	\$16.3M	\$11.4M	\$27.7M
Net Surplus	\$6.2M	\$2.3M	\$8.5M	\$8.5M	\$4.0M	\$12.5M

Source: City of San José

The results suggest that private development would generate \$28-\$40 million in General Fund revenue at full build out in 2035. Net Surplus, City revenue subtracting estimated City costs to service the development, is estimated at \$8.5-\$12.5 million.

Other potential fiscal and economic impacts include:

- At least 20,000 ongoing jobs, supporting the creation of another 60,000 multiplier jobs
- At least 1,500 jobs annually over a 16-year period of construction; \$2.1 billion in construction payroll
- One-time construction taxes of \$76-\$116 million
- New annual property tax of \$28-\$45 million to San José Unified School District and \$9-\$14 million to the County of Santa Clara

Staff’s Considerations and Recommendations: Achieving the Vision of the Diridon Station Area Plan and Goals of Envision 2040

More Vibrant Urban Center. Achieving the community-inspired vision for a vibrant urban center outlined in both the Diridon Station Area Plan and the Envision 2040 General Plan would bring many benefits: a transit-oriented city core would provide opportunities for residents to work closer to home, reduce carbon emissions, mitigate worsening freeway traffic, provide housing opportunities with easy access to transit, offer a unique urban lifestyle in the South Bay, enable new investment in community infrastructure and amenities, and generate substantial revenues for chronically underfunded public services.

San José’s Critical Need for Jobs and Tax Base. Google’s potential development would support the longstanding City vision for job growth in Downtown, and for a stronger tax base to fund public services for San José residents. San José is a very fiscally constrained city and will be for the foreseeable future. An underlying reason is that San José has an imbalanced structure – it has a very large resident population/housing base relative to its small job/workplace base. In fact, San José is the only “Top 20” city in the United States that has a larger resident population than job base. San José is by far the most imbalanced and fiscally challenged city in the South Bay.

The cost to provide services to San José's existing housing stock exceeds the property and sales tax revenue generated by those properties and their residents. The opposite is true for industrial, office, and retail lands; the cost of providing services to these 'job-supporting' uses is substantially less than the revenues received from them. Job-supporting lands not only cost less to service, but they produce net property tax and other revenues that the City can spend on services for residents.

A key goal of San José's plan for growth - the Envision 2040 General Plan - is to add 360,000 new jobs by 2040. According to the plan, 48,500 of those jobs should be located in the Downtown, which has the most transit options. Development of the Diridon Station Area could support more than 20,000 new Downtown employees, significantly aiding the City's need for local jobs and supporting ridership on existing and new public transportation investments.

Need to Continue to Address Housing and Displacement in San José. Many San José residents are fearful that a potential Google development, bringing more people to work and live in the area, will exacerbate rising rents, leading to the displacement of people who have called San José their home for many years. Rising rents and displacement are valid concerns amidst a Bay Area-wide housing crisis, and many people are dealing with the pressures of high demand for housing. The City of San José continues to entitle and encourage higher-density residential development, and continues to implement its Housing Crisis Plan. The City has taken a variety of policy actions to help prevent and address displacement, and other anti-displacement policies and tools are under consideration.

Substantial New Housing Possible. While staff do not know what Google plans to propose in terms of specific mix of land uses, we anticipate that the development could include substantial residential development, bringing thousands of new homes to the Diridon Station Area. The addition of thousands of new units Downtown will help ease pressures in the surrounding neighborhoods and support new deed-restricted affordable homes. When a proposed amendment to the Diridon Station Area Plan is brought forward for City Council consideration, the City Council will have the opportunity to apply housing affordability requirements that will be incorporated into any future development.

Additional Community Benefits Contribution. The future Development Agreement that will vest the land use entitlements for a Google project will include a comprehensive Community Benefits Plan with contributions from Google exceeding those required by existing ordinances, regulations, and policies. The future Community Benefits Plan could include components to address housing and displacement.

Civic Benefits of Land Assembly: Cohesive Integrated Development. As a potential anchor developer, Google has the resources to assemble enough properties without subsidy to help realize the shared vision of the Diridon Station Area Plan and Envision 2040, and be a long-term stakeholder in the area. A cohesive, master plan approach to developing the Diridon Station Area can maximize the potential for integrated, people-friendly private and public spaces.

