



## Agenda Report

19-821

Agenda Date: 10/23/2019

### REPORT TO PLANNING COMMISSION

#### SUBJECT

Public Hearing: Action on Amendment No. 1 to Development Agreement with Innovation Commons Owner LLC (Previously Yahoo)

#### BACKGROUND

In 2009, the City Council approved a Planned Development (PD) rezoning of the subject property on Democracy Way from Light Industrial (ML) to Planned Development to allow Yahoo, Inc. ("Yahoo") to construct up to 3.06 million square feet of office/R&D development. The project included a Development Agreement (DA) between the City and Yahoo to secure the development rights over a 10-year term with the vested right to develop in accordance with the permitted uses and intensity of development set forth in the approved PD. An Environmental Impact Report (EIR) was prepared and circulated in accordance with the California Environmental Quality Act (CEQA). The City Council certified the Final EIR and approved the project at a public noticed meeting in May 2010. In June 2016, Yahoo transferred all of its development rights and obligations to LeEco Real Estate Group ("LeEco"). LeEco was later acquired by the current property owner, Innovation Commons Owner LLC, which is an affiliate of Kylli, Inc., and all of the development responsibilities and obligations transferred to the current owner in June 2016. The current DA includes various performance deadlines for construction activity and is scheduled to expire in 2020 if construction has not commenced at that time. The property owner is requesting a three-year extension of each of the performance deadlines included in the DA.

In 2017, a new application that would supersede the current PD Zoning was filed to rezone the property to allow up to 6,000 residential units, 3.65 million square feet of office, 400,000 square feet of retail/community amenities, 300,000 square feet of hotel facilities and 70,000 square feet of educational facilities. The current DA will expire in May 2020. The purpose of the requested three-year extension is to maintain the existing development rights for 3.06 million square feet of office/R&D while the pending entitlements are pursued. An action to request a three-year extension does not suggest or influence support for a final decision on the pending entitlements pursued.

#### DISCUSSION

The primary issue for analysis is the project's consistency with the City's General Plan and Zoning.

##### Consistency with the General Plan

The current PD Zoning and DA were approved under the prior General Plan. The current General Plan designation of the property is High Intensity Office/R&D, which is intended for high rise or campus like developments for corporate headquarters and R&D and supporting uses. Therefore, the currently entitled 3.06 million square feet of office/R&D is consistent with the current General Plan.

The existing entitlement is also consistent with the following General Plan goals:

- 5.3.5 G1: A City that continues to be a major employment center in Silicon Valley.
- 5.3.5 G2: Sufficient industrial land that meets the demand for local employment and retains the City's economic base.
- 5.3.5-G3: Higher intensity employment centers located near major transit services and major transportation corridors to reduce vehicle miles traveled.

#### Consistency with the Planned Development Zoning

A PD Zoning was needed for the project because none of the standard zoning districts would allow the office use at the density proposed. The proposed DA extension would maintain the existing development rights consistent with the approved PD Zoning for 3.06 million square feet of office/R&D development.

#### Conclusion

The purpose of the three-year extension is to maintain the existing development rights for up to 3.06 million square feet of office/R&D development while the property owner pursues an alternative entitlement. The existing entitlement is consistent with the site's High Intensity Office/R&D GP designation. Extending the DA to 2023 will maintain development rights for a project that is consistent with the City's existing land use regulations under the current General Plan and would be considered a permitted use if proposed today with the current PD zoning in place. Extending the DA will maintain the ability to develop industrial uses on the site should the current rezoning proposal not be implemented. Limiting the term of the extension to three years will allow the City Council an opportunity to review the status of the site in the relatively near term to determine if additional extensions are warranted.

#### **ENVIRONMENTAL REVIEW**

An Addendum to the 2010 Yahoo Santa Clara Campus Final Environmental Impact Report (FEIR) for the Development Agreement extension project was prepared in accordance with the CEQA. The analysis concludes that no substantive revisions are needed to the 2010 EIR, because no new significant impacts or impacts of substantially greater severity would result from the proposed DA amendment. In addition, there have been no changes in circumstances in the project area that would result in new significant environmental impacts or substantially more severe impacts. The previous Mitigation Monitoring or Reporting Program remains in effect for the project.

#### **FISCAL IMPACT**

There is no additional cost to the City other than staff time and expense. As proposed, none of the terms of the DA would be modified except for the duration. The project would be subject to building permit and development fees in accordance with the City's Fee Schedule and be made payable at the time of building permit issuance.

Development of the project would increase property tax and other tax revenues for the City and provide additional construction and permanent jobs.

#### **COORDINATION**

This report has been coordinated with the City Attorney's Office.

**PUBLIC CONTACT**

On October 9, 2019, notice of the public hearing was published in the Santa Clara Weekly. On October 11, 2019, a notice of public hearing of this item was posted in three conspicuous locations within 300 feet of the project site and mailed to property owners within 1,000 feet of the project site. Notice was also mailed to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project. Planning Staff has not received public comments for this application.

**ALTERNATIVES**

1. Approve a Resolution recommending that the Council approve the First Amendment to Development Agreement between the City of Santa Clara and Innovation Commons Owner LLC.
2. Deny a Resolution recommending that the Council deny the First Amendment to the Development Agreement between the City of Santa Clara and Innovation Commons Owner LLC.

**RECOMMENDATION**

Alternative 1:

Approve a Resolution recommending that the Council approve the First Amendment to Development Agreement between the City of Santa Clara and Innovation Commons Owner LLC.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Addendum to the Final Environmental Impact Report
2. First Amendment to Development Agreement between the City of Santa Clara and Innovation Commons Owner LLC
3. Resolution Recommending City Council Approval of the First Amendment to Development Agreement Between the City of Santa Clara and Innovation Commons Owner LLC
4. Development Agreement Ordinance

# **ADDENDUM**

## **2010 Yahoo Santa Clara Campus Project Final Environmental Impact Report City of Santa Clara**

**August 2019**

### **1.1 PURPOSE OF ADDENDUM**

The California Environmental Quality Act (CEQA) recognizes that between the date an environmental document is certified and the date the project is fully implemented, one or more of the following changes may occur: 1) the project may change; 2) the environmental setting in which the project is located may change; and/or 3) previously unknown information can arise. Before proceeding with a project, CEQA requires the lead agency to evaluate these changes to determine whether or not they affect the conclusions in the environmental document, consistent with relevant case law.

In May 2010, the City of Santa Clara approved the Yahoo Santa Clara Campus project and certified the Environmental Impact Report (EIR).<sup>1</sup> Additionally, the City adopted CEQA Findings of Fact, a Statement of Overriding Consideration, and a Mitigation Monitoring and Reporting Program for the project (Resolution No. 10-7724). The approved project also included a Development Agreement between the City of Santa Clara and the project applicant. The original Development Agreement, approved on May 25, 2010, has a ten-year term (expiring in 2020), with the possibility to obtain two five-year extensions from the City (for an ultimate expiration of 2030).

Since the original approval of the project and Development Agreement in 2010, one change has been proposed by the applicant, which is to extend the assumed buildout date from 2030 to 2033. The proposed extension of the Development Agreement to 2033 is the subject of this Addendum. Because the City's decision on this change is discretionary, the City must determine whether any of the changes described in Section 15162 of the CEQA Guidelines has occurred.

The CEQA Guidelines Section 15162 states that when an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of

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<sup>1</sup> State Clearinghouse Number: 2008092011

new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

3. New information of substantial importance, which was not known and could have not been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, shows any of the following:
  - a. The project will have one or more significant effects not discussed in the previous EIR;
  - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measures or alternative.

The CEQA Guidelines Section 15164 states that the lead or responsible agency shall prepare an addendum to a previously certified EIR if changes or additions to the project are necessary but none of the conditions described in Section 15162 (see above) calling for preparation of a subsequent EIR have occurred.

## **1.2 PROPOSED CHANGE TO THE APPROVED PROJECT**

The approved Yahoo Santa Clara Campus Project includes the development of a 48.6-acre property with an approximately three million square-foot office/research and development/commercial campus consisting of 13 six-story buildings, three two-story commons buildings, surface parking, below grade parking, landscaping, and public and private improvements. The project includes the vacation of Democracy Way, relocation of existing utilities, installation of new facilities, and dedication of land for City construction of a substation.

The 2010 EIR analyzed the Yahoo Santa Clara Campus Project on the basis that its construction would be completed by 2030, which is consistent with the Development Agreement's original 10-year term (expiring in 2020) plus two five-year extensions (for completion of construction by 2030). The proposed project would extend the project's Development Agreement expiration date to allow completion of construction by 2033. All previously analyzed components of the project, including proposed land uses, intensity of development, and site configuration would remain the same.

