

EXCLUSIVE NEGOTIATIONS AGREEMENT

This Exclusive Negotiations Agreement ("Agreement") is made and entered into this ___th day of _____, 2017 ("Effective Date"), by and between THE CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and Google Inc., a Delaware corporation ("Developer"). City and Developer are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

A. City, as a municipal corporation, and as the Successor Agency to the City Redevelopment Agency and pursuant to a long range property management plan adopted by the Successor Agency to the City Redevelopment Agency, owns or controls real property located in the Diridon Station Area Plan of the City, which is more particularly described on **Exhibit A**, attached hereto and incorporated herein by this reference ("Property").

B. Developer is a multinational corporation that has offices and related properties throughout California.

C. Developer intends to develop a large scale mixed-use Transit Oriented Development to serve as an office and research campus consistent with a redeveloped Diridon Station Area ("Project").

D. The City now desires to offer Developer the opportunity to exclusively negotiate with the City for the purchase of the Property and the development of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties hereby agree as follows:

1. Good Faith Negotiations.

Subject to all terms and conditions of this Agreement, the City and Developer agree for the time period set forth below to negotiate diligently and in good faith towards the preparation of one or more purchase and sale agreements and any other Project agreement (collectively, "Project Agreement") which will involve the acquisition of the Property by the Developer for the Project. It is expressly understood and agreed by the Parties that this is a contract regarding negotiations only and does not convey any interest in the Property or a potential agreement or constitute any approval whatsoever of any proposed project. By its execution of this Agreement, the City is not committing to (a) any disposition of land to Developer; (b) the ability to obtain any approvals required from the City to use the Property for the Project or (c) any other acts requiring the subsequent independent exercise of discretion by the City, or its departments. It is further agreed and understood that this Agreement does not imply

any obligation on the part of the City or the Developer to enter into any agreement that may result from the negotiations contemplated herein.

City agrees, for the Initial Term and any Extended Term (defined below), not to negotiate with, solicit offers or proposals regarding, or respond to inquiries from (other than to notify the inquiring party, person or entity that City is subject to an exclusive negotiation agreement) any other person or entity regarding development, sale, or lease of the Property or any portion thereof.

2. Term of Agreement.

A. The term of this Agreement shall be for a period of one (1) year from the date of final execution by the Parties ("Initial Term") unless earlier terminated or extended as provided in this Section 2 or Section 13.

B. The City Manager ("Manager") or his designee acting on behalf of the City, shall have the right to extend the Initial Term of this Agreement for up to an additional one (1) year ("Extended Term"). The decision to extend the Initial Term shall be at the sole and absolute discretion of the Manager. If the Manager elects to extend the Initial Term, the Manager shall notify Developer in writing not less than thirty (30) days prior to expiration of the Initial Term ("Notice of Extension").

C. If a Development Agreement is executed by the Parties relating to all or part of the Property during the Initial Term or any Extended Term, then this Agreement shall terminate upon execution of said Development Agreement with regard to the portion of the Property subject to said Development Agreement.

3. Project Milestones. Within the time periods set forth in the Schedule of Performance attached hereto as **Exhibit B** ("Schedule of Performance"), the Parties shall have completed the milestones set forth therein. The City Manager is authorized to agree to extend the date of any task listed in Exhibit B on behalf of the City.

4. Right of Entry. During the Initial Term or any extension thereof, Developer, its representatives, consultants, contractors, agents and employees shall have the right to enter the Property at all reasonable times for the purpose of conducting any tests, studies, analysis or other work necessary to perform the milestones set forth above. The Developer shall provide the City with written notice prior to entry on the Property. The Developer shall have access to all data and information on the Property available to the City, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information. Copies of any tests, studies or analysis obtained or made by the Developer on the Property shall be provided to the City. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

5. Disposition of Property. Within the time period set forth in the Schedule of Performance, Developer and the City shall negotiate the terms and conditions of a

proposed Project Agreement. It is expressly acknowledged and agreed by the Parties that, until and unless a Project Agreement is signed by Developer and approved by the City Council, in its sole and absolute sole discretion, any drafts or other communications resulting from performance of this Agreement shall not be used to impose any legally binding obligation on the City or the Developer or as evidence of any oral or implied agreement by the City or the Developer to enter into a legally binding document.