Securing a lead private partner at this stage can help ensure the quality, timely development of the Diridon Station Area. Google could join the collaboration with the City of San José, VTA, Caltrain, Arena Management, and High-Speed Rail to make the Diridon Station Area a visionary destination that integrates new private development, the SAP Center, and the new intermodal station.

New Investment in Neighborhood Amenities. Private development can bring substantial investment in parks, trails, public spaces and new neighborhood-serving amenities and infrastructure to an old part of the city. Residents of the area are anxious to have a safer, cleaner, and walkable neighborhood as envisioned under the Diridon Station Area Plan. They have long awaited reinvestment, new amenities, better transportation connections, and safer pedestrian experiences. Further, Google has demonstrated a commitment to quality and innovation in design and sustainability through its other developments and early thinking for the Diridon Station Area. This could be a unique opportunity to advance San José's Climate Smart plan and other environmental goals.

Fiscal Benefits. In the paragraphs above, staff describe the significant jobs-housing imbalance that undermines the fiscal health of the City. The preliminary fiscal analysis of development capacity on the Google and City/SARA properties estimates new City revenues at full build-out between \$28 million and \$40.2 million, with a net annual surplus of \$8.5 million to \$12.5 million. This net surplus will provide important funding sources to improve and enhance services delivered to San José residents. In addition, substantial property tax revenues will benefit other taxing entities including public schools. A transformative master planned development in the Diridon Station Area could catalyze additional private investment in the area, further fueling the local economy and generating additional tax and fee revenues.

Staff's Recommendation. There are significant opportunities that the City could realize with a Google master planned development, including the realization of the Diridon Station Area vision, tens of thousands of new jobs, improvements in parks/public spaces/infrastructure, thousands of new housing units, future community benefits in a Development Agreement, and increased tax revenues to fund City services to residents.

Staff recommends that Council approve the Memorandum of Understanding, the Purchase and Sale Agreement for the Former SARA Properties, the Purchase and Sale Agreement for the Fire Department Training Site and associated Ground Lease, the Purchase and Sale Agreement for 697 W. San Carlos St., and the Option/Negotiation Rights Agreement for Lots A/B/C.

The Memorandum of Understanding is detailed in the section below. The Purchase and Sale Agreements and the Option/Negotiation Rights Agreement are detailed in the Appendix of this memorandum.

Memorandum of Understanding with Google

A Memorandum of Understanding (MOU) is an outline of mutually accepted terms and expectations between parties as they work toward a common objective, and is typically at a high, concept level. An MOU is non-binding legally, but is a very public statement of intent and expectation. It is a common first step before a more specific, legally binding agreement, such as a Development Agreement.

When Council approved the ENA, they directed staff to develop an MOU with Google to act as a basis for a future Development Agreement (described in greater detail in a section below). The proposed MOU contains the Vision and a set of Shared Goals for the potential development, which were informed by the extensive civic engagement process.

The 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.”

The Shared Goals:

1. **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.
2. **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.
3. **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.

4. **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.
5. **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.
6. **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.
7. **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.
8. **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.
9. **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.
10. **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.

11. **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.
12. **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.
13. **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.
14. **Proceed with Timely Implementation.** Implement development projects in a timely manner.
15. **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.

Future Development Agreement and Community Benefits Plan. A primary goal of the MOU is to act as a basis for negotiating a future Development Agreement. While the MOU is non-binding legally, the Purchase and Sale Agreements (which are legally-binding) anticipate that parties will enter into a Development Agreement. The Development Agreement will provide certainty regarding rules and regulations that will govern the future development, 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 City's expectation of a community benefit contribution will 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/SARA properties and the private properties acquired by Google, as well as the certainty that could be provided to Google through a Development Agreement. The City expects Google to share a portion of the value created by the City Council's actions with the City through a Community Benefits Plan.

In developing the Community Benefits Plan, the parties will utilize the input provided through the City's community engagement process (as summarized in the Diridon Station Area Civic Engagement Report) and subsequent input provided by the community or City Council, as well as address 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
- Public space, trails, and mobility
- Community nonprofit support, including homeless services
- Habitat and environmental sustainability

It is important to note that the City will not consider the following costs as 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.

