

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Google - DW - DA Exhibits Parkland Agreement, G, J
Date: Tuesday, April 6, 2021 3:04:49 PM
Attachments: [Google - DW - Exhibit E Parkland Agreement 3.23.21-c.docx](#)
[Redline CITY COMMENTS 3.17.21 Redlined Parkland Agreement - Google Walk Through Comments and City Comments - 3-17-21 \(002\) - Google - DW - Exhibit E --c.pdf](#)
[Exhibit E3.2 Park Dedication Delivery Triggers Figure-c.pdf](#)
[Exhibit E6 Diagram of Construction Right of Entry Area-c.pdf](#)
[Google - DW - Exhibit G Workforce Learning and Education Commitment-c.docx](#)
[Redline City Comment DA - Exhibit G Google DA 3-8-21-c \(002\) - Google - DW - Exhibit G Workforce Learning and Education Commitment-c.pdf](#)
[Google - DW - Exhibit J Microgrid-c.docx](#)
[Redline City comment DA Exhibit J Microgrid 3-8-21 \(Perkins 3-12-21\) \(Kevin O'Connor 3-15-21\) \(002\) - Google - DW - Exhibit J Microgrid-c.pdf](#)

From: Straka, Stephanie <SStraka@coblentzlaw.com>
Sent: Tuesday, March 23, 2021 7:01 PM
To: Phan, Johnny <Johnny.Phan@sanjoseca.gov>
Cc: Miller, Gregg <gmiller@coblentzlaw.com>
Subject: Google - DW - DA Exhibits Parkland Agreement, G, J

[External Email]

Hi Johnny,

Attaching the following:

- Exhibit E Parkland Agreement with Redline to City 3.17.21 comments
- Exhibit E3.2 (same as 3.6.21; included for completeness)
- Exhibit E6 (same as 3.8.21; included for completeness)
- Exhibit G Workforce etc. and Redline to City 3.8.21 comments
- Exhibit J Microgrid and Redline

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Google DRAFT 3/23/21

RECORDING REQUESTED
BY CITY OF SAN JOSE:

When Recorded, Return To:
City of San José
200 East Santa Clara Street
San José, CA 95113
Attn: City Clerk, 2nd Floor West Wing

**PARKLAND AGREEMENT
FOR
TENTATIVE MAP NO. [REDACTED].
BETWEEN
CITY OF SAN JOSE
AND
GOOGLE LLC AND
RESTRICTIONS AND COVENANTS RELATING TO
PRIVATE RECREATIONAL IMPROVEMENTS**

This Agreement (“Agreement”) is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (“City”), and GOOGLE LLC, a Delaware limited liability company (“Developer”) as of the date of City's execution (“Effective Date”). Each of City and Developer are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

RECITALS

- A. In connection with its Downtown West Mixed-Use Plan (herein, the "Project"), City and Developer have entered into a Development Agreement (the "Development Agreement"), adopted by the City Council on _____, 2021, by Ordinance No. _____, approving the Development Agreement and authorizing the City Manager to execute the Development Agreement on behalf of the City (the "Enacting Ordinance"). The Enacting Ordinance took effect on _____, 2021.

- B. In connection with the Project, Developer has filed Vesting Tentative Map Number [REDACTED] (the "Tentative Map") with the City's Planning Department for the subdivision of the Project site, as defined in the Development Agreement, and has obtained Planned Development Permit No. PD19-029 ("PD Permit") for the Project.
- C. Under the provisions of Chapter 19.38 of the San José Municipal Code ("Parkland Dedication Ordinance"), developers of residential subdivisions are required to dedicate property for neighborhood and community parks, construct park or recreational improvements, and/or pay in-lieu fees ("Parkland Dedication Obligation").
- D. In order for Developer to satisfy Developer's Parkland Dedication Obligation for the residential units identified on the Tentative Map, Developer and City desire to enter into this Agreement pursuant to which Developer shall satisfy its Parkland Dedication Obligation for development of four thousand (4,000) residential units as follows: (i) Developer shall dedicate a minimum of four and eight-tenths (4.8) acres of real property for public parks and trail to the City of San José; and (ii) Developer shall construct turnkey improvements, enhanced landscaping, and new plantings to these dedicated parks and trail, providing design and programming that would meet or exceed the requirements of the City's Parkland Dedication Ordinance (collectively, the "Park Improvements", and individually a "Park Improvement"); and (iii) for development of residential units in excess of four thousand (4,000), payment of in-lieu fees ("Parkland Fees") or use of credits as set forth in this Agreement. Park Improvements are to have an average value of One hundred Ninety Five Dollars (\$195) per square foot (in 2021 dollars, escalating by the California Construction Cost Index, which is a subset of the Engineering News Record Construction Cost Index), as specified in Table 1 of Exhibit E1 hereto ("Park Improvements Value"). The Park Improvements Value includes, but is not limited to, the City's Review Fees as defined in Section 3(I), and all fees and costs for design and construction materials and labor incurred by Developer in connection with the Park Improvements, including direct costs, soft costs, and contingency as reflected in Table 2 of Exhibit E1. Costs associated with any remediation, removal, disposal, or any combination thereof, of contaminated materials to meet applicable regulatory requirements for public park and trails uses shall

not be included in the Park Improvements Value or otherwise applied to satisfy the Parkland Dedication Obligation.

- E. Developer may also propose certain Private Recreation Improvements as defined in City Resolution No. 73587, dated January 9, 2007 ("Private Recreation Improvements") within the Project in accordance with the requirements of the PD Permit and for which Developer is also eligible to receive credit against its Parkland Dedication Obligation as set forth in the Parkland Dedication Ordinance and this Agreement.
- F. City's Director of Parks, Recreation and Neighborhood Services ("PRNS") ("PRNS Director") is charged with the administration of this Agreement in conjunction with the Director of Public Works ("Director of PW"). The Director of PW in coordination with the PRNS Director is responsible for the review, inspection, approval, and acceptance of the proposed City-owned Park Improvements. As described in the Downtown West Planned Development Zoning and General Development Plan for the Plan Area, the Director of PBCE is the decisionmaker for Open Space Conformance Review, following consultation with PRNS Director.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. REPRESENTATIONS AND WARRANTIES OF DEVELOPER.

Developer represents and warrants to City that the following facts are true and correct:

- A. The statements and certificates made on the Tentative Map and documents filed in conjunction with the Tentative Map remain true and correct.
- B. Any and all documents provided to City pursuant to the terms of this Agreement, or in connection with the execution of this Agreement, are now in full force and effect and contain no inaccuracies or misstatements of fact. Developer covenants that at such time City notifies Developer of City's intention to accept any Park Improvements, if any of these

documents contain inaccuracies, misstatements, or have become obsolete, Developer shall notify City and provide City with the information required to render the documents accurate, complete, and current.

