

**HOLD HARMLESS AND INDEMNIFICATION AGREEMENT BETWEEN GOOGLE
AND THE CITY OF SAN JOSE FOR DEPARTMENT OF PUBLIC SAFETY - POLICE
SERVICES TRAINING ON GOOGLE PROPERTY**

This Agreement is entered this 16 day of Oct. 2021, by and between the CITY OF SAN JOSE, a municipal corporation, whose address is 201 West Mission Street, San José, CA 95110 (hereinafter "CITY"), and GOOGLE LLC, a Delaware limited liability company, whose address is 1600 Amphitheatre Parkway, Mountain View, California 94043 (hereinafter "GOOGLE") with respect to the following facts:

RECITALS

WHEREAS, CITY desires to conduct San José Police Department Mobile Emergency Response Group and Equipment ("MERGE") Unit trainings in certain buildings owned by GOOGLE; and

WHEREAS, GOOGLE desires to support CITY's efforts to ensure a highly skilled and well-trained Police Department.

NOW, THEREFORE, in consideration of the Recitals and mutual promises contained herein, CITY and GOOGLE agree as follows:

ARTICLE I - GRANT OF A REVOCABLE, NON-EXCLUSIVE LICENSE

- A. Subject to the terms and conditions set forth in this Agreement, GOOGLE hereby grants to CITY a revocable, non-exclusive license (the “License”) to enter upon certain designated property owned by GOOGLE (“Property”) for the sole purpose of conducting public safety training exercises (the “Activities”).
- i. Location. CITY shall conduct all training Activities within the building(s) designated by GOOGLE (the “Building(s)”) on the Property. Any Activities conducted by CITY outside of the Building(s) shall be deemed a violation of this Agreement and shall result in the License’s immediate termination. GOOGLE designates the following Building(s) and/or areas within the Building(s) for CITY use subject to the terms of this Agreement: 40 S. Montgomery Street, 384 W Santa Clara Street, 580 Lorraine Ave, and 50 S Montgomery, as further shown on Exhibit A.
 - ii. Access Dates and Times. CITY will have access to the Building(s) on Wednesdays between the hours of noon to 10:00pm with 24 hour advance notice to property management for a period of one (1) year from the Effective Date of this Agreement, as defined below. GOOGLE retains the right to designate additional dates and/or times during which CITY may not access the Building(s) during the term of this Agreement. GOOGLE will coordinate with CITY any access by GOOGLE to the Building(s) and/or dates during which CITY may not access the Building(s) during the term of this Agreement. CITY’s access shall be to the Building(s) only; CITY shall not have the right to access parking without prior written confirmation from GOOGLE.

Agency: CITY	Phone No.: (408) 219-6712
Name: Lt. Stephen Lagorio	E-mail: Stephen.lagorio@sanjoseca.gov
Agency: GOOGLE	Phone No.: (408) 595-1447
Name: Ai Suzuki, Sr Real Estate Manager	E-mail: Ai.Suzuki@cbre.com

- iii. Use. CITY represents that the Activities will be limited to MERGE Unit Scenario Training. CITY further represents that the Activities will not be of a destructive nature. For example, the Activities will not include penetrations in walls, floors, ceilings, or roofs, or the use of paintballs. CITY is responsible for repairing any

such damage or destruction and will ensure that the Property is left in a reasonably safe and secure condition. All Activities will be conducted at CITY's sole cost and expense.

- iv. Site Security. The security of the Building(s), the surrounding Property, and any persons inside or adjacent to the Building(s), is CITY's sole responsibility. CITY will secure the Building(s) following each use.
- B. CITY will conduct all Activities in such a fashion that the Activities do not disturb GOOGLE and its Officers, Partners, Members, Employees and Agents, or constitute a public or private nuisance. If any Activities cause disturbance or constitute a nuisance, the Agreement shall be deemed violated.
- C. CITY also represents and warrants that all CITY sworn personnel are physically capable of undertaking the Activities planned for the site, that all appropriate safety equipment will be available on site while the Activities are in progress, and that CITY will follow all appropriate safety procedures during the Activities.
- D. This Agreement shall immediately terminate if violated by either party.

