

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Exhibit H draft - redline
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From: Miller, Gregg <gmler@coblenzlaw.com>
Sent: Tuesday, March 9, 2021 3:27 PM
To: Phan, Johnny <Johnny.Phan@sanjoseca.gov>
Subject: Exhibit H draft - redline

[External Email]

Johnny: please see attached. Thanks,

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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 historically been affected by structural racism and where the risk of displacement is the highest.
2. Purpose of the Fund. The purpose of the Fund is 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, including the Diridon Station Area, and underserved neighborhoods in Greater Downtown, East San José, and other areas identified by a credible, regularly updated source, (such as the Urban Displacement Project at U.C. Berkeley). The Fund should focus on advancing racial equity, addressing the root causes of displacement and economic mobility, and should result in measurable outcomes.
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 Community Advisory Committee.
 - b. The City Administration will select a Fund manager, in consultation with the Committee.
 - c. The Fund Manager will work with the Committee to prepare a **Five Year** Strategic Plan for the Fund and Strategic Plan Updates **every 5 years** ~~(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 **Five Year** 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 per commercial office building. 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 **Five Year 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 **Five Year Strategic Plan**. Caps on administrative costs shall be identified as part of the Council-approved **Five Year 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, **tenant education, community land trusts**, 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 allocation of Fund, excluding payments for Fund administrative costs, shall be distributed to the Program Areas in the following

percentages: ~~no less than 50-60%~~ to Community Stabilization and ~~no less than 30-40-50%~~ 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 **Five Year** Strategic Plan. The review and adjustment of percentage allocations may occur through approval of each **Five Year** Strategic Plan Update by the City Council, as recommended by the Fund Manager and Committee.
 - iv. The Fund Manager and Committee shall administer grants consistent with the **Five Year** Strategic Plan and the funding percentages set forth therein.
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 **Five Year** Strategic Plan. The City intends that grantees be limited to nonprofit 501(c)(3) organizations, public education institutions, and City of San José programs, with grants focused on direct on the ground services, and that grants shall not be used for lobbying or political organizing. **For the purpose of clarification, tenant education or protection shall not be construed as political organizing. Likewise, grantees can be involved in political organizing but cannot use the grants for the use of political organizing.**
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. Qualify and determine alignment of grant awards with approved Strategic Plan.
 - v. Manage development of **a the Five Year** Strategic Plan to guide activities of the Fund.
 - vi. Recommend metrics to the City and Community Advisory Committee to evaluate the Fund's effectiveness as part of each **Five Year** Strategic Plan.

- 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 qualification and performance.
 - xi. Solicit and manage grant programs supported by contributions from other companies and philanthropic organizations.
- b. Community Advisory Committee. 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 Committee would include:
- i. Participate in the development of ~~each~~ **the Five Year** Strategic Plan.
 - ii. Guide scoping of each round of competitive grant solicitations.
 - iii. Work with the Fund Manager to make grant recommendations **and approve grants** consistent with the **Five Year** Strategic Plan.
 - 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 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 **Five Year** 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 **Five Year** 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 initial subsequent-Five year~~ Strategic Plan and **subsequent Five Year** Strategic Plan Updates.
 - ii. Select and approve the contract with the Fund Manager.
 - iii. Appoint Community Advisory Committee members.
 - iv. Approve the annual budget appropriation for the Fund, consistent with the **Five Year** Strategic Plan.
 - v. Conduct a public review of and approve the **Five Year** Strategic Plan and any subsequent **Five Year** 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 Community Advisory Committee and supporting the nomination process for open seats.
 - 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.
- 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, 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. City Council shall appoint a Community Advisory Committee in advance of preparing the Fund Manager solicitation. The City Administration shall work with the Community Advisory Committee to develop the solicitation and recommend a Fund Manager to City Council. 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.
- a. Qualifications of Fund manager include: ~~[PENDING to be added from Estolano Advisors]~~
 - b. Commitment to the mission, vision, and outcomes of the fund(s)
 - c. Experience and proven success in managing funds of a similar type/scale
 - d. Transparency - must be able to clearly report on progress and outcomes
 - e. Credibility - must have credible relationships across multiple audiences
 - f. Competence - ability to disburse funds efficiently, consistently identifying

roadblocks and identifying solutions

- g. Adaptability - must be able to evaluate grantee and program performance, and respond accordingly

10. Committee Composition. The Committee shall be comprised of thirteen (13) voting members. 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, with the exception of one (1) the academic/~~and~~ research role which can be national.

