

**From:** [Phan, Johnny](#)  
**To:** [Downtown West Project](#)  
**Subject:** FW: Infrastructure Reimbursement DA Language  
**Date:** Tuesday, April 6, 2021 2:26:23 PM  
**Attachments:** [1775911.docx](#)

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**From:** Phan, Johnny  
**Sent:** Wednesday, February 3, 2021 1:06 PM  
**To:** Miller, J. Gregg <[gmler@coblenzlaw.com](mailto:gmler@coblenzlaw.com)>  
**Subject:** Infrastructure Reimbursement DA Language

Hi Gregg – Just a few comments on the latest draft Infrastructure Reimbursement language. I think we are close to being done with this. Thanks. Johnny

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The Project provides for the construction of significant new or upgraded infrastructure in the Project area. Google has provided a cost estimate of approximately \$174 million for the upgraded infrastructure which includes costs for improvements not included in the existing Diridon Station Area Basic Infrastructure Fee as codified in San José Municipal Code Chapter 14.35. Google's cost estimate for infrastructure improvements include, among other improvements, enhanced right-of-way improvements, utilities upgrades and relocation, and undergrounded overhead power and communication lines, as further detailed in Exhibit [ ] hereto.

The City recognizes that some of the new and/or upgraded infrastructure may be beneficial not only to development in the Downtown West Plan Area but also to existing and future development outside of the Downtown West Plan Area, including development in the broader Diridon Station plan area and surrounding portions of the City. Therefore, the City will consider taking actions reasonably necessary, and Developer will cooperate reasonably, to develop an updated or new infrastructure program, including preparation of appropriate infrastructure plans, technical ("nexus") studies and associated financial feasibility studies, that include the Downtown West Plan Area and which analyze the infrastructure improvements to be installed by Developer. Such an infrastructure program may include impact mitigation fees, community facilities districts, infrastructure facilities districts, or other similar programs or mechanisms for the funding of infrastructure improvements ("Funding Mechanism"). Upon adoption of a Funding Mechanism(s), Developer may be eligible to receive a credit and/or reimbursement (including pursuant to Municipal Code section 14.35 et seq.) for the costs of installing qualifying improvements within the Plan Area, in which case the City and Developer would then reasonably cooperate to enter into a reimbursement agreement, subject to approval by the City Council, for such reimbursement and/or credit.

To be eligible for such credit and/or reimbursement, at a minimum all of the following would need to occur:

- (i) City Council approval of a Funding Mechanism(s) in accordance with State laws;
- (ii) Construction of qualifying infrastructure subject to credit or reimbursement, which are supported by the appropriate technical ("nexus") studies and associated financial feasibility studies;
- (iii) City Council approval of a reimbursement agreement between the City and Developer setting forth the terms and conditions for reimbursement, consistent with the above conditions;
- (iv) City collects sufficient funding in the infrastructure program(s) to provide reimbursement, subject to annual appropriation of the City Council; and
- (v) Compliance with applicable local, state, and federal laws.

The City agrees to work with Developer to seek additional infrastructure funding, including grants and/or reimbursement from available programs to provide infrastructure improvements in the Plan Area. For example, the City may work with the Developer to implement the undergrounding of overhead electrical facilities by the Developer if legally permissible under the California Public Utilities Commission (CPUC) Electric Rule No. 20 program ([https://www.pge.com/nots/rates/tariffs/tm2/pdf/ELEC\\_3860-E.pdf](https://www.pge.com/nots/rates/tariffs/tm2/pdf/ELEC_3860-E.pdf)) and related CPUC regulations and orders subject to CPUC and PG&E approval, as well as, San Jose Municipal Code,

Chapters 15.20, 15.24 and/or 15.26. Any and all undergrounding of electric facilities in the Plan Area by the Developer or a third party such as PG&E, shall also comply with the City's undergrounding policies, including without limitation, the City's annual Fiscal Year Workplan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program and the Fiscal Year Rule 20B (In-Lieu Fee) Undergrounding Master Plan, as be approved by the City Council. Facilities used for the transmission of electric energy at voltages of thirty-four thousand five hundred volts or more shall not be included.