## **1.3 ENVIRONMENTAL IMPACTS OF THE PROPOSED CHANGE**

The proposed time extension of the project Development Agreement would not result in a substantial change to the project's environmental impacts, mitigation measures or alternatives. The approved EIR analyzed the following potential environmental impacts for the project:

- Land Use
- Visual
- Geology and Soils
- Hydrology
- Vegetation and Wildlife
- Hazardous Materials
- Cultural Resources
- Transportation and Circulation
- Air Quality
- Noise
- Utilities
- Energy
- Public Facilities and Services

The 2019 modified project would not negatively affect the environmental impacts analyzed in the 2010 EIR because the overall development capacity of the project would remain the same and there have been no substantial changes in the existing setting that would result in new or increased significant impacts. No changes to the physical characteristics of the project, including the proposed land uses, intensity of development, and site configuration are being contemplated. The extension of the Development Agreement for an additional three years beyond what was originally analyzed will not cause any new environmental impacts or exacerbate any impacts identified in the original analysis. In fact, the proposed three-year extension of the project's EIR-assumed construction completion date could result in reduced Air Quality and Energy impacts because construction equipment, trucks, and passenger vehicles in California are expected to be cleaner and more efficient in 2033 than in 2030.

With regard to traffic, the 2010 project trips have been accounted for as part of the background conditions in subsequent development proposals, so they have been addressed relative to new development and any changes to the roadway network.

No new mitigation measures or alternatives that were rejected or unknown in 2010, and that would substantially reduce one or more significant environmental effects, have since become feasible.

Finally, no new information of substantial importance, which was not known or knowable with reasonable diligence at the time of the original analysis, reveals new impacts, an increase in the severity of identified impacts, or any new possible mitigation measures.


Because the proposed time extension does not meet any of the conditions under CEQA Guidelines Section 15162 requiring a new EIR, this Addendum has been prepared per CEQA Guidelines Section 15164.

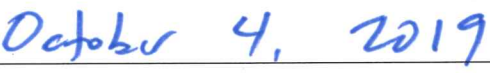
#### 1.4 CONCLUSION

Based on the above discussion, none of the criteria for preparation of a subsequent EIR under CEQA Guidelines section 15162 is implicated by a three-year extension of the project Development Agreement. An EIR Addendum has therefore been appropriately prepared, pursuant to Section 15164.

Pursuant to CEQA Guidelines Section 15164(c), this Addendum need not be circulated for public review, but will be included in the public record file for the Yahoo Santa Clara Campus Project.

Andrew Crabtree  
Director of Community Development

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Date

**RECORDING REQUESTED BY  
and When Recorded Mail To:**

City of Santa Clara  
City Clerk's Office  
1500 Warburton Avenue  
Santa Clara, California 95050

This document is exempt from payment of a  
recording fee pursuant to California  
Government Code Section 6103.

Recorder's Stamp

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN THE CITY OF  
SANTA CLARA AND INNOVATION COMMONS OWNER LLC**

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "**First Amendment**"), dated as of \_\_\_\_\_, 2020 (the "**First Amendment Effective Date**"), is entered into by and between the CITY AND OF SANTA CLARA, a chartered California municipal corporation (the "**City**"), and INNOVATION COMMONS OWNER LLC, a Delaware limited liability company ("**Developer**"), with reference to the following facts and circumstances:

**RECITALS**

A. The City and Yahoo! Inc., a Delaware corporation ("**Yahoo**") entered into that certain Development Agreement, dated May 25, 2010, recorded June 28, 2010 as Document No. 2075596, and re-recorded October 1, 2010 as Document No. 20896671, in the Santa Clara Clerk-Recorder's Office ("**Development Agreement**"), as well as that certain Operating Memorandum between the City and Yahoo, recorded June 17, 2015 as Document No. 22989859, in the Santa Clara County Clerk-Recorder's Office, which was amended by that certain First Amendment to Operating Memorandum between City and Yahoo, recorded December 2, 2015 as Document No. 23106419, in the Santa Clara County Clerk-Recorder's Office (collectively, the "**Memoranda**"). All capitalized terms used but not defined herein shall have the meanings assigned to them in the Development Agreement.