- C. Developer has the legal ability to enter into this Agreement and Developer's signatory(ies) to this Agreement is (are) duly authorized to sign this Agreement on its behalf. In the event the Developer is not the legal owner of the real property identified in the Development or on the Tentative Map and on which any Park Improvements are to be constructed, then the legal owner shall also be required to execute this Agreement and shall be subject to all terms, conditions, and obligations of this Agreement.

SECTION 2. COLLABORATION AND OBLIGATIONS REGARDING DISC AND CITY-DEDICATED OPEN SPACE.

- A. City and Developer acknowledge and understand that the Project and the Parkland Dedication Obligation described herein may be subject to subsequent proceedings initiated by any of the DISC Partner Agencies (California High-Speed Rail Authority; Valley Transportation Agency; Caltrain; Metropolitan Transportation Commission (MTC)) to acquire one or more portions of the Plan Area, potentially including one or more portions of the proposed City-Dedicated Open Space proximate to an existing rail line. If any DISC Partner Agency(ies) initiates proceedings to acquire any portion of the Plan Area for an approved alignment and expansion of the high speed rail right-of-way or other rail right-of-way, Developer may be unable to proceed in the manner described in this Agreement. In the event that a DISC Partner Agency(ies) initiates acquisition of one or more portions of the proposed City-Dedicated Open Space, City and Developer shall proceed in the following manner.
 - a. If a DISC Partner Agency initiates acquisition of all or a portion of a City-Dedicated Open Space prior to Developer's initiation of design for that City-Dedicated Open Space as described in Section 5(B), the Parties understand that Developer shall be compensated by the condemning authority for the land acquired based on its fair market value as defined in California Code of Civil Procedure Section 1263.320,

as may be amended from time to time. In the event of such an acquisition, and that acquisition results in a reduction in the size of a City-Dedicated Open Space as reflected in Exhibit E2, Developer shall pay to the City an amount equal to the fair market value received for the acquired land from the DISC Partner Agency(ies) promptly after such value is received by Developer, and that value shall then be available for use as credit toward the Project's Parkland Obligation for residential units constructed, or otherwise utilized as set forth in Section 3(B) upon termination or expiration of the Development Agreement. Any amounts paid to the City in the manner described in this paragraph shall not be subject to the limitations described in Section 4(F) regarding payment of Parkland Fees and use of Private Recreation Improvements credits, and the amount of the acquired acreage shall be counted toward Developer's acreage obligations set forth in Sections 3(O), 4(G)(b) and 4(G)(d) upon payment to the City of the fair market value received for the land. Upon payment by Developer as described in this paragraph, any security(ies) provided by Developer for the acquired land shall be released. For the portion of the City-Dedicated Open Space that is not acquired by the DISC Partner Agency(ies), Developer shall construct Park Improvements and dedicate that remaining portion in accordance with this Agreement. Any required payment of Parkland Fees for the Park Improvements Value associated with the acquired portion of the City-Dedicated Open Space shall be paid to City prior to issuance of a building permit for the Building associated with the subject City-Dedicated Open Space in Exhibit E3.1, and such Parkland Fees shall be calculated based on the amount of acquired, or lost acreage, multiplied by one hundred ninety-five dollars (\$195), subject to escalation based on the California Construction Cost Index.

- b. At least six (6) months prior to initiating design of a City-Dedicated Open Space, Developer shall consult with Department of Parks, Recreation and Neighborhood Services staff and Department of Transportation staff regarding the status of the DISC. At the time Developer initiates design of a City-Dedicated Open Space as described in Section 5(B), or any time thereafter but prior to City's issuance of a

Notice of Acceptance and recordation of the grant deed for that City-Dedicated Open Space, if Developer and/or City reasonably determines that any portion of the Open Space is reasonably likely to be acquired by a DISC Partner Agency(ies), City and Developer shall meet and confer to reach agreement regarding the manner in which Developer is to satisfy its Parkland Obligation with respect to the subject City-Dedicated Open Space. Such agreement shall be consistent with the intent of this Parkland Agreement, and with the following principles.

1. Developer and City shall remain in a financially neutral position, meaning that Developer shall not be required to incur higher costs or expenses than it otherwise would incur under this Agreement, or to pay amounts in excess of its Parkland Obligation; and Developer shall not be relieved of satisfying the Parkland Dedication Obligation for residential units constructed as part of the Project;
 2. Both the Project and DISC are to be effectively delivered and accommodated to the extent feasible; and
 3. The Parties intend to minimize impacts of DISC project construction activity on existing and future development within the Project Site boundary.
- c. If a DISC Partner Agency initiates acquisition of all or a portion of a City-Dedicated Open Space after City's Acceptance of that City-Dedicated Open Space, Developer shall have no obligation to provide replacement open space area or to pay additional Parkland Fees.
- B. Prior to commencement of construction of a City-Dedicated Open Space, Developer shall again consult with City Parks, Recreation and Neighborhood Services Department and City Department of Transportation staff regarding the status of the DISC. If Developer and City determine that any portion of the Open Space is reasonably likely to require use by a DISC Agency(ies) for construction staging or similar disruptive construction activity, Developer

shall remain obligated to dedicate the land to City, and City shall accept such land, in accordance with the terms of this Agreement, including Exhibit E5 hereto; provided, however, that City and Developer shall meet and confer to mutually determine whether Developer shall delay commencement of construction of the Park Improvements, including demolition and grading activity, until the DISC Agency activity within the Open Space has ceased, or whether Developer shall instead provide the Park Improvements Value to the City so that the City may itself complete the Park Improvements. If the Parties determine that Developer shall delay commencement of construction and Completion of the Park Improvements, Developer's obligation to construct the Park Improvements within the affected portion of the City-Dedicated Open Space shall survive the termination or expiration of the Development Agreement. If City and Developer reasonably determine that use of all or a portion of a City-Dedicated Open Space by a DISC Agency(ies) would delay Completion of construction of the Park Improvements thereon by more than one year beyond the date on which the Development Agreement has terminated or expired, notwithstanding Section 4(F) of this Agreement, at its option Developer shall be permitted to provide the City with the remaining Park Improvements Value for the affected City-Dedicated Open Space, and the City shall Accept the offer of dedication for the subject City-Dedicated Open Space, or portion thereof, and use the Park Improvements Value to construct the Park Improvements. If this occurs, the City shall release any security associated with such Park Improvements upon receipt of the funds and dedication of the land for Open Space.