Other main terms of the MOU include:

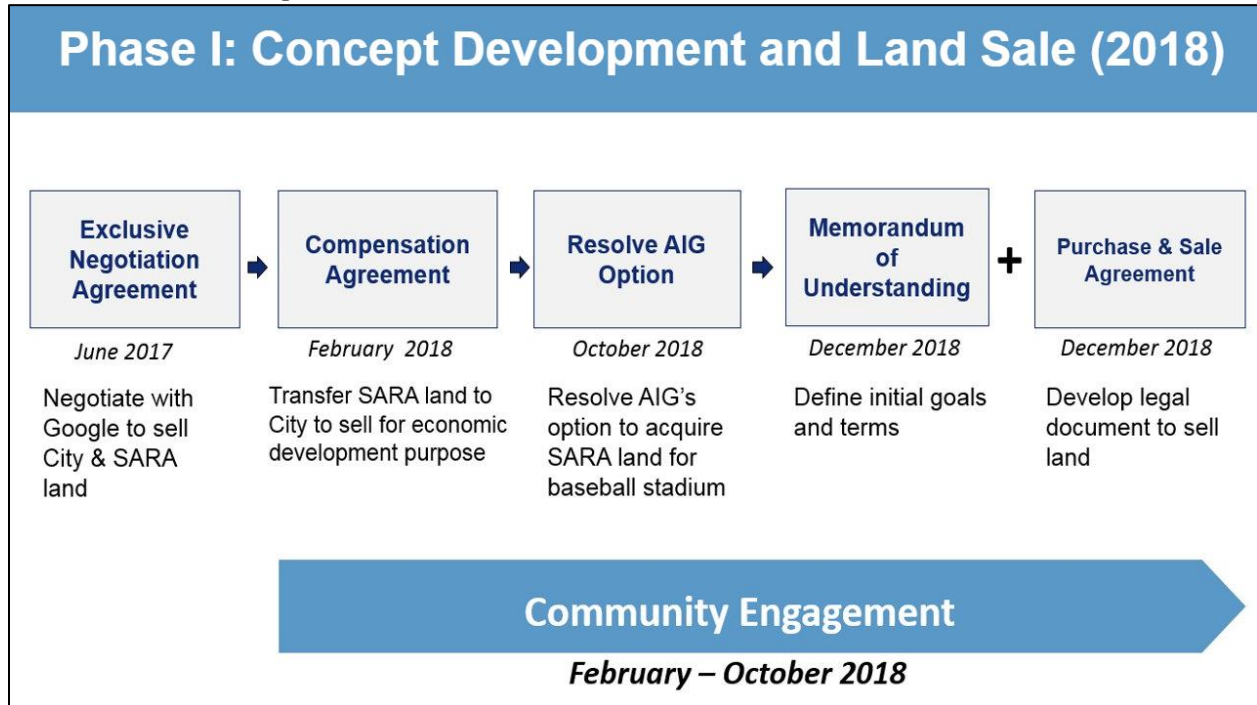
- Term: From Council approval to the mutual execution of a Development Agreement or December 31, 2022, whichever occurs first.
- Applications for Land Use Entitlements
- Revisions and Plan Updates
- Diridon Station Area Plan Amendment
- Financing of Shared Infrastructure and Services
- Commercial Linkage Fee [Exploration]
- District Utilities [Exploration]
- Parking Plan
- Consideration of Street Closures/Vacations
- Ongoing Community Engagement
- Planned Parkland on Fire Training Site [Equivalent Park Space in DSA]
- No City Funds or Tax Subsidies for Private Development

Next Steps

The Diridon Station Area Plan anticipated that development of the Diridon Station Area would take place over 20+ years, with the involvement of many private property owners and developers as well as public agencies. The potential Google development will be a multi-year process that will have many steps and ongoing community engagement.

In 2018 (Phase I), the focus was on community engagement, concept development, the sale of key publicly owned lands, and articulation of the shared goals and intent for possible future development. The Phase I steps are illustrated in the graphic below (“Exhibit 4”).