B. On or about June 16, 2016, Yahoo and LeEco Real Estate Group, LLC, a Delaware limited liability company ("**LeEco**") entered into that certain Assignment of Development Agreement ("**Assignment**") wherein Yahoo assigned all of its rights, title and interests under the Development Agreement to LeEco and LeEco agreed to be bound by and perform all of Yahoo's obligations under the Development Agreement and Memoranda. On or about June 28, 2018, LeEco transferred all of its rights and obligations in the Development Agreement to Developer.



C. The Development Agreement authorizes the development of the Property with up to 3,060,000 square feet of office/R&D/commercial use consisting of 13 six-story buildings, three two-story commons buildings, surface parking, two levels of below-grade parking, site circulation, landscaping, and public and private improvements.

D. On or around May 10, 2010, the Santa Clara City Council (“**City Council**”) certified the Environmental Impact Report for the Yahoo Santa Clara Campus Project (“**2010 EIR**”) under the California Environmental Quality Act (“**CEQA**”), approved rezoning the Property from ML-Light Industrial to PD - Planned Development, and approved the Vesting Tentative Parcel Map for the Property. In approving the Project, the City Council adopted Resolution No. 10-7724 making findings required under CEQA, including a statement of overriding considerations and a mitigation monitoring and reporting program.

E. By this First Amendment, the Parties intend to extend the Term of the Development Agreement to facilitate the development of the Property.

F. On or about \_\_\_\_\_, the City approved an Addendum to the 2010 EIR, which determined that the Project was previously evaluated in the 2010 EIR, and no subsequent or supplemental environmental impact report is required in connection with approval of this First Amendment because: (a) there are no substantial changes to the Project which will require major revisions to the 2010 EIR; (b) no substantial changes have occurred with respect to the circumstances under which the Project is being undertaken that will require major revisions to the 2010 EIR due to new significant impacts or a substantial increase in the severity of previously identified impacts; and (c) there is no new information which was not known and could not have been known at the time the 2010 EIR was certified as complete that has become available and shows new significant impacts, an increase in the severity of a previously identified significant impact, or changes related to the feasibility of, or new mitigation measures and alternatives which would substantially reduce significant impacts and which were rejected.

G. By this First Amendment, the Parties desire to amend the Development Agreement to reflect the foregoing, in accordance with the terms set forth herein.

## AGREEMENT

**ACCORDINGLY**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Developer agree as follows:

1. **Term.** Section 1 of the Development Agreement is hereby deleted and replaced with the following:

1.1 **Duration of Term.** The term (“Term”) of this Agreement shall commence on the Effective Date set forth above, approving this Agreement, and shall continue for a period of thirteen (13) years, unless sooner terminated or extended as hereinafter provided.

1.2 **Options.** If a Certificate of Occupancy has been issued for at least fifty percent (50%) of Phase I as set forth in the Development Plan within thirteen (13) years from the Effective Date, then the Term of the Agreement shall be automatically extended by an additional five (5) years. If a Certificate of Occupancy has been issued for at least fifty percent (50%) of Phase II as set forth in the Development Plan within eighteen (18) years of the Effective Date, then the Term of the Agreement shall be extended by an additional five (5) years upon written request by the Developer. In no event shall the maximum term of this Agreement be longer than twenty-three (23) years from the Effective Date.

1.3 **Expiration.** Following expiration of the Term or any extension, or if sooner terminated, or if the requirements of Section 1.2 are not met this Agreement shall have no force and effect, subject, however, to post-termination obligations of Developer and City.

2. **Miscellaneous.**

- (a) **Incorporation.** This First Amendment constitutes a part of the Development Agreement and any reference to the Development Agreement shall be deemed to include a reference to the Development Agreement as amended by this First Amendment.
- (b) **Ratification.** To the extent of any inconsistency between this First Amendment and the Development Agreement, the provisions contained in this First Amendment shall control. As amended by this First Amendment, all terms, covenants, conditions, and provisions of the Development Agreement shall remain in full force and effect.
- (c) **Counterparts.** This First Amendment may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same document, binding on all parties hereto notwithstanding that each of the parties hereto may have signed different counterparts. Delivery of this First Amendment may be effectuated by hand delivery, mail, overnight courier, or electronic communication (including by PDF sent by electronic mail, facsimile, or similar means of electronic communication). Any electronic signatures shall have the same legal effect as manual signatures.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the City and Developer have each caused this First Amendment to be duly executed on its behalf as of the First Amendment Effective Date.

