

**SECOND AMENDMENT TO THE  
SECOND AMENDED AND RESTATED ARENA MANAGEMENT AGREEMENT**

THIS SECOND AMENDMENT TO THE SECOND AMENDED AND RESTATED ARENA MANAGEMENT AGREEMENT (“**Second Amendment**”) dated for reference as of June 8, 2021 (“**Reference Date**”), is made by and between CITY OF SAN JOSE, a municipal corporation (“**City**”), and SAN JOSE ARENA MANAGEMENT, LLC, a Delaware limited liability company (“**Manager**”).

**RECITALS**

- A. City and Manager (collectively, the “**Parties**” and individually, a “**Party**”) are parties to that certain Second Amended and Restated San Jose Arena Management Agreement dated as of August 15, 2018, as amended by a First Amendment dated December 4, 2018 (collectively, the “**AMA**”). A memorandum of the AMA was recorded in the Santa Clara County Official Records on August 16, 2018, as Document 24004426.
- B. Under the AMA, Manager leases, manages and operates a regional multi-purpose sports and entertainment arena and related facilities (“**Arena Facilities**”) owned by City and located in downtown San Jose, California. The Arena Facilities, which include the main arena building (known as SAP Center) and adjacent parking lots (known as Lots A, B and C), are depicted on **Exhibit A** attached hereto and incorporated herein by reference. The Arena Facilities front along W. Santa Clara Street to the south, and along Barack Obama Boulevard (formerly known as N. Autumn Street) to the east.
- C. The City and Google LLC (“**Google**”) are parties to an Option/Negotiation Rights Agreement dated December 4, 2018, with respect to Lots A, B and C (the “**Option Agreement**”). A memorandum of the Option Agreement was recorded in the Santa Clara County Official Records on March 15, 2019, as Document 24135456.
- D. Google is proposing to develop a mixed-use project known as the Downtown West Mixed-Use Plan, pursuant to a Development Agreement and other project entitlements approved by the San Jose City Council on May 25, 2021 (the “**DTW Project Approvals**”).
- E. The City initiated certain amendments to the Diridon Station Area Plan and related land use documents, which were also approved by the City Council on May 25, 2021 (the “**DSAP Amendment Approvals**”).
- F. Just prior to the City Council hearings on May 25, 2021, City, Google and Sharks Sports & Entertainment LLC, Manager’s parent company (“**SSE**”), entered into a Settlement and Release Agreement (the “**Settlement and Release Agreement**”) pursuant to which the parties resolved disputes that had arisen between them in connection with the DTW Project Approvals and the DSAP Amendment Approvals. A copy of the Settlement and Release Agreement is attached hereto as **Exhibit B** and incorporated herein by reference. For purposes of this Second Amendment, all references in the Settlement and Release Agreement to “SSE” shall mean and refer to Manager.

- G. The Parties now wish to enter into this Second Amendment in order to effectuate the applicable provisions of Paragraph 3 of the Settlement and Release Agreement.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing Recitals, and in further consideration of the terms, covenants and conditions herein contained, the Parties mutually agree as follows:

#### **SECTION 1. GENERAL EFFECT OF FIRST AMENDMENT.**

- 1.1 Recitals.** The foregoing Recitals are hereby restated by reference and incorporated herein as terms and conditions of this Second Amendment.
- 1.2 Effective Date.** This Second Amendment is dated for reference as of the Reference Date set forth above, but the terms and conditions hereof shall become effective upon the date this Second Amendment has been fully executed by all Parties.
- 1.3 Defined Terms.** Capitalized terms used in this Second Amendment that are not defined herein shall have the definitions given in the AMA.

#### **SECTION 2. ALTERATION OF SIDEWALKS ALONG ARENA FRONTAGES.**

- 2.1 Manager's Consent Required.** City shall not allow any Alteration of any sidewalks along Arena frontages at W. Santa Clara Street or N. Autumn Street without Manager's consent that such Alteration does not materially negatively affect operations of the Arena (such as safety, security, crowd control, etc.). Manager's consent shall not be unreasonably withheld, conditioned or delayed.
- 2.2 AMA Obligations.** Nothing herein shall affect City's obligations under other applicable provisions of the AMA concerning implementation of Alterations work, such as providing plans to Manager for Manager's comments, coordinating with Manager regarding the work schedule, and complying with Governing Standards.

