

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Google - Diridon/DW - Exhibit H
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Attachments: [Exhibit H - Confidential Draft - 030521-c.docx](#) - [Google Docs-c.pdf](#)

From: Miller, Gregg <gmliller@coblentzlaw.com>
Sent: Sunday, March 7, 2021 1:25 PM
To: Phan, Johnny <Johnny.Phan@sanjoseca.gov>
Subject: Google - Diridon/DW - Exhibit H

[External Email]

Johnny: please see attached.

Gregg Miller

Coblentz Patch Duffy & Bass LLP

One Montgomery Street, Suite 3000

San Francisco, CA 94104

Cell: 415-939-3142 | Direct Dial 415-772-5736 | Office 415-391-4800

gmliller@coblentzlaw.com

www.coblentzlaw.com

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Exhibit H
Community Stabilization and Opportunity Pathways Fund

1. Establishment of Fund. The City intends to establish a fund to provide financial support to community stabilization (anti-displacement) efforts, education and employment opportunity pathways within the City (the "Fund"). The Fund will concentrate on communities in San Jose who have continuously suffered from Racial Inequity and where the risk of displacement is the highest. ~~Google shall make regular contributions to the Fund during the term of the Development Agreement.~~
2. Purpose of the Fund. The purpose of the Fund is to ~~advance equitable development with intent to~~ maximize opportunities for local youth and adults to participate and benefit from job opportunities through training, education, and support ("opportunity pathways") and to minimize displacement and other potential negative impacts on people and place, including from rising costs ("community stabilization"). The Fund shall be used to support grantees and program activities serving low-income people living in neighborhoods experiencing or at high risk of displacement and racial inequities, including the Diridon Station Area, specific neighborhoods in Greater Downtown, East San José, and other areas. The Fund should focus on advancing racial equity, addressing the root causes of displacement and economic mobility, and should result in measurable outcomes. ~~An important key objective is to include and empower marginalized affected groups in the decision-making process.~~
3. Fund Administration Overview. The administration of the Fund shall involve: a third party ("Fund Manager"), a Community Advisory Committee ("Committee"), City Council, and the City Administration. The model features delegation of grant approval to the Committee and Fund Manager, with oversight, accountability, and transparency to the City Council and public. As described in detail in the following sections, the key steps include the following:
 - a. The City Council will appoint a Fund Initiation Advisory Committee, with a composition that mirrors the composition of the Community Advisory Committee with proportional representation from each category.
 - b. The City Administration will prepare a Fund Initiation Plan, in consultation with the Fund Initiation Advisory Committee, select the Fund Manager, and establish the Community Advisory Committee, whose members shall be approved by ~~(City Council approval)~~.
 - c. The Fund Manager will work with the Committee to prepare a Strategic Plan for the Fund and Strategic Plan Updates (at least every 5 years) for City Council approval.
 - d. The Fund Manager will administer the grant process and affirm recommendations on grant-making, based on consistency with the Strategic Plan.
 - e. The Committee will make the grant recommendations.

- f. The Fund Manager will work with the Committee to prepare Annual Performance Reports, for the City Council to receive at a public meeting.
 - g. The Fund Manager shall be responsible for Ongoing community engagement and communication.
- 4. Contributions by Google LLC. Google shall make payments to a restricted Fund in the amount of \$22.12 per gross square foot of office development, excluding any related or similar prepayment amounts identified in Exhibit C2 (subject to Consumer Price Index escalation not to exceed three percent (3%) per year), with payment to be made at Certificate of Occupancy. The amount of the payment shall be established at the time the building permit for construction of the office Building is issued.
- 5. Appropriation Process. Payments made by Google will be deposited into a City-- restricted fund for this purpose and transferred to the Fund Manager for Fund grant-making and functions supporting grant-making. The transfer of monies from the restricted fund to the Fund Manager will occur as part of the City's annual budget appropriation process and in accordance with the Council-approved Strategic Plan. Subject to annual appropriation, the City Council shall allocate monies for two functional categories: 1) Fund administrative costs (including the contracted services of the Fund Manager and City Administration and City Attorney costs to support the Fund) and 2) grant making and other activities of the Fund Manager and Advisory Committee aligned with the Council-approved Strategic Plan. Caps on administrative costs shall be identified as part of the Council-approved Strategic Plan
- 6. Funding Priorities and Allocations.
 - a. The City Council intends that the Fund shall be dedicated to the funding of the following two major program categories ("Program Areas"):
 - i. Community Stabilization: Community Stabilization includes prevention of displacement and homelessness, preservation of affordable housing, homeless services, housing innovation research, and stabilization of small local businesses with a focus on accelerating racial equity.
 - ii. Opportunity Pathways: Opportunity Pathways includes adult and youth occupational skills training, college/post-secondary scholarships, career exploration for middle and high school youth, early childhood education, and small business and entrepreneurship programming with a focus on accelerating racial equity.
 - b. Fund Allocations.

- i. The maximum percentage of Fund allocation for City and Fund Manager administrative costs shall be outlined in each Council approved Strategic Plan.
- ii. The initial and future allocations of Fund, excluding payments for Fund administrative costs, shall be distributed to the Program Areas ~~in the with no less than 50% for following percentages: 50-60% to Community Stabilization and 40-50% to Opportunity Pathways.~~
- iii. The City intends for periodic review and adjustment of the percentage allocations between the two Program Areas; however, the Fund shall not be directed to programs outside the Program Areas or for other uses, and administrative costs shall not exceed amounts outlined in the Council approved Strategic Plan. The review and adjustment of percentage allocations may occur through approval of each Strategic Plan Update by City Council, as recommended by the Fund Manager and Committee.
- iv. Any changes to percentage allocations must be approved by a 2/3rd City Council majority
- v. The Fund Manager and Committee shall administer grants consistent with the Strategic Plan and the funding percentages set forth therein.

c. Others?

7. Grant Recipient Criteria. Grantees shall provide direct services, programs, and projects for the benefit of impacted communities in San José in the two Program Categories, consistent with the intent of the Fund established in this Agreement and with the Strategic Plan. The City intends that grantees ~~could include~~ be limited to nonprofit 501(c)(3) organizations, public education institutions, and public agencies.
8. Roles and Responsibilities.
 - a. Third Party Fund Manager. The primary role of the Fund Manager will be to: ensure strategic impact over time; facilitate community involvement in the grant-making and evaluation processes; and leverage opportunities for additional monies from external parties. The Fund Manager will adhere to best practices for accounting and financial responsibility. Roles will include:
 - i. Administer the Fund under a contract with City.
 - ii. Support the Community Advisory Committee and any subcommittees, including capacity building.
 - iii. Manage the solicitation, evaluation, and award recommendations of each round of competitive grants.
 - iv. Affirm alignment of grant awards with approved Strategic Plan.
 - v. Manage development of a Strategic Plan to guide activities of the Fund.

- vi. Recommend metrics to the City and Community Advisory Committee to evaluate the Fund's effectiveness.
 - vii. Conduct public engagement to inform the grant making and program planning process.
 - viii. Develop Annual Performance Report for City Council and the public.
 - ix. Provide technical services to grantees and potential grantees.
 - x. Evaluate grantee performance.
 - xi. Solicit and manage grant programs supported by contributions from other companies and philanthropic organizations.
- b. Community Advisory Committee (CAC). The City intends that the Fund's charter will include the establishment of a Community Advisory Committee (the "Committee") to execute key functions of the Fund. Roles of the CAC would include:
- i. Participate in the development of the Strategic Plan.
 - ii. Guide scoping of each round of competitive grant solicitations.
 - iii. ~~Work with the Fund Manager to make~~ Review grant recommendations consistent with the Strategic Plan ~~from the Fund Manager and approve grant awards.~~
 - iv. Provide guidance and support for public engagement..
 - v. Conduct meetings subject to the Brown Act.
 - vi. Provide feedback on the Annual Performance Report prior to public review.
 - vii. Participate in fundraising activities.

The Committee should have the authority to set its own by-laws, select its own chair and vice-chair, and form subcommittees. Decisions and recommendations should in all cases be consistent with the purpose of the Fund, funding priorities as defined in this Agreement, the Strategic Plan, and applicable laws.

- c. City Council Role. City Council will retain its legislative authority, including to approve the fundamental policy goals and funding priorities for the Fund, adopt the Strategic Plan that will guide annual budget appropriation, and conduct oversight and audit as necessary. Roles would include:
- i. Provide high-level direction on fundamental policy decisions for the Fund through approval of this Agreement and subsequent Strategic Plan and Strategic Plan Updates. ▯
 - ii. Select and approve the contract with the Fund Manager.
 - iii. ~~Approve the structure of the Committee and appoint its~~ Community Advisory Committee members.
 - 1. Changes to the structure of the Community Advisory Committee shall be approved by 2/3 Council member majority.