- C. In furtherance of the collaborative efforts described in Section 3.6 of the Development Agreement, as well as the collective goals of Developer, City, and the DISC Partner Agencies to effectively deliver both the Project and DISC, this section describes the understandings of City and Developer relative to DISC and the City-Dedicated Open Space:
 - a. The Project proposes to dedicate and improve the following City-Dedicated Open Spaces adjacent to the existing and potential future rail alignment: Northend Park, St. John Triangle, and Los Gatos Creek Connector.

- b. DISC Partner Agencies have indicated an intention to elevate the rail tracks and rail structure as part of DISC, providing new opportunities to connect to these parks to uses located to the west of the current rail alignment.
- c. Timing and phasing of DISC and other potential rail or transit projects (including California High Speed Rail) in the vicinity of the Project have not been finalized; and as of the Effective Date of this Agreement a Concept Layout for the Diridon Integrated Station Concept has been approved by the City (February 2020).
- d. In order to maximize parks and open space, as well as transit and connectivity in the near- and long-term, Developer and City shall proceed in the manner described in Section 2(A) of this Agreement with respect to any acquisition by a DISC Partner Agency(ies); and with respect to any potential DISC construction needs that may affect a City-Dedicated Open Space, Developer and City shall proceed in accordance with Section 2(B) of this Agreement, which Sections includes consultation and meet and confer processes between City and Developer, in addition to the City's and Developer's collaborative efforts with the DISC Agency(ies) described in Section 3.6 of the Development Agreement.
- e. New park spaces at St. John Triangle and the North End Park have been planned to be outside of the established Transit Project Buffer Zone, as defined in the Development Agreement. A temporary construction easement (TCE) may be required by a DISC Partner Agency(ies) for California High Speed Rail or other transit projects, at the western edge of the North End Park; compensation for this potential TCE – including any impact to the City-Dedicated or Privately-Owned Publicly Accessible Open Spaces, or any other private property – would be required consistent with law. In the event of any permanent acquisition by a DISC Partner Agency(ies), Developer or City as landowner, as applicable at the time of acquisition, would proceed in accordance with law and established practices for eminent domain proceedings.

SECTION 3. DEDICATION OF PARKS; DESIGN AND DEVELOPMENT OF PARK IMPROVEMENTS; CREDIT FOR PRIVATE RECREATIONAL IMPROVEMENTS; VOLUNTARY CORPORATE ACCOMMODATIONS PARKS CONTRIBUTION.

- A. Subject to Section 2(A), in satisfaction of its Parkland Dedication Obligation for development of four thousand (4,000) residential units Developer affirms its commitment to dedicate to City a minimum of four and eight-tenths (4.8) acres of real property located on Lots A, B, E, F, H, I, P, Q, R, and airspace parcel of Lot 20 (“City-Dedicated Open Space”) as identified on the Tentative Map for the Project, and as described in the Downtown West Design Standards and Guidelines. An offer of dedication for each City-Dedicated Open Space shall be made concurrent with the final map that contains the subject City-Dedicated Open Space, and shall be recorded following approval of the final map that contains the Building or development parcel that corresponds with the trigger for that City-Dedicated Open Space as reflected in Exhibits E3.1 and E3.2. The offers for dedication shall be substantially in the form as set forth in Exhibit E4, and shall be recorded in the Official Records, as defined in the Development Agreement. City shall accept an offer of dedication by grant deed only after issuance of a Notice of Acceptance of the Park Improvements thereon and in accordance with the timing requirements set forth in Exhibit E5. Developer shall be responsible for all costs incurred in the conveyance of the City-Dedicated Open Space to City in accordance with the requirements and specifications set forth in this Agreement and the Development Agreement. If the construction and Completion of the City-Dedicated Open Space is not triggered pursuant to Exhibits E3.1 and E3.2 prior to the expiration or termination of the Development Agreement, and Developer has not otherwise Completed the City-Dedicated Open Space such that credits would be provided and administered as set forth in Section 3(B), upon the termination or expiration of the Development Agreement the offer of dedication for such City-Dedicated Open Space shall also terminate and be void, and City shall promptly execute and record a notice terminating or vacating the offer of dedication.
- B. In the event Developer Completes and dedicates a City-Dedicated Open Space, and the credit value for the improved City-Dedicated Open Space exceeds the Parkland Dedication

Obligation for the Project upon the termination or expiration of the Development Agreement, Developer shall receive credit for the City Dedicated-Open Space, including the Park Improvements Value, and such credits shall be applied toward the Project's Parkland Dedication Obligation as residential units are constructed. Upon the termination or expiration of the Development Agreement, if any credits for land dedication and/or Park Improvements Value remain available and are not utilized to satisfy the Project's Parkland Dedication Obligation, such credits may be used by Developer, or by another developer(s) if transferred by Developer to that other developer(s), to satisfy the obligations under the City's Parkland Dedication Ordinance for new residential development within the Downtown West Planned Development District, with such credits provided at a ratio of one-to-one unit basis.

- C. Reconfiguration and/or Project redesign of a City-Dedicated Open Space may be necessary in the event Developer is prohibited from building to the maximum heights reflected in the DWDSG as a result of adoption of a construction tower crane policy that prohibits or impacts Developer's ability to construct to such maximum heights. Any reconfiguration or redesign would have a negative impact on Developer's master planning efforts, lessening the amount of square footage for both commercial and residential uses, and potentially reducing the number of residential units that may be developed within the Plan Area. Subject to the requirements of Sections 4(F), 4(G), and 4(J) of this Agreement, such reconfiguration and/or reduction in residential development shall require a commensurate reduction to Developer's Parkland Dedication Obligation.
- D. As reflected in Exhibits E3.1 and E3.2, the land for Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2 is to be dedicated by grant deed to the City prior to construction and dedication to the City of the Park Improvements thereon. The dedication of Los Gatos Creek Trail Connector 1 and Los Gatos Creek Trail Connector 2 shall be accepted by the City in conjunction with a fully executed leaseback agreement. The intent of the leaseback agreement is to enable Developer to Complete the required Park Improvements; allow non-income producing interim uses by Developer, such as landscaping and/or construction staging; require the same insurance and indemnification as set forth in this Agreement; and

to require Developer to maintain and manage the property, including any necessary security and fencing, until such time as the Park Improvements are accepted by the City in accordance with the terms of this Agreement. Additionally, the parties have mutually agreed that the agreement between the Parties is for a gross leaseback to Developer for a cost of one dollar (\$1.00) per year, and any associated property taxes shall not be the responsibility of Developer. To enable Developer's timely construction and Completion of the Park Improvements on Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2 as set forth in Exhibit E3.1, City shall provide written notice to Developer within ninety (90) days of City's issuance of a building permit for construction of, and also at issuance of a Certificate of Occupancy for, affordable housing developments on Block H5 and on Block H6.