#### **SECTION 3. CONFIGURATION OF STREETS NEAR SAP CENTER**

- 3.1 Clarifications to Proposed Configuration.** With respect to the proposed configuration of West Santa Clara Street and Barack Obama Boulevard near the SAP Center, the following shall apply:
- 3.1.1 West Santa Clara Street near the SAP Center.** As depicted in the Downtown West Vesting Tentative Map ("**VTM**") and Downtown West Design Guidelines and Standards ("**DWDSG**"), no reductions in general traffic through lanes are being proposed or approved as part of the Downtown West project along West Santa Clara Street. Per the Amended Diridon Station Area Plan, the City and Valley Transportation Authority (VTA) are exploring potential public service lane configurations to maintain reliable transit and emergency vehicle service; this is a separate effort from Downtown West and will continue to be coordinated with area stakeholders, including Manager.

3.1.2 Barack Obama Boulevard (between Santa Clara and San Fernando Streets). The City retains final decision-making regarding the public right-of-way. For example, the roadway (curb-to-curb space) includes two options, as shown on page 16 of the VTm:

- (a) A dynamic lane on one side of the roadway and two through lanes
- (b) A through lane on one side of the roadway, one center turn lane, and a second through lane on the other side of the roadway

The first option for the portion of Barack Obama Boulevard between Santa Clara and San Fernando Streets is illustrated on page 271 of the DWDSG (draft dated March 2021). The second option is very similar to the illustration of Barack Obama Boulevard between San Fernando and Park Avenue, as depicted on page 272 of the DWDSG. The City will determine the final configuration of the public right-of-way, including this portion of the roadway, during the Conformance Review process (as defined in the DTW Project Approvals), including with ongoing input from Manager.

3.2 **AMA Obligations.** Nothing herein shall affect City's obligations under other applicable provisions of the AMA concerning coordination with Manager regarding transportation projects, transportation plans, and other transportation matters in the vicinity of the Diridon Station Area or that may otherwise affect ingress to and egress from the Arena.

#### **SECTION 4. INCREMENTAL COSTS OF IMPLEMENTING ARENA TPMP**

4.1 **No Burden to Manager or its Patrons.** Neither Manager nor its patrons shall be responsible for the Incremental TPMP Costs (such as increased police/traffic control personnel, electronic traffic control measures, additional equipment or signage, etc.), beyond the pre-COVID Baseline TPMP Costs, adjusted for inflation based on the CPI (all as defined below). The City will identify and select potential funding sources for such Incremental TPMP Costs in consultation with Diridon Station Area stakeholders like Manager and area property owners, which funding sources will not burden Manager or its patrons. For example, the funding sources would not include taxes or surcharges on parking fees payable by Manager or its patrons, as those would effectively burden them with the Incremental TPMP Costs.

4.1.1 **Definitions.** As used herein, the following terms shall have the meanings given below:

- (a) **"CPI"** means the Consumer Price Index - All Urban Consumers for All Items (with a base period of 1982 - 1984 = 100) for the San Francisco-Oakland-Hayward Area published by the United States Department of Labor, Bureau of Labor Statistics. In the event the CPI Index is no longer published, another index published by either the State of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City or comparable to the City.
- (b) **"TPMP Costs"** means all costs reasonably necessary to implement the Arena TPMP (as modified from time to time in accordance with the AMA), including without limitation costs for Off-Site Traffic Control Services (currently payable by

Manager pursuant to Section 24.2 of the AMA) and costs to implement the following items (payable by City pursuant to Section 8.2.3 of the AMA):

- i. Signal Central staffing
- ii. Parking and code enforcement staffing
- iii. Neighborhood litter removal and clean up
- iv. Signal timing plan development
- v. Traffic and parking studies
- vi. Traffic signal system upgrades
- vii. Traffic signage (static and portable)
- viii. Minor public capital improvements
- ix. Residential permit parking program
- x. Public information material

(c) **“Baseline TPMP Costs”** means the average of the annual TPMP Costs incurred by Manager for the three full fiscal years prior to the onset of the COVID-19 pandemic (i.e., Fiscal Years 2017, 2018 and 2019); provided, however, that (i) prior to calculating the average, the annual costs for Fiscal Years 2017 and 2018 shall be increased by the equivalent percentage increase in the CPI for the applicable time period; and (ii) thereafter, the calculated average shall be further increased as of the end of each Fiscal Year (starting in Fiscal Year 2020) by the equivalent percentage increase in the CPI for the applicable time period.