- iv. Approve the annual budget appropriation for the Fund, consistent with the Strategic Plan.
 - 1. Budget appropriations that deviate from the Strategic Plan shall be approved by a 2/3 Council member majority
- v. Conduct a public review of and approve the Strategic Plan and any subsequent Strategic Plan Updates as part of a City Council meeting.
- vi. Receive and review Annual Performance Reports as part of a City Council meeting.
- vii. Initiate financial and performance audits for the Fund.
- viii. Take all necessary actions required under applicable laws and City Charter.

d. City Administration Role. The City Administration will primarily serve as support for the other parties. Roles would include:

- i. Provide general oversight and serve as a Fund liaison between the various parties involved in the Fund administration.
- ii. Administer the selection process for the Fund Manager, negotiate the contract with the Fund Manager, oversee contract compliance, and manage the fiduciary relationship with Fund Manager.
- iii. Support the City Council in establishing the Plan Implementation Committee and the Community Advisory Committee.
- iv. Bring forth the annual budget appropriation to City Council.
- v. Bring forth the Annual Performance Report to City Council.
- vi. Manage any independent financial audits or program evaluations of the Fund.
- vii. Support the public engagement process.
- viii. Participate on the Committee in an ex officio capacity.

e. Google Role. In addition to making monetary contributions to the Fund, the Google Community Liaison Manager identified in Exhibit G will explore with the City opportunities to work together in ways that are aligned with the Fund's objectives and Google's corporate social responsibility objectives. Google will engage with the Committee to the extent approved by City Council, ~~in the Fund Implementation Initiation Plan, which could include serving on the Committee as~~ an ex officio member.

- 9. Selection and Compensation of Fund Manager. The City intends to use a solicitation process to select a qualified Fund Manager with experience managing grant programs that are both similar in amount of money under management and purpose as the Fund. The City intends that the Fund Manager will receive compensation for its management duties from the Fund, which shall be outlined in each Strategic Plan.

10. Committee Composition. The Committee shall be comprised of 123 voting members. Communities of color and low income people have been excluded from the decision making process in our nation, a legacy which impacts an array of economic, social and health challenges we continue to wrestle with in San José. The Community Advisory Committee (CAC) intends to put decision-making into the hands of leaders in the neighborhoods experiencing and at-risk of displacement and should be comprised of individuals who are most knowledgeable about how to strengthen and build institutions and programs that strengthen communities and stabilize working families. It is the intent to have a balanced mix of local residents bringing their lived experience perspective to ensure that local needs are understood and met, local community leaders with experience working with target populations to provide specific insights and solutions, and other experts in the program areas to help guide use of the Fund towards meaningful outcomes and systemic change.
- a. The Committee shall reflect the racial, ethnic, economic and other diversity of the City of San José.
 - b. Committee members shall have demonstrated commitment to furthering the City's goals for anti-displacement, economic mobility, and racial equity, supporting workers and good jobs, and upliftingbuilding power with historically disadvantaged groups, including women, people of color, people with disabilities, low income residents, and the chronically unemployed.
 - c. At least 64 members shall be residents of the City who shall have Local Lived Experience and/or Direct Service Provider experience in the core fund areas. Local Lived Experience includes individuals with personal knowledge of the root causes of displacement gained through direct, first-hand involvement. Direct service provide experience includes individuals from organizations dedicated to service delivery, community organizing, or leadership development in neighborhoods at risk of displacement.
 - i. Committee members nominated in this category shall that live or operate a small business in a census tract categorized as 'high-risk' or 'undergoing displacement' by a credible source regularly updated source, (such as the Urban Displacement Project at U.C. Berkeley), including at least 2 from East San José and at least 1 from the Greater Downtown Area that is part of the "high risk" categorycategory in the Berkley or other relevant study. The residents should represent a range of experiences the Fund is intended to address, such as housing insecurity, neighborhood instability, homelessness, low-income, unemployment, and barriers to opportunity and economic mobility.
 - d. At least 96 members of the Committee shall have significant professional experience or subject matter expertise (e.g., through policy-making, service delivery, academic, or institutional capacity in one of the following fields:
 - i. Affordable housing preservation and/or shared equity and community ownership
 - ii. Housing finance

- iii. Tenant advocacy and support
- iv. Homelessness or homeless support services
- v. Education (early childhood, K-12, post-secondary)
- vi. Training and workforce development
- vii. Minority-owned and disadvantaged micro or family owned business retention and growth ~~Small business support (stabilization and entrepreneurship)~~
- viii. Community development
- ix. Philanthropy, fundraising and/or ~~g~~Grant-making

These members shall either live in San José, ~~have a history of conducting work~~ in San José in the relevant subject areas of the fund, or otherwise have a meaningful connection to San José. While these Committee members may have experience in multiple fields, members with deep expertise in a single field will be encouraged in order to create a balanced Committee in which no one area of expertise dominates. In making appointments, the City Council will strive to create a CAC with members that collectively possess expertise across all topic areas listed in Section 12. Notably, these members can and will be encouraged to overlap with lived experience and/or direct services experience.