- a. 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 (~~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.
- b. 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.
- c. The Committee shall reflect the racial, ethnic, economic and other diversity of the City of San José.
- d. Committee members shall have demonstrated commitment to furthering the City's goals for anti-displacement, economic mobility, and racial equity, supporting workers and family-supporting jobs, and uplifting historically disadvantaged groups, including women, people of color, people with disabilities, low income residents, and the chronically unemployed.
- e. 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 ~~Committee AC~~ with members that collectively possess expertise across all topic areas listed in this Section. Notably, these members can and will be encouraged to overlap with lived experience and/or direct services experience.
- f. At least four (4) members shall be residents of the City who shall have Local Lived 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.

- i. Committee members nominated in this category shall live or operate a small business in a census tract categorized as ‘high-risk’ or ‘undergoing displacement’ by a credible, regularly updated source, (such as the Urban Displacement Project at U.C. Berkeley), including at least two (2) from East San José and at least one (1) from the Greater Downtown Area that is part of the ‘high risk’ category 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.
- g. The other nine (9) members of the Committee shall have significant professional experience and subject matter expertise (e.g., through policy-making, service delivery, academic, or institutional capacity in one **or more** of the following fields:
 - i. Affordable housing preservation and/or shared equity and community ownership
 - ii. Housing preservation, ownership and finance models
 - iii. Tenant advocacy and support
 - iv. Homelessness or homeless support services
 - v. Education (early childhood, K-12, post-secondary)
 - vi. **Employment development, job training, apprenticeship programs, workforce development and/or labor** ~~Job training, apprenticeship programs, and workforce development~~
 - vii. Minority-owned and disadvantaged micro or family owned business retention and growth
 - viii. Community development
 - ix. Philanthropy, fundraising, grant-making, organizational management, legal, and/or finance experience
 - x. Academic and/or Research expert in relevant fields such as environmental & regional equity, ~~sociology~~, demography and/or economic mobility
- h. Ex officio (non-voting members) shall include three (3) representatives of the City Administration. The role of the 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.
- i. Committee members will be subject to applicable state and local disclosure and conflict of interest laws, and the City Attorney’s Office will perform a conflict analysis for each candidate as part of the appointment process consistent with City practice for appointments to City boards and commissions. Each committee member 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.

- j. 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 terms expire. The process is envisioned to include the following steps, in consultation with the Office of Racial Equity:
 - i. soliciting nominations using a standard form to provide information about the qualifications of nominated individuals;
 - ii. screening the nominations for eligibility;
 - iii. ~~recommending~~ Share a slate of eligible Committee members ~~nominations~~ 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 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~~ each Five Year 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. ~~The Initial-Each Five Year Strategic Plan will include a budget cap 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 Five Year 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 Plan in consultation with the Community Advisory Committee (“Committee”).
- a. The purpose of the Five Year Strategic Plan is to set the direction for the grant programs and funding allocation, including caps on administrative payments to the City and Fund Manager. The Five Year Strategic Plan will broadly describe the Committee’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.

- b. Once complete, it shall be submitted to the City Council for review and approval. City Council can propose changes ~~through the already-directed requirement of a two-thirds Council City vote amending any spending priorities, and additionally require a 60-day notice and at least two public hearings prior to the City Council taking action and shall describe the reasoning for those revisions at a City Council meeting.~~
 - c. Once approved, the Fund Manager is tasked with implementing the **Five Year Strategic Plan**.
 - i. Once the **Five Year Strategic Plan** is approved, the Fund Manager shall draft a work program, including a solicitation for grants applications.
 - d. The Five Year Strategic Plan must be updated ~~at a minimum~~ every five years, but may be updated more frequently based on changing conditions
 - e. The **Five Year 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 programs), 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 **Five Year Strategic Plan** will be developed by the Fund Manager and Committee, and must be updated ~~at least~~ every five years.
15. 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 Committee, 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~~ **each Five Year Strategic Plan**.
- a. The Annual Report will then be transmitted to the City Council for review and comment (information item; no action needed).