(d) **“Incremental TPMP Costs”** means, for purposes of this Section 4, the TPMP Costs incurred by Manager for any Fiscal Year in excess of the Baseline TPMP Costs for that Fiscal Year.

4.1.2 **Reimbursement Procedures.** If Manager is required to pay for TPMP Costs up front (such as for Off-Site Traffic Control Services) or Manager agrees to pay for TPMP Costs up front (such as for equipment leased or purchased at City’s request), then to the extent that such TPMP Costs constitute Incremental TPMP Costs, City shall reimburse Manager for such costs based on invoices submitted by Manager to City, accompanied by such records, receipts and other documents as City may reasonably request to verify the amount of the TPMP Costs and the calculation of Baseline TPMP Costs/Incremental TPMP Costs.

4.2 **AMA Obligations.** Nothing herein shall affect City’s obligations under other applicable provisions of the AMA to provide adequate traffic control systems, signage, and programs in accordance with the Arena TPMP, as modified from time to time in accordance with the AMA.

## **SECTION 5. MISCELLANEOUS PROVISIONS**

5.1 **Authority.** The persons who have executed this Second Amendment represent and warrant that they are duly authorized to execute this Second Amendment in their representative capacity, and that they are duly authorized to execute, acknowledge and record the short form memorandum referenced in Section 5.2.

5.2 **Recordation.** At the request of either Party, the Parties shall execute, acknowledge and record, in the Official Records of Santa Clara County, a memorandum of this Second Amendment, in form

and content reasonably acceptable to both Parties. The respective rights, title and interest of City and Manager under the AMA, as amended by this Second Amendment, shall be and remain prior and superior to the rights of Google under the Option Agreement and the DTW Project Approvals.

- 5.3 Joint Drafting.** This Second Amendment is the result of the joint efforts and negotiations of the Parties hereto, and no single Party is the author or drafter hereof. The Parties assume joint responsibility for the form and position of each and all of the contents of this Second Amendment and they agree that this Second Amendment shall be interpreted as though each of the Parties participated in the composition of this Second Amendment and each and every part hereof.
- 5.4 References to “this Agreement.”** All references in the AMA to “this Agreement” shall hereafter mean and refer to the AMA, as amended by this Second Amendment.
- 5.5 Interpretation.** In the event of any conflict or inconsistency between the terms of this Second Amendment and the terms of the AMA or the terms of the Settlement and Release Agreement, the terms of this Second Amendment shall control. Except as expressly provided in this Second Amendment, the AMA, and each provision thereof, shall remain unmodified and in full force and effect, and constitute a legally valid and binding contract enforceable in accordance with its terms.

[Signatures on following page.]

**SIGNATURES TO SECOND AMENDMENT TO  
SECOND AMENDED AND RESTATED ARENA MANAGEMENT AGREEMENT**

**IN WITNESS WHEREOF**, the Parties have executed this Second Amendment on the dates below.

**“City”**

APPROVED AS TO FORM:

CITY OF SAN JOSE,  
a California municipal corporation

\_\_\_\_\_  
CAMERON DAY  
Deputy City Attorney

By \_\_\_\_\_ Date \_\_\_\_\_  
TONI TABER  
City Clerk

**“Manager”**

APPROVED AS TO FORM:

SAN JOSE ARENA MANAGEMENT, LLC  
a Delaware limited liability company

\_\_\_\_\_  
LUCY A. LOFRUMENTO  
LMA Law, LLP

By \_\_\_\_\_ Date: \_\_\_\_\_  
JONATHAN D. BECHER  
President

Exhibit A

**Aerial Photo of Arena Facilities**

[Attached on next page.]

Second Amendment to Second Amended and  
Restated Arena Management Agreement  
T-2844.002.002/ 1826977

Exhibit B

**Settlement and Release Agreement  
Between City, Google and Manager**

[Attached on next page.]

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