- E. The Park Improvements to be installed on a City-Dedicated Open Space shall be Completed in accordance with the City-Dedicated Open Space Dedication and Improvements Schedule and Park Dedication/Delivery Triggers Figure set forth in Exhibits E3.1 and E3.2. For clarity, except as otherwise set forth herein, Developer shall not be obligated to install Park Improvements on any City-Dedicated Open Space unless and until Developer undertakes the actions or development set forth in Exhibit E3.1 that corresponds to any such Park Improvements. Subject to approval by the Directors of PRNS and PW, City may elect to extend the Delivery trigger reflected in Exhibit E3.1 by twelve (12) months to allow Developer to complete installation of art and other non-functional, sculptural or ornamental features, or kiosks/pavilions or other optional structures, that are not essential to the intended use of the park by the public ("Park Art and Optional Structures"). Alternatively, subject to approval of the Directors of PRNS and PW, Completion of Park Improvements upon any City-Dedicated Open Space for purposes of determining compliance with Exhibit E3.1, and issuance of a Notice of Acceptance for such Park Improvements by Director of PW as outlined in Exhibit E5 of this Agreement shall be permitted to occur without first requiring the completed installation of Park Art and Optional Structures, so long as (i) final installation of such Park Art and Optional Structures will not interfere with the safe use of the park by the public, and (ii) Developer

provides the Park Art and Optional Structures Security as described in this Agreement so that the City may utilize the Security to complete the installation or construction of the Park Art and Optional Structures following City's acceptance of the Park Improvements, which City shall complete within twelve (12) months of Developer providing the Security; provided however, that City shall release all other bonds and securities as indicated in Exhibit E5. Separately, Completion also does not include or require relinquishment and improvement of any Park Construction Right of Entry, which Right of Entry areas are depicted in Exhibit E6 (referred to therein as "Temporary Construction Easement (TCE)"), so long as the Park Construction Right of Entry is relinquished and improved within six (6) months of issuance of the temporary certificate of occupancy for the fronting building.

- F. As more particularly described in Exhibit E5, Developer shall be responsible for the development of Park Improvements Plans for, and the construction of the Park Improvements on the City-Dedicated Open Space, consistent with the Park Improvements Plans, and as otherwise described in this Agreement and the Development Agreement. Developer shall construct the Park Improvements in conformance with the Park Improvements Plans and Downtown West Design Standards and Guidelines, and all applicable standards and specifications in effect on the Effective Date of this Agreement, except as otherwise set forth herein.
- G. Developer has no obligation to construct other improvements on the City-Dedicated Open Space beyond the Park Improvements.
- H. The Parties acknowledge that the exact size, dimensions, and other particular characteristics of the Park Improvements have not been determined as of the Effective Date of this Agreement. The Parties, however, agree that the Park Improvements shall consist of the Park Improvements as conceptually depicted and described in the Downtown West Design Standards and Guidelines, with a minimum cumulative acreage of 4.8 acres for the development of 4,000 units, as reflected on the Tentative Map for the Project and based on the unit equivalent values reflected in Table 1 of Exhibit E1. As described in Section 4(B), any future adjustments to the conceptual City-Dedicated Open Space sizes, as permitted

by the General Development Plan, shall be identified and finally approved at the Conformance Review stage or the processing of a final map that includes the subject City-Dedicated Open Space, whichever occurs first, and shall be tracked using Exhibit E7, which Exhibit shall ensure compliance with the requirements of this Agreement.

- I. Developer shall be responsible for all costs incurred for planning, design, construction, and supervision of the construction of all Park Improvements, including without limitation, the Review Fees. All such costs are included in, and are part of the Park Improvements Value. For clarity, the Park Improvements Value includes, but is not limited to, the City's Review Fees and all fees and costs for design and construction materials and labor incurred by Developer in connection with the Park Improvements, including direct costs, soft costs, and contingency as reflected in Table 2 of Exhibit E1. Costs associated with any remediation, removal, disposal, or any combination thereof, of contaminated materials to meet applicable regulatory requirements for public park and trails uses shall not be included in the Park Improvements Value or otherwise applied to satisfy the Parkland Dedication Obligation. Developer and City agree that the Park Improvements Value shall not be less than the values set forth in Table 1 of Exhibit E1. The Review Fees shall be in an amount equal to seventeen and one-half percent (17.5%) of the direct costs, which Review Fees are reflected in Table 2 of Exhibit E1, and which direct costs and Review Fee shall both escalate by the California Construction Cost Index. Twenty percent (20%) of the Review Fees for each City-Dedicated Open Space shall be paid upon submittal of the Vertical Conformance Review application for the Building associated the subject City-Dedicated Open Space in Exhibit E3.1; and the remaining eighty percent (80%) of the Review Fees for each City-Dedicated Open Space shall be paid upon submittal of the Open Space Conformance Review application for the subject City-Dedicated Open Space. Developer shall cause all labor and material incorporated in the Park Improvements to be furnished in accordance with the requirements and specifications set forth in this Agreement.
- J. As described and depicted in the Downtown West Design Standards and Guidelines, kiosks and/or pavilions are included as optional features in some of the City-Dedicated Open Spaces. The improvement value of such kiosks and/or pavilions is not included in the Park

Improvements Value and, therefore, it is understood that the improvement value of any kiosk or pavilion constructed within a City-Dedicated Open Space may exceed the Park Improvements Value. In its sole discretion, the City may elect to approve Park Improvements Plans for a City-Dedicated Open Space during Conformance Review with a kiosk and/or pavilion. If the City elects to include a kiosk/pavilion in a City-Dedicated Open Space, the improvement value of such kiosk/pavilion shall be permitted to be used to satisfy any outstanding Parkland Dedication Obligation associated with the development of four thousand (4,000) residential units. In the event the improvement value of such kiosk/pavilion exceeds the value of any remaining Parkland Dedication Obligation, Developer may use such value to satisfy any Parkland Dedication Obligation associated with the development of more than four thousand (4,000) residential units. If Developer does not develop more than four thousand (4,000) residential units, Developer's shall receive credits for the excess improvement value of a kiosk or pavilion, which shall be available for use consistent with Section 3(B).

