

**ORDINANCE NO. 28339**

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING ORDINANCE NO. 26136, WHICH ORDINANCE APPROVED A DEVELOPMENT AGREEMENT WITH CISCO TECHNOLOGY, INC. RELATIVE TO THE DEVELOPMENT OF REAL PROPERTY IN NORTH SAN JOSE, TO ALLOW AMENDMENT OF A CERTAIN OCCUPANCY DEADLINE CONTAINED IN THE ORIGINAL DEVELOPMENT AGREEMENT, AND TO RATIFY THE EFFECTIVENESS OF THE ORIGINAL DEVELOPMENT AGREEMENT FROM NOVEMBER 13, 2000, AND AUTHORIZING THE CITY CLERK TO EXECUTE THE AMENDED DEVELOPMENT AGREEMENT**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:**

**SECTION 1.** This Ordinance is adopted under the authority of California Government Code Section 65868 and pursuant to the provisions of City of San Jose (“City”) Ordinance No. 24297 (the “Enabling Ordinance”), both of which provide for the ability to adopt and amend development agreements and set forth procedures and requirements for the consideration of those agreements.

**SECTION 2.** This Ordinance incorporates by reference that certain “First Amendment to Development Agreement By and Between the City of San José and Cisco Technology, Inc., Relative to the Development of Property in North San José (Alviso),” which amendment is attached hereto as Exhibit A and together with the Original Development Agreement (as defined in Section 3, below) are incorporated herein by this reference (collectively, the “Amended Development Agreement”).

**SECTION 3.** The City Council finds that the following are the relevant facts concerning the proposed Amended Development Agreement:

- A. A “Development Agreement By and Between the City of San José and Cisco Technology, Inc., Relative to the Development of Property in North San José

(Alviso)” was approved by City under City Ordinance No. 26136 and was entered into by City and Cisco Technology, Inc., a California corporation (“DEVELOPER”) as of November 13, 2000 (the “Original Development Agreement”).

- B. Section 1.B of the Original Development Agreement provides that, “This Agreement shall have no force and effect unless executed by CITY, DEVELOPER [sic] by the effective date of Ordinance No. 26136 approving this Agreement.” Notwithstanding this provision of the Original Development Agreement, CITY and DEVELOPER have been operating under the belief and intention that the Original Development Agreement is and has been effective as of its full execution and desire to ratify and recognize the effectiveness of the Original Development Agreement with the approval and adoption of this Ordinance approving the Amended Development Agreement and the execution of the Amended Development Agreement.
- C. A portion of the real property subject to the Amended Development Agreement and described therein (the “Subject Property”) is currently owned by Cisco Technology, Inc., a California corporation and is and will be subject to those certain vested elements set forth in Exhibit C to the Original Development Agreement, which vested elements provide for certain industrial park and combined industrial/commercial uses on the Subject Property.
- D. A term of the Original Development Agreement memorialized at Section 1.C therein contains a requirement that “part of the Subject Property shall be occupied as part of the San Jose corporate campus of DEVELOPER within eight (8) years of the effective date of Ordinance No. 26136 . . . [,]” and that the Original Development Agreement would become null and void if DEVELOPER failed to fulfill that occupancy condition. CITY and DEVELOPER desire to amend that term of the Original Development Agreement to extend such occupancy timing deadline retroactively to allow CITY and DEVELOPER the opportunity to

negotiate a new development occupancy deadline. While CITY and DEVELOPER negotiate the terms of such a new development occupancy deadline, CITY and DEVELOPER desire initially to extend the development occupancy timing deadline set forth in Section 1.C retroactively from July 21, 2008 to December 31, 2008 in order to provide CITY and DEVELOPER with an opportunity to come to an agreement on such an amended development occupancy timing deadline and so that the Original Development Agreement does not become null and void as of July 21, 2008 and may be amended as set forth under the Amended Development Agreement approved by this Ordinance.

- E. DEVELOPER requests this Amended Development Agreement, to have all parties ratify and recognize the effectiveness of the Original Development Agreement and to extend the time period within which to meet the occupancy requirements set forth in Section 1.C of the Original Development Agreement, due to delays in the ability to develop the Subject Property as described within the Original Development Agreement caused by local economy and market conditions.

**SECTION 4.** This Council, based upon analysis of the facts set forth above, finds and concludes that:

- A. The ratification of the effectiveness of the Original Development Agreement reflects the understandings of CITY and DEVELOPER and will not adversely impact CITY, DEVELOPER, nor development of the Subject Property located in North San Jose; and
- B. The initial extension of the time period that DEVELOPER has to occupy a part of the Subject Property from July 21, 2008 to December 31, 2008 will not adversely impact CITY, DEVELOPER, nor the development of the Subject Property in North San Jose.

**SECTION 5.** The City Council hereby adopts the following as its findings required by Section 12 of the Enabling Ordinance:

- A. Development of the Subject Property in accordance with the conditions of the Amended Development Agreement will promote and provide for orderly growth and development of the Subject Property in accordance with the policies set forth in the current General Plan in that the project described in more detail in the Original Development Agreement, which is not amended as a part of the Amended Development Agreement, for a 2.325 million square foot corporate campus of office, research and development, and manufacturing uses (the "Project"), has been partly constructed with two buildings totaling approximately 400,000 square feet in area, which buildings have been partially occupied by a corporate user and the full build out of the Project will ultimately provide for at least 500 jobs in the City of San José in conformance with the CITY's Economic Development Policies; and
  
- B. The Amended Development Agreement remains consistent with the General Plan, Alviso Specific Plan, and Zoning Code of CITY, as those documents existed at the time the Original Development Agreement was entered into and as vested under and through the Original Development Agreement, in that the industrial/office development vested by the Original Development Agreement, including the Planned Development Zoning, Planned Development Permit, and Vesting Tentative Map (File Nos. PDCSH99-05-054, PDSH00-03-027, and PTSH00-03-035, respectively), all conform with and promote orderly development of CITY's General Plan as well as CITY's Alviso Specific Plan land use designations of Industrial Park with Mixed Industrial Overlay, and Combined Industrial/Commercial designations as vested through the Original Development Agreement.

**SECTION 6.** The City Council hereby approves the Amended Development Agreement in substantially the form attached hereto as Exhibit A and hereby authorizes and directs the City Clerk to execute the Amended Development Agreement in substantially the form approved by this Ordinance on behalf of the City of San Jose within a reasonable period of time after this Ordinance becomes effective.

**SECTION 7.** CITY understands that CITY and DEVELOPER intend to agree to terms in the Amended Development Agreement that the effectiveness of the Original Development Agreement shall be from its full execution date. CITY's ratification of the effectiveness of the Original Development Agreement shall be retroactive and effective as of November 13, 2000, *nunc pro tunc*, and shall continue until the Original Development Agreement expires or terminates by its own terms, as those terms are amended by the Amended Development Agreement.

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**SECTION 8.** Notwithstanding the effective date of this Ordinance, CITY and DEVELOPER desire, and CITY ordains, that this Ordinance shall be deemed effective and apply retroactively on and to July 21, 2008, *nunc pro tunc*, so that the Original Development Agreement does not expire pursuant to the provisions set forth in Section 1.C(1) of the Original Development Agreement.

**PASSED FOR PUBLICATION** of title this 17<sup>th</sup> day of June, 2008, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, CORTESE,  
LICCARDO, NGUYEN, OLIVERIO, PYLE, WILLIAMS,  
REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk