CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of Economic Development

April 5, 2019

Dear Bill,

Thank you for expressing your concerns in your email letter to me on March 14. I'm glad we could get together recently to discuss your concerns for a few hours in person. As you suggested, I'm going to also put a few key responses in writing for the public record.

Non-Disclosure Agreements

First, I am clarifying that there are no city employees, including me, that are 'still under NDA with Google.'

As soon as the City publicly announced its intent to negotiate with Google on June 9, 2017 -- via the City Council Memo for the June 20 Council meeting -- no City official has been bound to confidentiality by any NDA, as stated early last year by City Attorney Rick Doyle in an official statement (attached). All negotiations proceeded without any NDA-imposed requirement of confidentiality, and City-created documents remain subject to public disclosure under existing local, state, and federal law. This information was also provided in an FAQs document text was distributed to SAAG members and made available on diridonsj.org in July 2018. For your reference, I have provided at the end of this email the complete text to FAQ Question #18 regarding Non-Disclosure Agreements.

Council Decision Regarding OEI/Downtown Height Limitations

I know that you advocated for a different Downtown height limit than the one unanimously adopted by City Council on March 19, and recommended by City staff and by the project Steering Committee. Thank you for investing time to review the staff/consultant analysis and for contributing your views on the topic at the Council meetings.

Your question about our coordination with Google's OEI consultant was one John Aitken and I answered at the Feb. 26 City Council meeting (in the video you attached). As we said, the prior 2006 attempt to resolve the OEI issue with a formal Council-adopted policy failed precisely because of lack of agreement on the facts and analysis. In our 2018 work, we wanted to avoid a situation where Google as the potential master developer in the Diridon Station Area had a different analysis of how high they could build. To that end, the City's OEI consultant Landrum and Brown were authorized to share interim analyses with Google's OEI consultant, after the analysis had been shared with City staff and Steering Committee members. The goal was to ensure that Google was approaching the issue with a technically accurate understanding of the

facts and the analysis of the various air surfaces and scenarios. The task order with Landrum and Brown referenced the term that Google apparently uses for their San Jose: Project Sparta. (Note: The City refers to Google as Google).

On the City's part, there was no attempt to hide that Google is a major stakeholder in Downtown and that we were discussing OEI with them as the potential master developer of the Diridon Station Area. I said at the public Stakeholder Meetings throughout the process that we were coordinating with Google. (Concerns were raised in the public meetings that we were not coordinating with the company.)

Despite our coordination with Google, Google was not involved as a decision-maker. The Airport Director, after reviewing all of the analysis and considerations, and the input of the Steering Committee, recommended Scenario 4 in the best long-term interest of the airport and the City. After two lengthy Council meeting deliberations, Council adopted the recommendation unanimously.

My Trip to University of Toronto/Quayside Project Reflections

Your letter references a 'city-sponsored' trip to Toronto, and your disappointment that I did not provide a report-back to the SAAG. I was invited by the University of Toronto to be the plenary speaker at a Tuesday, May 15 conference entitled "Toronto: Toward a Smart and Inclusive City-Region." The University of Toronto covered all of my travel-related expenses. My talk that generally followed the slides used in our 2018 community meetings. It's clear that many cities globally are wrestling with similar challenges.

Bill, we have known each other for a very long time and I have tremendous respect for your lifetime of contribution to our city, our downtown, and our neighborhood. I respect that you are raising questions that matter to you, and will continue to be available to answer questions or provide clarity on these topics.

Sincerely,

Kim

Kim

Attachment A: FAQ Concerning Non-Disclosure Agreements

FAQ 18. Why did some City staff and elected officials sign Non-Disclosure Agreements in Spring of 2017? Are they still operative? What is a Non-Disclosure Agreement?

A Non-Disclosure Agreement (NDA) is a contract that creates a confidential relationship between a person or entity that holds confidential information or a "trade secret", and a person to whom the information will be disclosed. It is common for purchasers of multiple real estate sites to seek NDAs with the land owner in the very early exploratory stage of real estate projects while both parties are assessing a potential deal, in order to prevent land speculation by other developers. To the extent that such speculation makes a larger land assemblage financially untenable, it does so to the detriment of both the buyer and the seller. For that reason, the City has entered into NDAs in other instances in which large employers have sought to assemble multiple parcels.

Google requested that key City employees and officials sign NDAs in the February-May 2017 time-period when a potential Exclusive Negotiations Agreement was being considered and a draft recommendation was being developed for City Council consideration.

On June 9, 2017, the Administration publicly released its Council memo recommending the Exclusive Negotiations Agreement, which included the recommended Agreement as an attachment. City Council considered and adopted this recommendation at its June 20, 2017 meeting. As soon as the City publicly announced its intent to negotiate on June 9, 2017, the transaction no longer remained confidential. Accordingly, since that date, no City official has been bound to confidentially by any NDA, according to City Attorney Rick Doyle. All negotiations have proceeded without any NDA-imposed requirement of confidentially, and City-created documents remain subject to public disclosure under existing local, state, and federal law.

Government entities and government employees who enter into NDAs remain subject to the Public Records Act requirements for disclosures. For example, in February 2018, the City received a Public Records Request for the executed NDAs related to the Google-Diridon Station land sale and potential development. The City fulfilled that request, and provided the documents to the public.

In addition, the City has followed—and will continue to follow—all sunshine requirements related to this project, including the requirement that proposed agreements be publicly posted 10 days before coming to Council for approval.

Attachment B: Rick Doyle Official Statement February 16, 2018

For Immediate Release
February 16, 2018

Contact:
Rosario Neaves, Director of Communications
Phone: 408-535-8170
rosario.neaves@sanjoseca.gov

Statement from City Attorney Rick Doyle on San Jose's Non-Disclosure Agreement with Google

San Jose, Calif. – San Jose City Attorney Rick Doyle released the following statement, regarding San Jose's Non-Disclosure Agreement with Google:

"San Jose's Non-Disclosure Agreement with Google has had no effect in constraining the release of any information to the public since June of 2017, months before any negotiations over the price of publicly-owned land took place.

Although the Council just considered a compensation agreement relating to the sale of property to Google on Tuesday, that agreement will have been subjected to no fewer than 15 public hearings by 14 separate governmental agencies before a single parcel of public land changes hands." – *Rick Doyle, City Attorney*

###