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

Approved as to Form:

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BRIAN DOYLE  
City Attorney

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DEANNA J. SANTANA  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

Attest:

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NORA PIMENTAL, MMC  
Assistant City Clerk  
City of Santa Clara

**DEVELOPER:**

INNOVATION COMMONS OWNER LLC  
a Delaware limited liability company

By:           Dustin            
Name:           DUSTIN            
Title:           Secretary

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

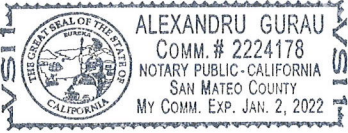
State of [ California ] )  
 ) ss.  
County of San Mateo )

On October 7, 2019, before me, Alexandru Gurau,  
a Notary Public, personally appeared Sun Ou,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are)  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Affix seal here]



Alexandru Gurau

Signature of Notary Public

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA RECOMMENDING THAT THE CITY COUNCIL APPROVE THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA CLARA AND INNOVATION COMMONS OWNER LLC FOR THE PROPERTY LOCATED AT 5010 OLD IRONSIDES DRIVE (INCLUDING PROPERTIES ON TASMAN DRIVE, DEMOCRACY WAY, PATRICK HENRY DRIVE AND OLD IRONSIDES DRIVE), SANTA CLARA, 95054**

PLN2019-13873 (Development Agreement Amendment)

**BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, the City of Santa Clara (“City”) and Yahoo!, Inc., a Delaware corporation (“Yahoo”) entered into a Development Agreement dated May 25, 2010, recorded June 28, 2010 as Document No. 2075596, and re-recorded on October 1, 2010 as Document No. 20896671 in the Official Records of Santa Clara County (the “Development Agreement”), as well as an Operating Memorandum between the City and Yahoo, recorded June 17, 2015 as Document No. 22989859, in the Santa Clara County Clerk-Recorder’s Office, which was amended by that certain First Amendment to Operating Memorandum between City and Yahoo, recorded December 2, 2015 as Document No. 23106419, in the Santa Clara County Clerk-Recorder’s Office (collectively, the “Memoranda”). The Development Agreement and Memoranda concerned that certain real property consisting of nine lots located at 5010 Old Ironsides Drive (the “Project Site”);

**WHEREAS**, the Development Agreement authorizes the development of the Project Site with up to 3.06 million square feet of office/R&D/commercial uses consisting of 13 six-story buildings, three two-story commons buildings, surface parking, two levels of below grade parking, site

circulation, landscaping, and public and private improvements (the “Project”);

**WHEREAS**, on May 10, 2010, in Resolution 10-7724, the City Council certified an Environmental Impact Report (“EIR”) for the Project;

**WHEREAS**, on or about June 16, 2016, Yahoo and LeEco Real Estate Group, LLC, a Delaware limited liability company (“LeEco”) entered into an Assignment of Development Agreement wherein Yahoo conveyed all of its rights, title and interests under the Development Agreement to LeEco and LeEco agreed to be bound by and perform all of Yahoo’s obligations under the Development Agreement and Memoranda. On or about June 28, 2018, LeEco transferred all of its rights and obligations in the Development Agreement to Innovations Commons Owner LLC, a Delaware limited liability company (“Developer”);

**WHEREAS**, Developer is the successor in interest to Yahoo under the Development Agreement;

**WHEREAS**, Section 11.1 of the Original Development Agreement provides that City and Yahoo, by mutual consent, may modify the terms of the Original Agreement;

**WHEREAS**, on May 6, 2019, Andrea Jones (“Applicant”), on behalf of Developer, applied for a “First Amendment to Development Agreement” attached hereto and incorporated herein by this reference (“Amendment No. 1”) to extend the term of the Development Agreement for three additional years, with the proposed new expiration date of the Development Agreement on May 25, 2023;

**WHEREAS**, as a result of the application for Amendment No. 1, City staff prepared an Addendum to the 2010 Final EIR for the Yahoo Santa Clara Campus Project, attached hereto and incorporated herein by this reference;

**WHEREAS**, Santa Clara City Code (SCCC) Section 17.10.130 provides for the review and recommendation of the City’s Planning Commission of all development agreements before

action is to be taken by the City Council;

**WHEREAS**, on October 9, 2019, the City published notice in the Weekly, a newspaper of general circulation, of a public hearing to be conducted before the Planning Commission on October 23, 2019 to consider the proposed Amendment No. 1;