[NOTE, RECOMMEND CONVERTING TO PORTLAND MODEL, MEANING WRITING THIS OUT IN THE SAME FORM]

- e. Ex officio (non-voting members) shall include 3 representatives of the City Administration. The role of the City representatives is to consider alignment and collaboration with City strategies, goals, and programs. The Committee may add ex officio seats for Google, additional major funders, or others as deemed helpful by the Committee, and subject to approval by City Council.
- f. Committee members will be subject to applicable state and local disclosure and conflict of interest laws. Each committee members shall file a Form 700 Statement of Economic Interests upon appointment and as required under the Political Reform Act and Fair Political Practices Commission (“FPPC”) regulations.
 - i. The purpose of the conflict of interest policy is to prevent the institutional or personal interests of CAC members from interfering with the performance of their duties to the Fund, and to ensure there is no personal, professional, or political gain at the expense of the Fund.
 - ii. Prohibited activities include:
 - 1. Voting or scoping grants related to an organization that the Committee Member works for or sits on the Board of. ~~Having a~~

~~business or financial interest with any organization seeking financial support from the Fund~~

2. Holding employment, participation in management, or service on a board of an organization seeking financial support from the Fund
 3. Deriving financial gain from Fund dollars, other than the per diem allotted as Advisory Committee Members.
- g. All meetings of the Committee shall be subject to and conducted in accordance with the open meeting requirements of the Brown Act and applicable City requirements.

11. Committee Selection Process.

- a. The City Administration shall conduct an open, transparent process for selecting the Committee members, initially and as term limits expire. The process is envisioned to include the following steps:
 - i. soliciting nominations using a standard form to provide information about the qualifications of nominated individuals;
 - ii. screening the nominations for eligibility;
 - iii. recommending a slate of eligible Committee members to City Council, and
 - iv. approval of the Committee members by the City Council at a public meeting.
- b. Committee members shall be appointed by the City Council for staggered 104-year terms, with the exception of the first Committee, which will have 7 members appointed for 104-year terms and 6 members appointed for 52-year terms.
- c. Citizenship shall not be a factor in the selection process.

12. Public Engagement. The Fund Manager, with the support of the City Administration and Committee, will be expected to conduct public outreach and community engagement to inform the Strategic Plan and grant making process. The Fund Manager should develop and implement the strategy and methods to be used in collaboration with the Committee. The expectation is to use best practices for inclusive engagement, considering factors such as language and accessibility. In the Initial 5 year plan a capped budget for City Administration will be included.

13. Audit Rights by the City Council. The City may complete an independent financial and performance audit of the Fund on a biannual basis to ensure conformance with this Agreement, the Strategic Plan, the contract with the Fund Manager, and applicable laws. Further, the City may take any and all necessary steps and actions to address any issues

raised in annual reports, audits, allegations of misuse of funds, or violation of application policies, rules or laws.

14. Strategic Plan As a first order of business, the Fund Manager shall develop a Five Year Strategic in consultation with the CAC.

15. The purpose of the Strategic Plan is to set the direction for the grant programs and funding allocation, including caps on administrative payments to City and Fund Manager. The Five Year Strategic Plan will broadly describe the CAC's strategic vision for the fund, its objectives, and funding priorities over the next five years. It will describe metrics to measure progress or success on its objectives and funding priorities.

- a. Once complete, it shall be submitted to the City Council for review and approval. City Council can propose changes and shall describe the reasoning for those revisions at a City Council meeting.
- b. Once approved, the Fund Manager is tasked with implementing the Strategic Plan.
 - i. Once the Strategic Plan is approved, the Fund Manager shall draft a work program, including a solicitation for grants applications.
- c. The Five Year Strategic Plan must be updated at a minimum every five years, but may be updated more frequently based on changing conditions

16. The Strategic Plan shall include, but is not limited to:

- i. Community needs assessment: such as community context, priority needs, analysis of gaps in system effectiveness
- ii. Desired outcomes, funding objectives on intent of impact (rather than program outcome), and performance metrics to evaluate Fund effectiveness
- iii. Recommended allocation of funding between Community Stabilization and Opportunity Pathways program areas
- iv. Anticipated administrative costs
- v. Categories of competitive grant programs
- vi. Expectations for community engagement

The Strategic Plan will be developed by the Fund Manager and Committee, and must be updated at least every five years.

17. Annual Performance Report. Every year, the Fund Manager will generate an Annual Report describing its accomplishments and progress on proposed metrics. This Report will be developed in consultation with the CAC, who may review and revise as needed..The purpose of the Annual Performance Report shall be to analyze and report out on the effectiveness of Fund's grant making , including achievement of outcomes, objectives, and metrics identified in the Strategic Plan...

- a. The Annual Report will then be transmitted to the City Council for review and comment (information item; no action needed).