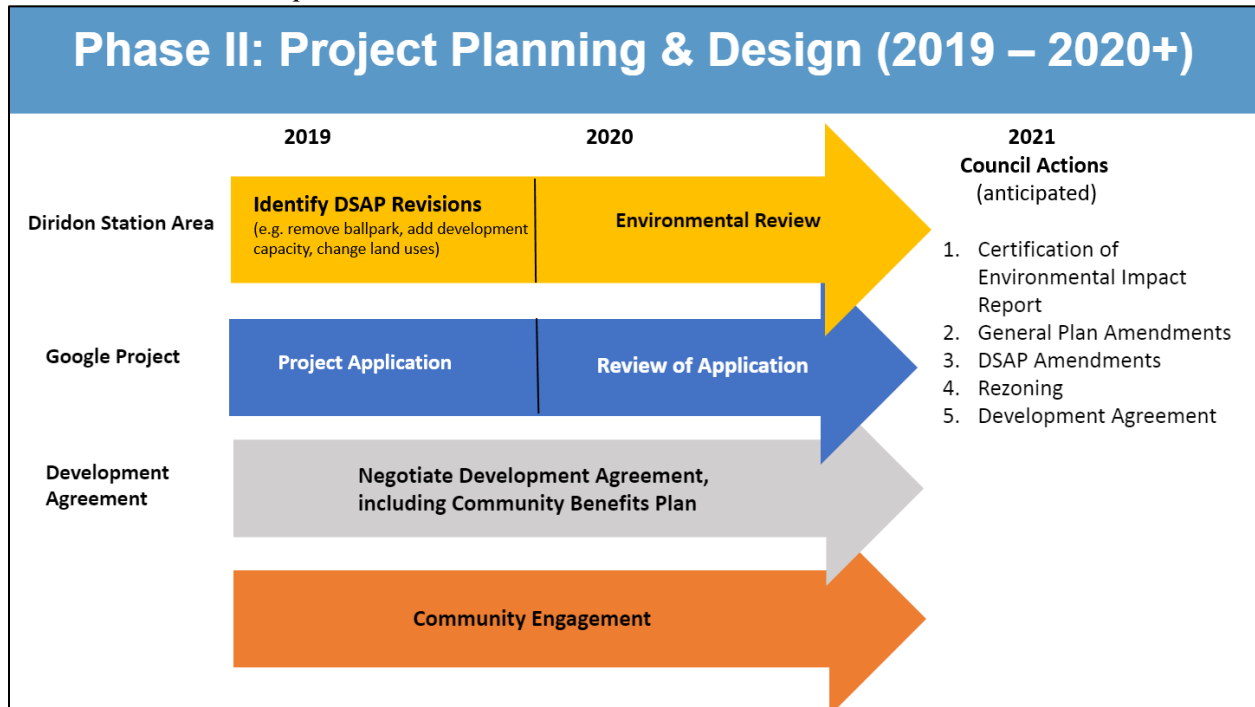
Exhibit 4: Phase I Steps



Source: City of San José

Phase II (Project Planning and Design) is expected to begin in 2019 and last at least two years. Civic engagement will continue throughout this period. For Phase II, City and Google will work with our partners and the community on possible recommended updates to the Diridon Station Area Plan (DSAP). The absence of a baseball stadium, potential increases to building heights, planned improvements in the public right-of-way for streets and open space, as well as a new envisioned mix of land uses in various building configurations, may likely require a comprehensive amendment or preparation of a new DSAP plan. As part of Phase II, Google will also likely submit a planning application for any required General Plan and DSAP Amendments related to their proposed master plan development. This Planning application will likely also include any required rezoning and other policy changes. A fully completed Planning application will start the regular planning, design, entitlements, permitting process for the potential development and environmental review under the California Environmental Quality Act (CEQA). The Phase II steps are illustrated in the graphic below (“Exhibit 5”).

Exhibit 5: Phase II Steps



Source: City of San José

A Development Agreement will be necessary for Google to vest any of the entitlements described above that the City Council may consider and approve in the future. Further, a Development Agreement would include the agreed upon Community Benefits Plan. The Development Agreement application will likely be submitted to the City at the same time as the Planning entitlement application. The City anticipates that all the necessary planning, design, and regulatory plans and policies necessary for Google's master plan project approval (including the Development Agreement) will be presented together for Planning Commission review and recommendation, and then for City Council consideration. As such, the City Council will have the opportunity to assess the project comprehensively before final consideration.

The following five Council actions are anticipated for consideration:

- Certification of an Environmental Impact Report (EIR)
- General Plan Amendments
- Diridon Station Area Plan Amendments
- Rezoning
- Development Agreement

Phase III (Building Approval and Construction) would be the permit and construction phase. It is likely the Google master plan would be constructed in phases over ten or more years. After

obtaining all the required legislative entitlements from the City Council, Google may begin applying for specific planning and building permits and start construction.

EVALUATION AND FOLLOW-UP

Staff will continue to provide periodic updates via Information Memo. Staff will provide a summary report of community outreach conducted in 2019.