- K. Each individual Park Improvement shall be deemed Completed and accepted by City upon recordation of the Notice of Acceptance by Director of PW as outlined in Exhibit E5 of this Agreement. Upon Developer's request, the PRNS Director, in consultation with the Director of PW, may, at the their discretion, grant extensions of one or more of the Completion requirements specified in this subsection.
- L. With respect to any Park Improvements which are owed but which have not been Completed as specified in Exhibit E3.1 to the Development Agreement, the credits for the incomplete improvements shall be disallowed and Developer and City shall proceed in accordance with Section 7.
- M. Subject to Section 3(O), the Project is eligible to receive credit for Private Recreation Improvements pursuant to the Parkland Dedication Ordinance. The description of the Private Recreation Improvements that may be included in the Project by Developer and that, if included, shall receive credit pursuant to Chapter 19.38 as set forth in City Council Resolution No. 73587 dated January 9, 2007. Developer may request Private Recreation

Improvements credit for qualifying Private Recreation Improvements in a residential building at the time of Conformance Review for that building by submitting for review by the PRNS Director documentation including, but not limited to: (i) a written summary of all qualifying on-site Private Recreation Improvements, (ii) a table itemizing all proposed Private Recreation Improvements by net square footage, (iii) the location, (iv) classification type (active classification or non-active elements classification), (v) dimensioned and labeled floor plans showing all private recreational amenities, and (vi) photo simulations or other illustrative examples of proposed recreational accessories. The PRNS Director will review the Private Recreation Improvements credit documentation and, if in conformance with the criteria in Resolution No. 73587, tentatively approve the recreation credit. Credits shall be finally approved upon Completion of the Private Recreation Improvements consistent with the Private Recreation Improvements credit documentation and this Agreement, but shall only be available for Developer's use pursuant to the provisions of Section 3(O) below. Developer shall complete the installation of the Private Recreation Improvements described in Resolution No. 73587 prior to the issuance of a Final Certificate of Occupancy for the residential building(s) in which the Private Recreation Improvements are located or to which the Private Recreation Improvements are tied.

With respect to any Private Recreation Improvements that have not been Completed prior to the issuance of a Final Certificate of Occupancy for the residential building of which the improvements are a part, the credits for the incomplete improvements shall be disallowed and Developer shall be required to pay Parkland Fees, if any such fee is owed, together with additional charges as set forth in the Parkland Dedication Ordinance.

- N. Developer acknowledges and agrees that Developer shall not receive any credit for eligible Private Recreation Improvements pursuant to the Parkland Dedication Ordinance unless (i) constructed in full compliance with this Agreement, or as otherwise creditable to the satisfaction of PRNS Director; and (ii) subject to a restrictive covenant as set forth below in Section 3(P).

- O. Credit for Private Recreation Improvements constructed in accordance with the requirements of this Agreement and the Exhibits hereto shall not be credited against the Parkland Dedication Obligation unless and until (i) at least two and four tenths (2.4) acres of City-Dedicated Open Space have been dedicated and Park Improvements associated with such acreage have been Completed and Accepted by the City, (ii) at least four (4) acres of Privately-Owned Publicly Accessible Open Space have been Completed and Delivered and a restrictive covenant(s) as described in Section 4.1.3 of the Development Agreement has (have) been recorded to maintain public access, and (iii) either (x) the Development Agreement has expired or terminated, or (y) Developer has satisfied its Parkland Dedication Obligation for the development of four thousand (4,000) residential units and thereafter constructs residential units in excess of those four thousand units. With respect to any Private Recreation Improvements that have not been Completed as specified in this Agreement, the credits for the incomplete improvements shall be disallowed.
- P. Prior to receipt of credit for any Private Recreation Improvements, Developer acknowledges and agrees that use of the Private Recreation Improvements shall be restricted for recreation purposes by a recorded covenant which runs with the land for the life of the subject residential building, and which expressly cannot be defeated or eliminated without the written consent of the City as described in the Parkland Dedication Ordinance. For clarity, Private Recreation Improvements for which Developer does not receive credit toward its Parkland Dedication Obligation are not subject to this, or any other requirements of this Agreement.
- Q. Developer acknowledges that pursuant to the covenants set forth in Section 3(P) above, the Developer or Owner shall henceforth be required to maintain all such Private Recreation Improvements in safe working order and provide access for regular inspections at the City's request. After any such inspection and pursuant to written request by the City, the Developer or Owner shall promptly provide for any remedial actions, replacement, and/or repair work as may be necessary to ensure that the improvements remain in safe working order for recreational use.

- R. In the event that the project contains Private Recreational Improvements designated in this Agreement or associated exhibits as 'publicly accessible,' the Developer or Owner agrees to maintain public access to these amenities for a minimum of 360 days per year. The Developer may however, post reasonable Rules and Regulations for respectful use and maintenance of Private Recreational Improvements and areas as well as conduct occasional extended closures, subject to approval by PRNS Director. This Section shall apply in addition to any Easements or Restrictions which may be in place providing for public access and/or appurtenant uses.
- S. In addition to the City-Dedicated Open Space and Park Improvements thereon, and other requirements and obligations set forth in this Agreement for the satisfaction of Developer's Parkland Obligation, as an additional Project Feature Developer agrees to voluntarily contribute to City the amount of four thousand eight hundred fifty dollars (\$4,850) per Limited Term Corporate Accommodation (a non-residential use defined in the Downtown West Planned Development Zoning District and General Development Plan) (the "Corporate Accommodations Parks Contribution"), which Contribution shall be paid upon issuance of a building permit for a Building containing a Limited-Term Corporate Accommodation(s). The Corporate Accommodations Parks Contribution shall be vested for the term of the Development Agreement. Pursuant to Section 5.6 of the Development Agreement, Developer shall not be subject to any new Impact Fee for Limited-Term Corporate Accommodations or similar use that City may adopt. Developer's voluntary Corporate Accommodations Parks Contribution would be spent by the City within a three-quarter (3/4)-mile straight line radius from the Project Site boundary for neighborhood serving elements, which include, but are not limited to, neighborhood parks, playgrounds, and open recreation areas and their operations; and within a three-mile straight line radius from the Project Site boundary for community serving elements, which include, but are not limited to community centers, sports fields, and community gardens. The intention of the funds is to support the City network of parks. No more than thirty percent (30%) shall be spent on any one park resource.

SECTION 4. COMPLIANCE WITH THE PARKLAND DEDICATION ORDINANCE AND SATISFACTION OF PARKLAND OBLIGATION.