ARTICLE II - PROPERTY CONDITION, INDEMNITY, AND INSURANCE REQUIREMENTS

- A. CITY acknowledges that it received the following reports (the "Reports"), if any, regarding the environmental quality of the Property and/or Building(s):
 - o Phase I Environmental Site Assessment, 40 S Montgomery and 55 South Autumn Street, San José, California;
 - o Draft Limited Phase II Environmental Site Assessment, 40 South Montgomery and 55 South Autumn Street, San José, California;
 - o Results of Hazardous Building Materials Survey, 40 South Montgomery Street, 55 and 57 South Autumn Street, San José, California;
 - o Phase I Environmental Site Assessment, 50 S Montgomery Street, San José, California;
 - o Phase I and Phase II Environmental Site Assessment, 580 Lorraine Avenue, San José, California; and
 - o Phase I and Phase II Environmental Site Assessment, 374-384 W Santa Clara Street, San José, California.

CITY assumes all risk associated with the environmental quality of the Property and/or Building(s), including but not limited to the risks identified in the Reports. CITY acknowledges that the Property is provided to CITY "AS IS", "WHERE IS" and "WITH ALL FAULTS" and that there are no representations and/or warranties, express or implied, made by GOOGLE in connection with the CITY's use of the Property as contemplated in this Agreement. CITY acknowledges and agrees that (1) CITY shall rely upon CITY's own due diligence in determining whether the Property is suitable for use by CITY; (2) GOOGLE has no obligation, liability, responsibility or duty to repair or

correct any facts, circumstances, conditions, issues, problems, deficiencies, lack of compliance or defects regarding the Property, or to compensate CITY for same; and (3) CITY shall assume the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the Property.

- B. In consideration for use of the Property, CITY agrees to indemnify and hold harmless GOOGLE and its Officers, Partners, Members, Employees, and Agents (“Indemnitees”) from any and all liability, damages, claims, or causes of action for injury to person or persons, or damage or loss of property, which may either directly or indirectly arise out of, or occur by the reason of, or result from the acts or omissions of, CITY during the use of the Property for the Activities, provided, however, that CITY shall not be obligated to defend nor indemnify GOOGLE with regard to the gross negligence or willful misconduct of GOOGLE or any other Indemnitees.
- C. CITY shall not cause or permit any dangerous or "Hazardous Substances" (as defined below) or materials or any other item, to be brought upon, produced, treated, stored, used, discharged or disposed of in or near the Building(s) or Property without GOOGLE's prior written consent (not to be unreasonably withheld). Any handling, transportation, storage, treatment, disposal or use of any Hazardous Substances in or about the Building(s) or Property by CITY, its agents, employees, contractors or invitees shall strictly comply with all applicable laws, ordinances, regulations and requirements, including, without limitation, "Environmental Laws" (as defined below). CITY shall be solely responsible for obtaining and complying with all permits necessary for the Activities, including, without limitation, all permits governing the use, handling, storage, treatment, transport, discharge and disposal of Hazardous Substances. CITY shall indemnify, defend and hold GOOGLE harmless from and against any and all obligations, losses, claims, actions (including remedial and enforcement actions of any kind and administrative and judicial proceedings, suits, orders or judgments), causes of action, liabilities, penalties, damages arising from any claims which result from or arise out of the use, storage, treatment, transportation, release, or disposal of any Hazardous Substances on or about the Building(s) during the term of this Agreement and on or about the Property outside of the Building(s) by CITY; provided, however, that the foregoing indemnity shall not apply if and to the extent any Hazardous Substances exist in the Building(s) prior to the execution of this Agreement.
- Definitions. "Hazardous Substances" means (1) any substance or material that is included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "pollutant," "contaminant," "hazardous waste," or "solid waste" in any Environmental Laws; (2) petroleum or petroleum derivatives, including crude oil or any fraction thereof, all forms of natural gas, and petroleum products or by-products or waste; (3) polychlorinated biphenyls (PCB's); (4) asbestos and asbestos containing materials (whether friable or non-friable); (5) lead and lead based paint or other lead containing materials (whether friable or non-friable); (6) urea formaldehyde; (7) microbiological pollutants; (8) batteries or liquid solvents or similar chemicals; (9) radon gas; (10) mildew, fungus, mold, bacteria and/or other organic spore material, whether or not airborne, colonizing, amplifying or otherwise; and (11) any additional substance, material or waste (A)