PUBLIC OUTREACH

Extensive public outreach was performed throughout 2018, including approximately 50 community meetings, as described in detail in the Analysis section. The Diridon Station Area Civic Engagement Report is available for download by typing this URL into a web browser: <https://www.diridonsj.org/report>.

This memorandum will be posted on the City's Council Agenda website for the December 4, 2018 Council Meeting.

COORDINATION

The memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office, as well as the Departments of Finance; Planning, Building, and Code Enforcement; Transportation; Public Works; Housing; and Parks, Recreation and Neighborhood Services.

COMMISSION RECOMMENDATION/INPUT

The Housing and Community Development Commission heard a Commissioner-initiated briefing of the SAAG process and community engagement report at its November 8, 2018, meeting. The Commission discussed the potential Google project and will be submitting a comment letter.

COST SUMMARY/IMPLICATIONS

Once the project is fully built out, the City can expect to receive estimated revenue of \$28 million to \$40.2 million annually, with net revenues ranging from \$8.5 million to \$12.5 million annually, in addition to the broader economic impact to the downtown core and surrounding community. In the near future, the City would receive one-time revenue from the transactions recommended in this memorandum as discussed below. These amounts would be recognized and allocated during a future budget process after the revenues' receipt.

SARA-Owned Properties. Sale proceeds of \$67 million will be distributed to the various taxing entities, of which the City will receive approximately \$9.5 million. The Administration recommends placing this one-time revenue into a reserve that can be allocated during the 2019-2020 Proposed Budget process.

Fire Training Center. Sale proceeds from Fire Training Center, which are anticipated to be sufficient to fund the facility's replacement, will be recommended to be placed into a reserve for that facility's future construction at a new location. Assuming that environmental mitigation is not necessary, the City would initially receive \$38.6 million (\$37.6 million if a maximum environmental remediation amount of \$1.0 million is required). The remaining 10% retention amount of approximately \$4.3 million will be released to the City from the escrow account upon completion of the specified performance milestones (completion of the new facility's construction documents within 18 months and vacation of the existing site within three years). Over the ensuing three-year period, the City will lease back the existing site for \$0 per year.

697 W. San Carlos. Sale proceeds of approximately \$1.6 million from the sale of 697 W. San Carlos is also recommended to be placed into a reserve that can be allocated during the 2019-2020 Proposed Budget Process.

SAP Center Lots A/B/C. The annual payments of \$1.1 million related to the Option/Negotiation Rights Agreement for Lots A/B/C will be held in reserve until Google, SJAM, and the City come to an agreement on parking and the Parking Agreement Amendment is executed.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/
KIM WALES
Deputy City Manager
Director of Economic Development

For questions, please contact Nanci Klein, Assistant Director of Economic Development, at (408) 535-8184.

APPENDIX:
Details and Terms of the Purchase and Sale Agreements
and Option/Negotiation Rights Agreement

Purchase and Sale Agreement for the Former SARA Properties

The Purchase and Sale Agreement for the former SARA properties allows the City to sell those parcels mandated for sale pursuant to the state-approved Long Range Property Disposition Plan and Compensation Agreement approved by all 14 affected taxing entities, to Google for \$67,000,000.

The purchase price is based on the Fair Market Value determined through professional appraisers (as described in a section above), which is \$237.50 per square foot.

This Purchase and Sale Agreement, along with the PSAs for the other properties, includes a provision to allow the City to have a “first right of offer” to purchase back any portions of the public lands sold to Google, should Google choose to sell them in the future, subject to certain terms and conditions.

Finally, this Purchase and Sale Agreement, along with the PSAs for the other properties, anticipates that Google and the City enter into a Development Agreement, and that Google continues to reimburse the City for costs related to its potential development.

An additional item to note is the fact that the Arena Management Agreement between the City and San José Arena Management, LLC (discussed in more detail in the Option/Negotiation Rights Agreement for Lots A/B/C) provides for the use of the 228 parking spaces that are situated on 8 S. Montgomery St. This property, also known as “Lot D”, is located across W. Santa Clara St. from the SAP Center and is used for event parking. In order to complete the sale of the SARA properties, including 8 S. Montgomery St., the City must provide San José Arena Management with replacement parking stalls elsewhere and amend the Arena Management Agreement. Staff will release a Supplemental Memorandum detailing the proposed amendment.