**WHEREAS**, on October 11, 2019, the City mailed notice of the public hearing to all property owners located within 1,000 feet of the Project Site, and on October 11, 2019, the City posted notice of the public hearing in three conspicuous locations within 300 feet of the Project Site;

**WHEREAS**, on October 11, 2019, the City also mailed notice to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the Project; and

**WHEREAS**, on October 23, 2019, the Planning Commission held a duly noticed public hearing to consider Amendment No. 1, at which time the Commission received and considered all verbal and written testimony and evidence submitted.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA AS FOLLOWS:**

1. That the Planning Commission hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the Planning Commission finds that consideration of Amendment No. 1 is based on the Addendum to the 2010 Final EIR for the Yahoo Santa Clara Campus Project. The Planning Commission has reviewed the Addendum, and based upon its independent judgment, finds that it is complete and complies in all aspects with CEQA.
3. The Planning Commission has reviewed Amendment No. 1, and based on its review finds that the Development Agreement, as amended by Amendment No. 1, complies with all requirements of Government Code section 65865.2 [entitled "Contents" (of a Development Agreement)].

4. That the Planning Commission hereby recommends that the City Council approve the First Amendment to Development Agreement between the City of Santa Clara and Innovation Commons Owner LLC for the property located at 5010 Old Ironsides Drive.

5. Pursuant to Government Code section 65867.5, the Planning Commission hereby finds that the provisions of Amendment No. 1 are consistent with the General Plan, in that the Project would locate an industrial office campus development in proximity to workforce housing, commercial uses, services, and major transportation corridors. The General Plan's stated goals include locating higher-intensity employment centers near major transit services and major transportation corridors to reduce vehicle miles traveled, and providing sufficient industrial land to meet the demand for local employment and retention of the City's economic base.

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6. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE \_\_\_ DAY OF OCTOBER, 2019, BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAINED: COMMISSIONERS:

ATTEST: \_\_\_\_\_  
ANDREW CRABTREE  
DIRECTOR OF COMMUNITY DEVELOPMENT  
CITY OF SANTA CLARA

Attachments Incorporated by Reference:

1. First Amendment to the Development Agreement with Innovation Commons Owner LLC
2. Addendum to the 2010 Final Environmental Impact Report for the Yahoo Santa Clara Campus Project

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA,  
APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT  
AGREEMENT BETWEEN THE CITY OF SANTA CLARA AND  
INNOVATION COMMONS OWNER LLC (PREVIOUSLY YAHOO)  
FOR THE PROPERTY LOCATED AT 5010 OLD IRONSIDES  
DRIVE, SANTA CLARA**

**[Original Ordinance No. 1858 Adopted May 11, 2010]**

**BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, California Government Code sections 65864 through 65869.51 (collectively, the “Development Agreement Act”) authorize cities to enter into binding development agreements with owners of real property and these agreements govern the development of the property;

**WHEREAS**, the City of Santa Clara (“City”) and Yahoo!, Inc., a Delaware corporation (“Yahoo”) entered into a Development Agreement dated May 25, 2010, recorded June 28, 2010 as Document No. 2075596, and re-recorded on October 1, 2010 as Document No. 20896671 in the Official Records of Santa Clara County (the “Development Agreement”), as well as an Operating Memorandum between the City and Yahoo, recorded June 17, 2015 as Document No. 22989859, in the Santa Clara County Clerk-Recorder’s Office, which was amended by that certain First Amendment to Operating Memorandum between City and Yahoo, recorded December 2, 2015 as Document No. 23106419, in the Santa Clara County Clerk-Recorder’s Office (collectively, the “Memoranda”). The Development Agreement and Memoranda concerned that certain real property consisting of nine lots located at 5010 Old Ironsides Drive (the “Project Site”);

**WHEREAS**, the Development Agreement authorizes the development of the Project Site with up to 3.06 million square feet of office/R&D/commercial uses consisting of 13 six-story buildings, three two-story commons buildings, surface parking, two levels of below grade parking, site circulation, landscaping, and public and private improvements (the “Project”);

**WHEREAS**, on May 10, 2010, in Resolution 10-7724, the City Council certified an Environmental Impact Report (“EIR”) for the Project;