- A. Subject to Section 2(A), the Parties acknowledge and agree that the calculation of the Developer's Parkland Dedication Obligation for development of four thousand (4,000) residential units is set forth in Exhibit E8, including the calculation of Parkland Fees. As reflected in Exhibit E8, the total Parkland Dedication Obligation, based on the number of type of units to be provided – such as mid-rise, high-rise, market-rate, and affordable – shall be blended across the Project, regardless of unit type, and administered uniformly based on the number of residential units produced, as shown in Table 2 in that Exhibit. The Park Improvements Value is set forth in Table 1 of Exhibit E1. Credits for Private Recreational Improvements, if any, are described in City Council Resolution No. 73587.
- B. The final acreage of each City-Dedicated Open Space shall be verified at the Conformance Review stage or the processing of a final map that includes the subject open space, whichever occurs first. If the size of a City-Dedicated Open Space is different from the acreage set forth in this Agreement and Exhibit E2 hereto, which may occur due to final roadway or parcel alignments, among other reasons, that acreage will be reflected and tracked in Exhibit E7. If the size of a City-Dedicated Open Space is increased or decreased, subject to Section 2(A), Developer shall adjust other City-Dedicated Open Spaces so that the total acreage of City-Dedicated Open Space provided for the development of 4,000 residential units is at least 4.8 acres. Such reallocation shall not require amendment to this Agreement or to the Development Agreement. At the termination or expiration of the Development Agreement, City and Developer shall verify the total City-Dedicated Open Space acreage provided by the Project and calculate any remaining Parkland Dedication Obligation that is owed. Any remaining Parkland Dedication Obligation shall be satisfied in accordance with Section 4(L).
- C. Except as otherwise provided herein and in the Development Agreement, provided that Developer is not in material default hereunder, and provided further that Developer satisfies all other terms, conditions, and requirements associated with issuance of a building

permit(s), City shall issue all building permits necessary for the residential units identified on the Tentative Map.

- D. City acknowledges and agrees that Developer's performance of this Agreement shall fully satisfy Developer's Parkland Dedication Obligation under the City's Parkland Dedication Ordinance for development of four thousand (4,000) residential units in the Plan Area. The Parties further acknowledge and agree that the Parkland Dedication Obligation set forth in Exhibit E8 for development of four thousand (4,000) residential units is based on and assumes the development of six hundred (600) of the 4,000 residential units as affordable housing units on the affordable housing sites H1, H5, and H6 that Developer will dedicate to the City. In the event the City and/or an affordable housing developer causes more than 600 affordable housing units to be developed on the affordable housing sites, any parkland dedication obligation applicable to such additional affordable housing units shall be the responsibility of, and attributed to the developer of those additional units; and Developer's Parkland Dedication Obligation shall not be decreased or increased or otherwise affected as a result of such additional affordable housing development on the affordable housing sites, nor shall such additional units be counted toward or otherwise affect any milestones or triggers set forth in this Agreement, including, but not limited to, the requirements contained in Section 4(H) and in Exhibit E8 hereto.
- E. Pursuant to the terms of the Development Agreement, the Parkland Fee in effect upon the Effective Date of the Development Agreement, which Fee is reflected in Exhibit E8, is vested for the term of the Development Agreement, subject to escalation based on the California Construction Cost Index. Upon such escalation of the Parkland Fee, the land value of any City-Dedicated Open Space dedicated thereafter, and the Park Improvements Value for any Park Improvements constructed thereafter shall escalate by a commensurate amount using the California Construction Cost Index. Further, the following underlying assumptions upon which the Parkland Dedication Obligation is based, and which are set forth in Exhibit A to Resolution Number 73587 and Section 1 of Exhibit A of Resolution No. 75346 as amended by Resolution _____ [**ADD FINAL RESOLUTION NUMBER**], shall be fixed and vested for the term of the Development Agreement: (i) mid-rise

residential units have an occupancy rate of two and thirty-four hundredths (2.34) persons per unit; (ii) high-rise residential units have an occupancy rate of one and fifty-one hundredths (1.51) persons per unit; (iii) the Parkland Fees charged for each deed restricted, low income residential unit shall be set at fifty percent (50%) of the otherwise applicable Parkland Fees for each such unit; and (iv) the Parkland Fees charged for each deed restricted, moderate income residential unit shall be set at fifty percent (50%) of the otherwise applicable Parkland Fees for each such unit].

- F. Regardless of any land acquisition or condemnation that may occur as a result of the actions described in Section 2(A) of this Agreement and which affects a portion(s) of the Plan Area anticipated for development of City-Dedicated Open Space, in no event shall Developer be permitted to satisfy more than fifty percent (50%) of its Parkland Dedication Obligation through the combination of (a) payment of Parkland Fees, and (b) Private Recreation Improvements credit. Further, City and Developer acknowledge and agree that, following dedication and acceptance by the City of a City-Dedicated Open Space, the amount of credits received by Developer for such land and any Park Improvements thereon shall be unaffected by any future actions by any DISC Partner Agency that may affect such land.
- G. Developer acknowledges that of the 4,000 housing units covered in this Agreement, approximately 2,900 units are proposed south of Santa Clara Street and approximately 1,100 units are proposed north of Santa Clara Street. While Developer is committed to providing Privately-Owned Publicly Accessible Open Space in addition to its commitments set forth in this Parkland Agreement, as described in Section 4.1.3(a) of the Development Agreement, the Privately-Owned Publicly Accessible Open Space is not counted toward satisfaction of Developer's Parkland Obligation. As a result, the Parkland Dedication Obligation for units developed south of Santa Clara Street above the 2,000th residential unit cannot be fully met through the proposed City-Dedicated Open Space located south of Santa Clara Street. The following provisions address how the Parkland Dedication Obligation may be met while addressing this imbalance.

- a. **At the end of the Term of this Agreement, if fewer than two thousand (2,000) residential units are constructed south of Santa Clara Street,** the Developer shall dedicate City-Dedicated Open Space and construct Park Improvements thereon sufficient to meet the minimum Parkland Dedication Obligation for the number of residential units constructed no later than thirty (30) years after the Effective Date of the Development Agreement, which Parkland Dedication Obligation for fewer than 2,000 residential units cannot be met by payment of Parkland Fees, use of credits for Private Recreation Improvements, or provision of Privately-Owned Publicly Accessible Open Space; provided, however, if satisfaction of this requirement would obligate Developer to dedicate and/or Complete only a portion of a proposed City-Dedicated Open Space, City and Developer shall cooperate in Good Faith to (i) redesign proposed Park Improvements to Los Gatos Creek Connector 1 and/or Los Gatos Creek Connector 2 so that the land value plus the Park Improvements Value does not exceed, and is equivalent to the remaining Parkland Dedication Obligation, in which case the applicable Park Improvements Value reflected in Table 1 of Exhibit E1 would not apply and certain requirements of the DWDSG may need to be waived as permitted by the DWDSG and/or the General Development Plan; (ii) increase the size of a City-Dedicated Open Space(s), or add a City-Dedicated Open Space adjacent to a residential building, in an amount equal to the remaining Parkland Dedication Obligation; (iii) dedicate and improve a portion of a Privately-Owned Publicly Accessible Open Space that is equivalent to the remaining Parkland Dedication Obligation, converting that portion to a City-Dedicated Open Space; and/or (iv) pay Parkland Fees to satisfy the remaining obligation. The obligations under this Section 4(G)(a) apply even if the buildings that would otherwise trigger the Parkland Dedication Obligation as set forth in Exhibits E3.1 and E3.2 have not been constructed during the 30-year period after the Effective Date of the Development Agreement.