The main terms of the Purchase and Sale Agreement for these properties include:

- **Purchase Price.** \$67,000,000
- **Properties.**
 - 8 S. Montgomery St. (APN: 259-38-130)
 - 102 S. Montgomery St. (APN: 259-48-012)
 - 105 S. Montgomery St. (APNs: 261-35-003, -006, -010)
 - 150 S. Montgomery St. (APN: 259-48-053)
 - 510 W. San Fernando St. (APNs: 259-48-011, -013)
 - 645 Park Ave. (APN: 261-35-014)
- **Close of Escrow.** On or before December 31, 2018
- **City Right of First Offer.** If Google acquires the Property under this Agreement, and then subsequently elects to sell all or any portion of the Property, whether individually or as part of a portfolio of properties which may include properties other than the Property in the Diridon Station Planning Area prior to the date Google obtains a permit to

commence grading on the Property, then City shall have the right of first offer to purchase the Sale Property.

- **Development Agreement.** Following the Close of Escrow for the sale of the Property by the City to Google, the parties will seek to enter into a development agreement pursuant to Chapter 18.02 of the San José Municipal Code for the properties that Google is acquiring from the City (including the Property), and Google shall reimburse the City for the City's costs in connection with the creation of the development agreement to the extent provided in an amendment to that certain Funding and Reimbursement Agreement between Google and the City dated June 17, 2018.

Purchase and Sale Agreement for the Fire Training Center Site

The Purchase and Sale Agreement for the site containing the Fire Training Center, located at 255 S. Montgomery St., allows the City to sell the property to Google for \$42,872,075, and thereby realize revenue to fund the long desired relocation and replacement of the Center.

The purchase price is based on the same price per square foot of \$237.50 that was agreed upon in the Compensation Agreement for the SARA properties.

Because this property was used for fire training purposes, and certain materials (including firefighting foams) were used on the site over the years, Google is conducting specialized soil and groundwater testing to determine whether the presence of these materials will require additional development remediation. It is common practice for a seller of real property to credit remediation costs related to environmental conditions; the financial burden imposed by such remediation requirements effectively reduces the value of the property by that amount. The proposed Purchase and Sale Agreement for this site includes a provision to allow for a credit against the Purchase Price up to \$1,000,000 to remediate the existing environmental conditions. If the testing reflects no additional remediation costs, no credit will be provided. If the testing reflects more than \$1,000,000 in additional remediation costs, the City may terminate the Agreement. If the testing reflects more than \$1,000,000 in additional remediation costs, and Google elects to complete the transaction and incur the additional remediation costs, the difference between the purchase price paid and the decreased value of the land (price minus remediation costs) will be acknowledged as a community benefit.

Should the sale of this property close escrow, the City will continue to use the site as its Fire Training Center for up to three years (at \$0 in rent) while the replacement Center is developed (see terms of the Ground Lease in a subsequent section). During this lease period, the City will need to satisfy two performance milestones: (i) completion of construction documents for the replacement Center within 18 months; and (ii) vacation of the leased site within three years. If the City fails to meet these performance milestones, thereby causing significant financial damages to Google, the purchase price will be reduced by up to ten percent (see details in the list of terms below).

The main terms of the Purchase and Sale Agreement for this property include:

- **Purchase Price.** \$42,872,075
- **Property.** 255 S. Montgomery St. (APN: 261-37-025)
- **Development Remediation Costs.** Google shall be entitled to credit against the Purchase Price up to \$1,000,000 of the estimated costs to remediate the existing environmental condition of the Property in connection with Google's proposed development of the Property excluding assessment, investigation and testing costs; provided, however, that if the Estimated Development Remediation Costs exceed \$1,000,000, then the City may terminate this Agreement by written notice to Google.
- **Performance Milestones for Relocation of Fire Training Facilities.** The Purchase Price is based, in part, on the City's agreement to timely satisfy the following performance milestones for the relocation of the fire training facilities located upon the Property. If the City fails to satisfy a Performance Milestone on or prior to the completion date set forth below, time being of the essence, the Purchase Price shall be reduced by the percentage specified below.