the presence of which on or about the Building(s) (i) requires reporting, investigation or remediation under any Environmental Laws, (ii) causes or threatens to cause a nuisance on the Building(s) or any adjacent area or property or poses or threatens to pose a hazard to the health or safety of persons on the Building(s) or any adjacent area or property, or (iii) which, if it emanated or migrated from the Building(s), could constitute a trespass, or (B) which is now or is hereafter classified or considered to be hazardous or toxic under any Environmental Laws. "Environmental Laws" means all statutes, terms, conditions, limitations, restrictions, standards, prohibitions, obligations, schedules, plans and timetables that are contained in or promulgated pursuant to any federal, state or local laws (including rules, regulations, ordinances, codes, judgments, orders, decrees, contracts, permits, stipulations, injunctions, the common law, court opinions, and demand or notice letters issued, entered, promulgated or approved thereunder), relating to pollution or the protection of the environment, including laws relating to emissions, discharges, releases or threatened releases of Hazardous Substances into ambient air, surface water, ground water or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances, including but not limited to the: Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9601 et seq.; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901 et seq.; Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.; Toxic Substances Control Act, 15 U.S.C. 2601 et seq.; Clean Air Act, 42 U.S.C. 7401 et seq.; and the Safe Drinking Water Act, 42 U.S.C. § 300f et seq. "Environmental Laws" shall include any statutory or common law that has developed or develops in the future regarding mold, fungus, microbiological pollutants, mildew, bacteria and/or other organic spore material. "Environmental Laws" shall not include laws relating to industrial hygiene or worker safety, except to the extent that such laws address asbestos and asbestos containing materials (whether friable or non-friable) or lead and lead based paint or other lead containing materials.

- CITY's obligations under this Section C shall survive the expiration or earlier termination of this Agreement until all claims within the scope of this Section are fully, finally, and absolutely barred by the applicable statutes of limitations.

D. CITY shall provide GOOGLE with adequate proof of insurance ("Proof of Insurance") covering the Activities. The Proof of Insurance shall list GOOGLE as an also-insured party. CITY shall submit the Proof of Insurance to GOOGLE no later than five (5) business days after the CITY's execution of this Agreement, which shall be not less than five (5) business days prior to CITY's conduct of any Activities. GOOGLE shall approve or deny the adequacy of Proof of Insurance at GOOGLE's sole discretion. CITY may not conduct any Activities until CITY has submitted and GOOGLE has approved the Proof of Insurance.

ARTICLE III - TERM AND TERMINATION

- A. The term of this Agreement shall commence upon the date first above written (the “Effective Date”) and shall expire immediately following the final access date listed in Article I.A.ii.
- B. This Agreement may be extended by Amendment in writing, signed by both parties.
- C. This Agreement may be terminated by either CITY or GOOGLE upon fifteen (15) days’ written notice to the other party unless a shorter termination period is mutually agreed upon by both parties.

ARTICLE IV - GENERAL PROVISIONS

- A. Successors and Assigns. This Agreement is binding on GOOGLE and its respective agents, successors and assigns and legal representatives. CITY shall not assign or transfer its interest in this Agreement without the prior written consent of GOOGLE, and any attempt to do so shall be voidable by GOOGLE.
- B. Applicable Laws and Attorneys' Fees. This Agreement shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, each party shall bear its own legal costs and attorneys' fees.
- C. Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.
- D. Public Records. The parties recognize and acknowledge that CITY is subject to the California Public Records Act, California Government Code Section 6250 and following. Public records are subject to disclosure.
- E. Execution in counterparts. This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
- F. Use of electronic signatures. Unless otherwise prohibited by law or CITY policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the CITY.

G. Notices. Any notice required to be given to GOOGLE shall be deemed to be duly and properly given if mailed to GOOGLE, postage prepaid, addressed to:

Google LLC
Attention: VP of Real Estate
1600 Amphitheatre Parkway
Mountain View, CA 94043

With a copy of notice to:

Google LLC
Attention: Legal Department/RE Matters
1600 Amphitheatre Parkway
Mountain View, CA 94043

or personally delivered to GOOGLE at such address or at such other addresses as GOOGLE may designate in writing to CITY.