6. Disclosure of Confidential Information. Developer acknowledges that the City is subject to the California Public Records Act (“Act”). The Act generally provides that written documents retained by the City are subject to disclosure upon the request of any third party except for specific limited exceptions provided for in the Act. Developer shall designate as “Confidential” any information which Developer provides to the City which Developer desires to keep confidential. If a request for disclosure of any information designated as “Confidential” by Developer is made under the Act, the City shall notify Developer in writing and Developer shall have the opportunity to object to the release of such information.

7. Conflict of Interest.

A. Developer shall at all times avoid conflict of interest or appearance of conflict of interest under any applicable state, federal or local laws, rules and regulations in the performance of this Agreement. Developer shall disclose any conflict of interest, or potential conflict of interest, which exists or arises at any time during the Term of this Agreement. For purposes of this Section, any conflict of interest of a principal, officer, partner, joint-venturer, or employee of Developer shall be conclusively deemed to be a conflict of interest of Developer.

B. City shall have the right to treat any violation of this Section as a material breach of this Agreement, and shall have the right to terminate the Agreement and pursue any and all legal or equitable remedies for said breach of this Agreement.

8. Developer Responsibilities.

A. Development Costs. Developer expressly acknowledges that all expenses and costs it may incur during the Initial Term of or as a result of this Agreement are its sole obligation and responsibility and done at its sole risk, including, but not limited to, any costs associated with any proposed project and any costs incurred to prepare the necessary studies and analysis required for any proposed project. All City fees for processing a development application or any CEQA review are due upon submittal of each and every development application to the City.

B. Entitlement Applications. Developer shall cooperate with City in the preparation, processing and submittal of the Project planning and zoning approvals and related environmental documents by supplying necessary information and/or development plans concerning the Project.

C. California Environmental Quality Act. The California Environmental Quality Act (CEQA) is applicable to any Project contemplated by this Agreement. Environmental clearance must be obtained prior to obtaining City Council approval for the Project. All studies prepared on behalf of the Developer in support of any CEQA clearance for the Project shall be prepared under the direction of the City and City's independent judgment.

D. Progress Reports. Developer shall keep City apprised as to the status of all work to be undertaken by or on behalf of Developer as described in the Schedule of Performance. During the Initial Term or any Extended Term, Developer shall submit to City within ten (10) days following City's request, via email or other reasonable method, a progress update advising City of the status of all work being undertaken by or on behalf of Developer.

9. City Responsibilities.

A. City Assistance and Cooperation. City shall cooperate with Developer by providing information regarding the development potential of the Property.

B. Entitlement Processing. City shall cooperate with Developer in the preparation, processing and submittal of the Project planning and zoning approvals and related environmental documents by supplying necessary technical data and other related information and/or development plans concerning the Project.

C. Progress Reports. City shall keep Developer apprised as to the status of all work to be undertaken by or on behalf of City as described in the Schedule of Performance. Within ten (10) days following Developer's request, which may be made from time to time during the Initial Term or any Extended Term, City shall submit to Developer, via email or other reasonable method, a progress update advising Developer of the status of all work being undertaken by or on behalf of City.

10. Distinction from Regulatory Authority of the City. Developer understands and agrees that this Agreement does not and shall not be construed to indicate or imply that the City, acting as a regulatory or permitting authority, has hereby granted or is obligated to grant any approval or permit required by law for the development of the Project on the Property as contemplated by this Agreement.

11. Public Hearing. If the negotiations contemplated herein culminate in the execution of a Project Agreement, the Project Agreement will be brought forward for consideration by the City Council, provided, however, such Project Agreement shall become effective only after having been considered and approved by the City Council in its sole and absolute discretion following any public hearing or other actions required by law.

12. Non-discrimination. Developer shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or

perceived gender identity, disability, ethnicity or national origin in connection with or related to the performance of this Agreement.

13. Termination. If Developer does not comply in a timely and diligent manner with any material obligation of Developer under this Agreement, City, at its option, may terminate this Agreement at any time by written notice to Developer and failure of Developer to cure the breach within a reasonable period of time following receipt of such notice. The Manager may terminate this Agreement on behalf of the City. The termination shall be effective upon Developer's receipt of City's written notice. If, during the Initial Term or any Extended Term, Developer determines that it is not commercially feasible for Developer to develop the Project, Developer shall have the right to terminate this Agreement upon providing written notice to City.

14. Indemnification. Subject to the limitations of Section 20 below, Developer shall defend, indemnify and hold harmless the City of San Jose, and its officers, employees and agents against any claim, loss or liability arising out of this Agreement or resulting in any way from work performed under this Agreement, including any work performed on the Property pursuant to the provisions of Section 4 above, by Developer, its representatives, consultants, contractors, agents or employees. This indemnification shall survive the expiration or other termination of this Agreement.

15. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, or by United States mail, postage prepaid and return receipt requested, addressed to the respective Parties as follows:

To City: City of San Jose
Attention: Office of City Manager,
Director of Economic Development
200 East Santa Clara Street, 17th Floor
San Jose, CA 95113

To Developer: Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043

With a copy to: David H. Blackwell, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to, any claims against City, its officers or employees shall also be served in the manner specified above to the following address:

City of San Jose
Richard Doyle, City Attorney
200 East Santa Clara Street 16th Floor
San Jose, CA 95113

16. Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed with respect to this Agreement or any dispute or act arising from it.

17. Time of Essence. It is understood and agreed by the Parties that time is of the essence in the performance of the obligations of this Agreement.

18. Assignment. Developer may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of City which may be granted or withheld in City's sole and absolute discretion, and any such attempted assignment without the prior written consent of City shall be wholly void and of no effect.

19. No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and Developer and no other person shall have any right of action under this Agreement.

20. Limitation of Liability. Notwithstanding anything to the contrary at law or equity, in the event of any breach of this Agreement by the City, the sole and exclusive remedy of Developer hereunder shall be the recovery of Developer's actual out of pocket costs incurred by Developer to third parties to satisfy its obligations under this Agreement. In no event shall Developer be entitled to "expectation damages" i.e., any amounts that Developer would expect to gain were an agreement ever executed, including, without limitation, any amount for potential lost profits. Neither Party shall be allowed to recover any damages for lost business opportunity, or for any indirect or consequential damages from the other Party.

21. Waiver. Developer agrees that waiver by City of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by City of the performance of any work or services by Developer shall not be deemed to be a waiver of any term or condition of this Agreement.

22. Governing Law. The law governing this Agreement shall be that of the State of California.

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

24. Prior Agreements and Amendments. This Agreement, including all Exhibits listed below and attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment duly executed by the Parties.

Exhibit A	Description of Property
Exhibit B	Schedule of Performance

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“City”

APPROVED AS TO FORM:

CITY OF SAN JOSE

City Attorney

By: _____
City Manager

“Developer”

GOOGLE INC.
a Delaware corporation

By: _____

Name: _____

Title: _____

EXHIBIT A

DESCRIPTION OF PROPERTY

255 South Montgomery Street (APN 261-37-025)
8 South Montgomery Street (APN 259-38-130)
102 South Montgomery Street (APN 259-48-012)
510 West San Fernando Street (APN 259-48-011, 259-48-013)
150 South Montgomery Street (APN 259-48-053)
105 South Montgomery Street (APN 261-35-003, 261-35-006, 261-35-010)
645 Park Avenue (APN 261-35-014)
525 West Santa Clara Street/566 West Julian Street (APN 259-28-031, 259-28-041,
259-28-043, 259-28-044)
697 W. San Carlos (261-37-030)
No address (261-37-028)

EXHIBIT B
SCHEDULE OF PERFORMANCE

Task	Date
Property Appraisals	City to complete no later than City approval of ENA
Initiate Compensation Agreement Approval Process with All Relevant Approving Agencies	City to initiate within 30 days of ENA
Complete Compensation Agreement Approval Process with All Relevant Approving Agencies	City to complete no later than December 31, 2017
Complete General Conceptual Development Envelope Project Description	Google to complete no later than March 1, 2018
Parties to Cooperate Regarding Written Commitment for Shared Public Parking for Project	Google and City ongoing
Parties to Cooperate Regarding Commitment to Interim/Construction Parking Supply	Google and City ongoing
AIG Option	City to remove option prior to conveyance of the Property
Preparation of Community Engagement Plan	Google to provide within 120 days of ENA
Implementation of Community Engagement Plan	Google to implement within 30 days of acceptance by City
Draft Memorandum of Understanding	Parties to have deal points negotiated no later than 120 days of ENA, and MOU finalized no later than March 31, 2018
City Council to Consider and Take Action Regarding Project Agreement (<i>i.e.</i> , Property purchase and sale agreement)	No later than March 31, 2018

Application for Required Planning and Zoning Actions, Including CEQA	Parties to address in MOU
Commitment of Financial Support to Assist with PG&E Studies Relating to Sub-station Relocation	Google to provide within 90 days of ENA
Coordination with HR&A Advisors Relating to Land Use and Design	Google and City ongoing
Coordination with VTA and Consultants Relating to San Jose Diridon Station Master Plan	Google and City ongoing