Performance Milestone	Completion Date	Purchase Price Reduction
1. Substantial completion of construction documents for the City's new fire training facility	Eighteen (18) months after Close of Escrow	Two percent (2%)
2. The City vacating and turning over full and complete possession of the Property to Google, and termination of the Fire Training Facility Ground Lease.	Three (3) years after Close of Escrow, unless a later date is mutually agreed upon by the parties in their respective sole and absolute discretion, except that the "burn tower" site may be occupied by the City under the terms of the Fire Training Facility Ground Lease until Google obtains a grading permit for the Property	Eight percent (8%)

The parties agree that \$4,287,200 (10% of the purchase price) shall be retained by Escrow Holder in order to secure the payment to Google of any Purchase Price Reductions. If the City fails to complete a Performance Milestone prior to its applicable Completion Date, the parties shall immediately jointly instruct Escrow Holder to release the applicable Purchase Price Reduction to Google from the Holdback Funds. If the City performs the last Performance Milestone on or prior to its applicable Completion Date, then the parties shall jointly instruct Escrow Holder to release to the City any and all remaining Holdback Funds, less any prior Purchase Price Reductions that are to be paid to Google.

- **Close of Escrow.** The later of (i) December 31, 2018 or (ii) forty-five (45) days following the Remediation Credit Determination Date.

- **City Right of First Offer.** If Google acquires the Property under this Agreement, and then subsequently elects to sell all or any portion of the Property, whether individually or as part of a portfolio of properties which may include properties other than the Property in the Diridon Station Planning Area prior to the date Google obtains a permit to commence grading on the Property, then City shall have the right of first offer to purchase the Sale Property.
- **Development Agreement.** Following the Close of Escrow for the sale of the Property by the City to Google, the parties will seek to enter into a development agreement pursuant to Chapter 18.02 of the San José Municipal Code for the properties that Google is acquiring from the City (including the Property), and Google shall reimburse the City for the City's costs in connection with the creation of the development agreement to the extent provided in an amendment to that certain Funding and Reimbursement Agreement between Google and the City dated June 17, 2018.

Ground Lease for the Fire Training Center Site

The Ground Lease for the Fire Training Center site allows the City (as Tenant) to “rent back” the property from Google (as Landlord) for a period of up to three years to allow the City to develop the replacement Center.

No lease payments are due to Google during the three-year term of the lease.

Google will also provide the City with free use of its privately owned warehouse space north of the SAP Center for a period of three years (for \$0) through a separate lease agreement. The City's free use of this space will help with the relocation of the Fire Training Center.

The main terms of the Ground Lease for this property include:

- **Lease Payment.** \$0
- **Property.** 255 S. Montgomery St. (APN: 261-37-025)
- **Term.** Three years from Close of Escrow
- **Net Lease.** This Lease is a so-called “triple-net” lease, except that the City shall not be obligated to pay any property taxes or any assessments that are based on any assessment district created after the date hereof, but the City will be responsible to pay for any and all special taxes and assessments assessed by any and all existing assessment districts. The City shall be responsible for all aspects of maintaining, restoring, insuring and operating the Property, and obtaining and paying for all utilities to the Property during the Term including electricity, telephone service, water, sewer service and trash removal.
- **Holding Over.** The City has no right to retain possession of the Property or any part thereof beyond the expiration or earlier termination of this Lease.

Purchase and Sale Agreement for 697 W. San Carlos St.

The Purchase and Sale Agreement for 697 W. San Carlos St. (APN: 261-37-030), which also includes a small piece of land with no address (APN: 261-37-028), allows the City to sell the properties to Google for \$1,609,300.

The purchase price is based on the same price per square foot of \$237.50 that was agreed upon in the Compensation Agreement for the SARA properties.

The property located at 697 W. San Carlos St. is a 6,627-square-foot vacant parcel of land situated across the Los Gatos Creek from the Fire Training Center site. Similarly, the parcel with no address is an even smaller (149-square-foot), landlocked piece of vacant land in the same area across the Los Gatos Creek from the Fire Training Center site. The City does not use or occupy these properties.

The PSA for 697 W. San Carlos includes a “hold-back” provision to deal with title encumbrances that affect two other properties: 8 S. Montgomery St. (one of the SARA properties subject to the Compensation Agreement) and 255 S. Montgomery St. (the Fire Training Center site). Basically, portions of the purchase price will be held in escrow while the title encumbrances are modified or removed according to the terms of the PSA. The encumbrance affecting 8 S. Montgomery St. is a deed restriction that prevents development of the site due to groundwater issues, which is recorded against the title to the property, to the benefit of the Santa Clara Valley Water District. The deed restriction can be amended to allow for development, although such an amendment would occur following the close of escrow for that property. The encumbrance affecting 255 S. Montgomery St. is an “Indenture” - or easement - recorded in 1951 to the benefit of Southern Pacific Railroad. Once these encumbrances are modified or removed according to the terms of the PSA, the “holdback” amounts, which are \$100,000 each or \$200,000 total, will be released from escrow to the City.