**WHEREAS**, on or about June 16, 2016, Yahoo and LeEco Real Estate Group, LLC, a Delaware limited liability company (“LeEco”) entered into an Assignment of Development Agreement wherein Yahoo conveyed all of its rights, title and interests under the Development Agreement to LeEco and LeEco agreed to be bound by and perform all of Yahoo’s obligations under the Development Agreement and Memoranda. On or about June 28, 2018, LeEco transferred all of its rights and obligations in the Development Agreement to Innovations Commons Owner LLC, a Delaware limited liability company (“Developer”);

**WHEREAS**, Developer is the successor in interest to Yahoo under the 2010 Development Agreement;

**WHEREAS**, Section 11.1 of the Original Development Agreement provides that City and Yahoo, by mutual consent, may modify the terms of the Original Agreement;

**WHEREAS**, on May 6, 2019, Andrea Jones (“Applicant”), on behalf of Developer, applied for a “First Amendment to Development Agreement” , attached hereto and incorporated herein by this reference (“Amendment No. 1”) to extend the term of the Development Agreement for three additional years, with the proposed new expiration date of the Development Agreement on May 25, 2023;

**WHEREAS**, as a result of the application for Amendment No. 1, City staff prepared an Addendum to the 2010 Final EIR for the Yahoo Santa Clara Campus Project, attached hereto and incorporated herein by this reference;

**WHEREAS**, Santa Clara City Code (SCCC) Section 17.10.130 provides for the review and recommendation of the City’s Planning Commission of all development agreements before action is to be taken by the City Council;

**WHEREAS**, on October 23, 2019, the Planning Commission conducted a duly noticed public hearing to consider Amendment No. 1, at the conclusion of which, the Planning Commission voted to recommend that the City Council approve Amendment No. 1;

**WHEREAS**, on **TBD**, the City published notice of a public hearing to be conducted on **TBD, 2020** to consider Amendment No. 1 in the Weekly, a newspaper of general circulation, and on **TBD**, the City mailed notice to all property owners located within 1,000 feet of the Project Site and posted a notice of the public hearing in three conspicuous locations within 300 feet of the Project Site;

**WHEREAS**, on **TBD**, the City also mailed notice to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the Project; and

**WHEREAS**, on **TBD, 2020**, the City Council conducted a public hearing to consider Amendment No. 1, at which time the Council received and considered all written testimony and evidence submitted.

**NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**SECTION 1:** The City Council hereby finds that all of the foregoing recitals are true and correct.

**SECTION 2:** The City Council finds that consideration of Amendment No. 1 is based on the Addendum to the 2010 Final EIR for the Yahoo Santa Clara Campus Project. The City Council has reviewed the Addendum, and based upon its independent judgment, finds that it is complete and complies in all aspects with CEQA.

**SECTION 3:** Pursuant to Government Code section 65867.5, the City Council hereby finds that the provisions of Amendment No. 1 are consistent with the General Plan, in that it would locate an industrial office campus development in proximity to workforce housing, commercial uses, services, and major transportation corridors. The General Plan's stated goals include locating higher-intensity employment centers near major transit services and major transportation corridors to reduce vehicle miles traveled and providing sufficient industrial land to meet the demand for local employment and retention of the City's economic base.

**SECTION 4:** The City Council has reviewed Amendment No. 1 and based on its review finds that the Development Agreement, as amended by Amendment No. 1, complies with all requirements of Government Code section 65865.2 [entitled "Contents" (of a Development Agreement)].

**SECTION 5:** The City Council hereby approves Amendment No. 1, substantially in the form attached hereto.

**SECTION 6:** The City Manager is hereby authorized to execute Amendment No. 1 on behalf of the City upon adoption of this Ordinance, together with such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof. The City Manager, or designee, is also authorized and directed to take any action and execute any documents or agreements necessary to implement the Development Agreement as amended, including but not limited to conducting an annual review of compliance as specified therein.

**SECTION 7:** Except as specifically set forth herein, this ordinance suspends and supersedes all conflicting resolutions, ordinances, plans, codes, laws and regulations.

**SECTION 8:** Within ten (10) days after the City Manager executes Amendment No. 1, the City Clerk shall cause Amendment No. 1 to be recorded with the Santa Clara County recorder.

**SECTION 9:** This Ordinance shall not be codified in the Santa Clara City Code.

**SECTION 10:** Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

**SECTION 11:** Effective Date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

**PASSED FOR THE PURPOSE OF PUBLICATION** this \_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED:

COUNCILORS:

ATTEST:

\_\_\_\_\_  
NORA PIMINTEL  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Amendment No. 1 to the Development Agreement with Innovation Commons Owner LLC

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