Any notice required to be given to CITY shall be deemed to be duly and properly given if mailed to CITY, postage prepaid, addressed to:

Chief of Police
City of San José
201 West Mission Street
San José, CA 95110

or personally delivered to CITY at such address or at such other addresses as CITY may designate in writing to GOOGLE.

[signatures on following page]

IN WITNESS WHEREOF, this Hold Harmless and Indemnification Agreement between the City of San José and Google LLC for activities related to Department of Public Safety training is executed by CITY and GOOGLE as of the day and year first above written.

CITY:

GOOGLE:

City of San José,

Google LLC,

a municipal corporation

a Delaware limited liability company

By:

By:

DocuSigned by:
Emilie Snow

Name: Leland Wilcox
Title: Chief of Staff, Office of the City
Manager

Name: David Radcliffe
Title: Vice President

10/16/2020

APPROVED AS TO FORM:

Carl B. Mitchell

Carl B. Mitchell (Oct 14, 2020 12:33 PDT)

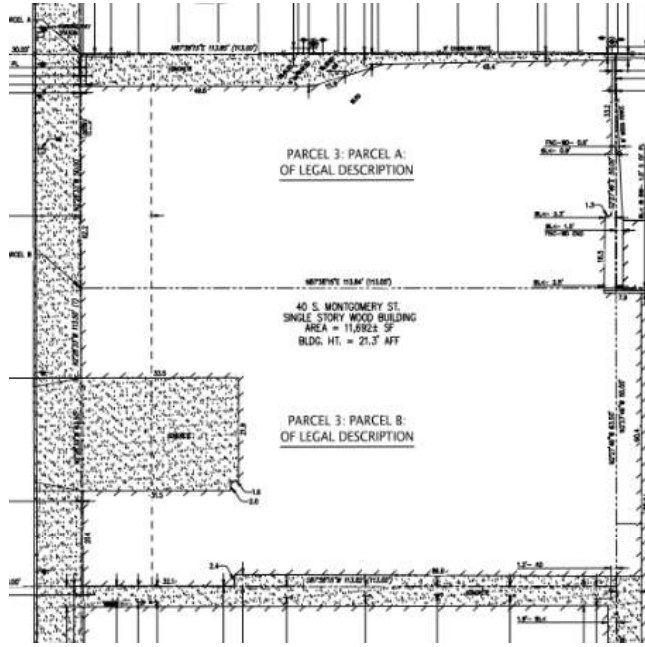
Name: Carl B. Mitchell
Title: Senior Deputy City Attorney



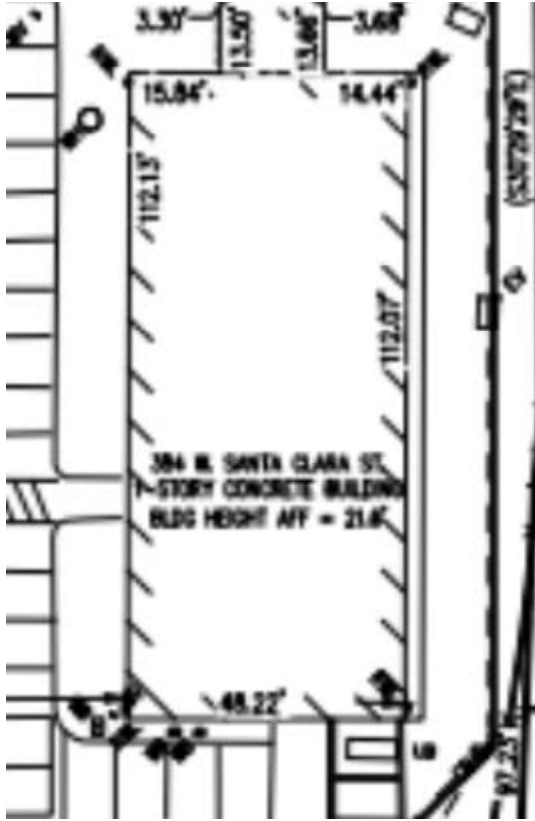
Exhibit A

Designated Building(s)

40 S Autumn Street, San José, CA



384 W Santa Clara, San José, CA



580 Lorraine, San José, CA



50 S Montgomery, San José, CA





Finance Department

PURCHASING & RISK MANAGEMENT DIVISION

September 5, 2020

Attn: David Radcliff

Re: Statement of City of San José Self-Insurance for San José Police Department Mobile Emergency Response Group and Equipment (“MERGE”) Unit trainings to be held by buildings owned by GOOGLE located at 30 S Montgomery, 55 South Autumn Street, 57 South Autumn, 580 Lorraine Avenue, and 374-384 W Santa Clara.