- b. **At the end of the Term of this Agreement, if two thousand (2,000) or more residential units are constructed south of Santa Clara Street and Developer does not develop North of Santa Clara Street,** then Developer shall dedicate at least two and four tenths (2.4) acres of City-Dedicated Open Space South of Santa Clara Street and construct Park Improvements thereon to satisfy the Parkland Dedication Obligations for 2,000 residential units, and may improve and dedicate additional parkland, pay Parkland Fees, apply accrued credits for Private Recreation Improvements, or any combination thereof, in order to satisfy the remaining Parkland Dedication Obligation for the residential units constructed in excess of 2,000. The obligations under this Section 4(G)(b) cannot be met by the provision of Privately-Owned Publicly Accessible Open Space. The obligations under this Section 4(G)(b) apply even if 2.4 acres of City-Dedicated Open Space has not otherwise been triggered as set forth in Exhibits E3.1 and E3.2 because construction on the development parcels that correspond to the City-Dedicated Open Space has not occurred during the 30-year period after the Effective Date of the Development Agreement.
- c. **At the end of the Term of this Agreement, if more than 2,000 residential units are constructed south of Santa Clara Street and Developer develops any additional buildings North of Santa Clara Street,** then Developer shall have dedicated the City-Dedicated Open Spaces and constructed Park Improvements thereon in accordance with this Agreement, including the delivery and Completion triggers set forth in Exhibits E3.1 and E3.2, subject to Section 2(A), which delivery triggers ensure that 2.4 acres of City-Dedicated Open Space is provided for the development of 2,000 residential units. Any outstanding Parkland Obligation shall be satisfied in accordance with Section 4(L).
- d. In no event shall the use of Private Recreation Improvements credit be used prior to Developer's Completion of 2.4 acres of City-Dedicated Open Space and construction of Park Improvements thereon, nor shall any combination of Parkland Fees and Private Recreation Improvements credit be applied to satisfy more than

fifty percent (50%) of the Project's Parkland Dedication Obligation, consistent with Section 4(F).

The obligations of this Section 4(G) shall survive the termination or expiration of this Agreement and/or the Development Agreement.

- H. Upon Developer's dedication of three parcels of real property, currently identified as Properties H1, H5 and H6 (the "City-Dedicated Affordable Housing Sites") to the City (or its designee) for use in the production of affordable housing, the combined six hundred (600) affordable housing units that are assumed for these Sites, as reflected in Exhibit E8, shall be counted toward the 1,250 residential units that would trigger the Design Outside Date referenced in Section 5(B) and set forth in Section 5(C) for the Social Heart open space, and toward the 1,500 residential units and 3,250 residential units, respectively, that would trigger the dedication and Completion for the Social Heart open space and the St. John Triangle open space, which triggers are set forth in Exhibits E3.1 and E3.2. For clarity, upon dedication of each of the three City-Dedicated Affordable Housing Sites, it shall be assumed, for the limited purpose of triggering the Design Outside Date, dedication, and Completion of the Social Heart, and the dedication and Completion of St. John Triangle, that the residential units assumed for that Site have received Temporary Certificates of Occupancy. Therefore, upon dedication of all three of the City-Dedicated Affordable Housing Sites and issuance of Temporary Certificates of Occupancy for the balance of the residential units indicated in Exhibit E3.1 -- whether issuance of Temporary Certificates of Occupancy for such residential units occurs before or after dedication of the City-Dedicated Affordable Housing Sites, and no matter where such units are located within the Project Site -- the Design Outside Date, and the dedication and Completion requirements for the Social Heart, respectively, shall be triggered and the Social Heart shall be delivered within twenty-four (24) months of issuance of a Temporary Certificate of Occupancy for the 1,500th residential unit, unless earlier triggered by the issuance of a Temporary Certificate of Occupancy for development on Block D4; and the dedication and Completion of St. John Triangle shall be triggered and St. John Triangle shall be delivered within 12 months of issuance of a Temporary Certificate of Occupancy for the 3,250th

residential unit, unless earlier triggered by issuance of a Temporary Certificate of Occupancy for a Building on Block C2.

- I. Notwithstanding the Completion timing requirements set forth in Section 4(H), in Exhibits E3.1 and E3.2, or elsewhere in Development Agreement and other Exhibits thereto, if the Completion requirement for the Social Heart is triggered by issuance of a Temporary Certificate of Occupancy for the 1,500th residential unit developed in the Project (rather than for issuance of a Temporary Certificate of Occupancy for a Building on Block D4), the Completion date for the Social Heart (inclusive of the subterranean garage) shall be extended to provide Developer twenty-four (24) months to Complete the Social Heart from the date on which the VTA's BART Silicon Valley Phase II Extension Project (located adjacent to the south side of West Santa Clara Street, between Autumn Street and the San José Diridon Caltrain Station) ("BART Project") is completed, if due to active or reasonably imminent construction staging or other construction-related activity on or in the vicinity of the Social Heart, the BART Project prevents, delays, or otherwise interferes with Developer's timely construction and Completion of the Social Heart and/or the subterranean garage.
- J. In addition to adhering to the schedule set forth in Exhibits E3.1 and E3.2 and the other timing requirements of this Agreement, and the Development Agreement, through Completion and delivery of a combination of (i) City-Dedicated Open Space and (ii) Privately-Owned Publicly Accessible that is subject to recorded restrictive covenant(s) as described in Section 4.1.3 of the Development Agreement and reflected in Exhibit E7 (the "Covenant Privately-Owned Publicly Accessible Open Space"), Developer shall ensure that a cumulative minimum of fifty-two (52) square feet of Completed open space is provided for each residential unit that is constructed. Continued compliance shall be demonstrated and confirmed through the accounting process required as part of the Conformance Review for vertical development. Final acreage of the open spaces shall be verified in the manner set forth in Section 4(B). City shall deny Conformance Review for a subsequent residential building that would cause the cumulative minimum square feet of open space for each residential unit to fall below 52 square feet. Further, pursuant to

Section 4.1.3(a)(iii) of the Development Agreement, in the event Developer fails to Complete any Covenant Privately-Owned Publicly Accessible Open Space in accordance with the completion schedule set forth in Section 4.1.3(a)(i) therein, Developer shall be required to pay the Private Open Space Delay Penalty Fee. For clarity, it is understood that Privately-Owned Publicly Accessible Open Space, including Covenant Privately-Owned Publicly Accessible Open Space cannot be used to satisfy Developer's Parkland Dedication Obligation.