The main terms of the Purchase and Sale Agreement for these properties include:

- **Purchase Price.** \$1,609,300
- **Properties.**
 - 697 W. San Carlos St. (APN: 261-37-030)
 - No Address (APN: 261-37-028)
- **Close of Escrow.** On or before December 31, 2018
- **Holdbacks.** Upon the Close of Escrow, Escrow Holder shall hold back from the proceeds of the Purchase Price, in an interest bearing account (with interest becoming part of the holdback):
 - \$100,000.00, which shall not be released to the City until that certain Indenture dated October 26, 1951 recorded on November 2, 1951 in Book 2310, Page 287 of Official Records of Santa Clara County (affecting 645 Park Avenue in San José) is terminated of record or is otherwise resolved to the satisfaction of Google, and
 - \$100,000, which shall not be released to the City until that certain Amended and Restated Notice of Environmental Restrictions document previously delivered to the City by counsel to Google 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 Google.

- **City Right of First Offer.** If Google acquires the Property under this Agreement, and then subsequently elects to sell all or any portion of the Property, whether individually or as part of a portfolio of properties which may include properties other than the Property in the Diridon Station Planning Area prior to the date Google obtains a permit to commence grading on the Property, then City shall have the right of first offer to purchase the Sale Property.
- **Development Agreement.** Following the Close of Escrow for the sale of the Property by the City to Google, the parties will seek to enter into a development agreement pursuant to Chapter 18.02 of the San José Municipal Code for the properties that Google is acquiring from the City (including the Property), and Google shall reimburse the City for the City's costs in connection with the creation of the development agreement to the extent provided in an amendment to that certain Funding and Reimbursement Agreement between Google and the City dated June 17, 2018.

Option/Negotiation Rights Agreement for Lots A/B/C

Lots A/B/C are City-owned parking lots adjacent to the SAP Center and used by San José Arena Management (SJAM) for event parking for patrons. The Arena Management Agreement (AMA) between the City and SJAM provides SJAM with the use of Lots A/B/C for the term of the AMA, which currently ends in year 2040.

The Option/Negotiation Rights Agreement for Lots A/B/C allows Google to negotiate an alternative parking arrangement with SJAM, and to move forward with purchasing the property from the City should the alternative parking arrangement be acceptable to all parties (SJAM, Google, and the City). (Because SJAM has the right to use Lots A/B/C through the AMA, SJAM must approve any alternative parking arrangement.)

Should Google, SJAM, and the City come to an agreement on parking, Google may exercise an option to purchase Lots A/B/C from the City.

The main terms of the Option/Negotiation Rights Agreement for Lots A/B/C include:

- **Property.** 525 W. Santa Clara St./566 W. Julian St. (APNs: 259-28-031, -041, -043, -044)
- **Option.** The City grants to Google an option to purchase the Property from the City, 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 Google's acquisition of the Property.
- **Option Consideration:**
 - The first Option Payment of \$1,100,000 will be paid by Google to the City 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 Google in the event of a default by the City under this Agreement that is not cured within 45 days after written notice from Google.

- 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 the City shall refund to Google \$600,000 of the first Option Payment.
- Google shall have the right, but not the obligation, by depositing the following additional optional Option Payments into Escrow when due, to extend the Option and secure the Fixed Purchase Price beyond the end of the first anniversary of the Effective Date of the Agreement.

<u>Payment Date</u>	<u>Amount</u>	<u>Total Option Payments</u>
1st 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

- **Purchase Price for the Property.** If Google 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 \$237.50 per square foot for the Property (which equals approximately \$111,475,613), subject to the credits hereinafter described. If Google 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, then Google shall be entitled to credit against the Fixed Purchase Price the following:
 - an amount equal to the increased costs Google will incur to develop the Property as a result of the existing environmental condition of the Property;
 - an amount equal to the costs that Google is required to incur as a result of the Parking Agreement Amendment if any beyond City mandated parking requirements; and
 - the estimated costs to Google (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.
- **Buyer Right of First Offer.** If Google does not exercise its Option, and the City thereafter elects to sell all or any portion of the Property prior to the expiration of the ROFO Period, then Google shall have the right of first offer to purchase the Property.
- **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 the City to Google under this Agreement (whether pursuant to the Option or the Google's Right of First Offer) that SJAM and the City 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, Google's Right of First Offer shall remain in full force and effect.