To Whom It May Concern:

The City of San José is self-insured covering third party claims arising out of its general operations (by way of example, commercial general liability and automobile liability insurance). Further, the City is self-insured covering workers’ compensation claims and has received the necessary consent of the State Department of Industrial Relations to do so.

Each fiscal year, as a part of its budgetary process, the City appropriates funds specifically for the purposes of satisfying valid third-party and workers’ compensation claims, which may potentially be brought against the City. Information concerning these appropriations is a matter of public record and can be obtained from visiting the following website <https://www.sanjoseca.gov/your-government/departments-offices/office-of-the-city-manager/budget/budget-documents>.

Should you need any additional information regarding this letter, please feel free to direct those inquires through the Risk Management Office.

Sincerely,

By *Mina Kim*
Mina Kim
Risk Management






LA-#1222848-v2-Google_San_Jose_-_Hold_Harmless_Agreement (1)

Final Audit Report

2020-10-14

Created:	2020-10-14
By:	Sarah Tapia (sarah.tapia@sanjoseca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAaXeCKw_IrpDopbU9XjRFWRHeAlmqSVw

"LA-#1222848-v2-Google_San_Jose_-_Hold_Harmless_Agreement (1)" History

-  Document created by Sarah Tapia (sarah.tapia@sanjoseca.gov)
2020-10-14 - 7:20:42 PM GMT- IP address: 156.39.0.199
-  Document emailed to Carl B. Mitchell (carl.mitchell@sanjoseca.gov) for signature
2020-10-14 - 7:21:26 PM GMT
-  Email viewed by Carl B. Mitchell (carl.mitchell@sanjoseca.gov)
2020-10-14 - 7:32:27 PM GMT- IP address: 23.103.200.254
-  Document e-signed by Carl B. Mitchell (carl.mitchell@sanjoseca.gov)
Signature Date: 2020-10-14 - 7:33:13 PM GMT - Time Source: server- IP address: 156.39.0.199
-  Agreement completed.
2020-10-14 - 7:33:13 PM GMT

City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

TO: City Attorney
 City Manager
 City Clerk **OR** Return to
Dept. (circle one)

Insurance Certificates / Waivers Electronically Signed: Select one
 Business Tax Certificate Audit Trail Attached (if applicable)
 Contacted Clerk re: Form 700
 Supplemental Memorandums (if applicable): Select One

Type of Document: Other

Type of Contract: Other

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667321-000

Contractor: GOOGLE

Address: 225 W. Santa Clara Street, 12th Floor, San Jose, CA 95113

Phone: (408) 453 7402

Email: Ai.Suzuki@cbre.com

Contract Description: Hold Harmless and Indemnification Agreement between GOOGLE and the City of San Jose, for Police Services Training on GOOGLE property.

Term Start Date: Date Signed Term End Date: 11/30/21 Extension: Select one

Method of Procurement: N/A RFB, RFP or RFQ No.: _____ Date Conducted: _____

Agenda Date (if applicable): N/A Agenda Item No.: N/A

Resolution No.: N/A Ordinance No.: N/A

Original Contract Amount: N/A Amount of Increase/Decrease: N/A

Option #: of Option Amount: _____ Updated Contract Amount: N/A

Fund/Appropriation: N/A

Form 700 Required: No


Business Tax Certificate No.: N/A Expiration Date: N/A

Department: Police (50)

Department Contact Name/Phone: Jennifer Otani 408 537-1618

Notes:

My will do

Department Director Signature:  _____ Date

Office of the City Manager Signature: Jessica Lowry 10/15/2020 _____ Date