- K. Certain exceptions from the Parkland Dedication Ordinance (San José Municipal Code Chapter 19.38) are necessary in order to provide the City-Dedicated Open Spaces in the manner set forth in the Development Agreement and this Agreement. The exceptions from certain provisions of the Parkland Dedication Ordinance are listed in Exhibit E9. The City has agreed to grant the waivers or exceptions listed in Exhibit E9. With respect to items (i) and (ii) listed in Paragraph 2 of Exhibit E9, the City has further agreed that such exceptions shall not impact the amount of credit that Developer is eligible to receive for land and Park Improvements impacted by those exceptions, except that credit shall not be granted for above-grade existing and/or proposed building footprints, vehicular access ways and aprons, elevators and associated lobbies, and similar non-open, non-park or non-recreational features located within any City-Dedicated Open Space; and for item (iii) in Paragraph 2, the exception shall not impact the amount of the credit that Developer is eligible to receive for the Park Improvements, and the City agrees that it shall provide seventy-five percent (75%) credit for the land value of the Social Heart park. For clarity, credits shall be available for land underlying park-related and recreational structures, which structures may include but are not limited to kiosks/pavilions or similar structures permitted by the DWDSG, park maintenance facilities, or restrooms.
- L. Subject to Section 4(G), upon the termination or expiration of the Development Agreement, any outstanding Parkland Dedication Obligation that has accrued based on the number of residential units constructed as of such termination or expiration shall first be satisfied through any then-available credits from dedicated acreage and/or costs of Park Improvements for the City-Dedicated Open Space in accordance with Exhibit E8 and this

Agreement. Thereafter, subject to Sections 3(O), 4(F), and 4(J), any remaining Parkland Dedication Obligation for the number of residential units constructed shall be satisfied with Private Recreation Improvements credits, if any, followed by payment of Parkland Fees. This Section 4(L) shall survive the termination or expiration of the Development Agreement.

- M. Subject to the mutual understandings and acknowledgments set forth in Section 4(D) and the other requirements and limitations set forth in this Agreement, in the event Developer intends to develop more than four thousand (4,000) residential units (meaning Developer develops more than 3,400 residential units, subtracting from the 4,000 total units the 600 residential units assumed to be developed on the City-Dedicated Affordable Sites), Developer agrees to immediately notify the PRNS Director. Any additional Parkland Dedication Obligation that may be required shall first be satisfied by excess credit from dedicated acreage and/or costs of Park Improvements for the City-Dedicated Open Space, if any. Any remaining obligation shall then be satisfied by Private Recreation Improvements credits authorized for the first 4,000 units, if any, followed by payment of Parkland Fees.
- N. Because of the benefit to the Development that will result from the Park Improvements and land dedication, Developer agrees to design, develop, and construct the Park Improvements on the City-Dedicated Open Space and to dedicate the City-Dedicated Open Space as specified in this Agreement and the exhibits and attachments hereto, and as provided in the Downtown West Design Standards and Guidelines, without any obligation on the part of City with respect to design, development, or construction except as otherwise provided in this Agreement.

SECTION 5. REVIEW OF CITY-DEDICATED OPEN SPACE DESIGN; OPEN SPACE IMPROVEMENT CONFORMANCE REVIEW

- A. Prior to initiating design of any City-Dedicated Open Space, Developer shall meet with PRNS Staff, after which PRNS Staff will support community outreach and engagement for the park design and naming. Developer agrees to hold two community meetings prior to

submittal of an application for Open Space Improvement Conformance Review pursuant to the provisions of the Downtown West Planned Development Zoning and General Development Plan. Developer shall consider the input and comments received from the public during the community meetings when finalizing its application for Open Space Conformance Review. Following submittal of Developer's Open Space Conformance Review application, which application shall contain the thirty-five percent (35%) Park Improvements Plans described in Section 5(C), below, the Parks and Recreation Commission shall review the application and 35% Park Improvements Plans at a public hearing, and shall thereafter make a recommendation to the Director of PBCE regarding approval or disapproval of the Open Space Conformance Review. If consistent with all applicable design standards, taking into account input from the public and the Parks and Recreation Commission, the Director of PBCE, in consultation with the Director of PRNS, shall approve the Open Space Conformance Review and 35% Park Improvements Plans contained therein. Technical review of the City-Dedicated Open Space design shall occur in accordance with the provisions of Exhibit E5.

- B. In accordance with the Design Outside Date Schedule set forth below, as part of its Open Space Improvement Conformance Review application for the Park Improvements, in addition to paying Review Fees in accordance with Section 3(I), Developer shall submit Park Improvements Plans (defined in Exhibit E5) at thirty-five percent (35%) consistent with the Design Submittal Requirements set forth in the City's Turnkey Project Process and Submittal Requirements, dated November 5, 2019, and the Conformance Review Implementation Guide for the Project. Following Conformance Review Approval as described in Section 5(A), Developer shall submit Park Improvements Plans at sixty-five percent (65%) and ninety-five percent (95%), consistent with the Design Submittal Requirements set forth in the City's Turnkey Project Process and Submittal Requirements, dated November 5, 2019, and the Conformance Review Implementation Guide for the Project, which 65% and 95% Plans and technical specifications shall be reviewed by the Director of PW. The 95% Park Improvements Plans for City-Dedicated Open Space shall

be reviewed, approved, and signed by the Director of PW, and approval from the Director of PW and issuance of a Notice to Proceed shall authorize construction.

C. The Design Outside Date Schedule referenced in Section 5(B) sets forth the dates by which the Conformance Review application and 35% Park Improvements Plans for each City-Dedicated Open Space shall be submitted in the manner described in the General Development Plan for the Downtown West Planned Development Zoning District. The Design Outside Date Schedule shall be as follows:

- a. Los Gatos Creek Trail (Blocks E): within six (6) months of Conformance Determination approval for Block E1;
- b. Los Gatos Creek Trail (Block G): within six (6) months of Conformance Determination approval for block G1;
- c. Los Gatos Creek Park: within six (6) months of Conformance Determination approval for block G1;
- d. Los Gatos Creek Trail Connector 1: within six (6) months of Conformance Determination approval for 1st residential building of H3;
- e. Social Heart: within six (6) months of the earlier of Temporary Certificate of Occupancy for the twelve hundred fiftieth (1,250th) unit or Conformance Determination approval for Block D4;
- f. Northend Park: within six (6) months of Conformance Determination Approval for the first building on Block A1;
- g. Los Gatos Creek Connector 2: within six (6) months of Conformance Determination approval for the first (1st) residential building of Block H6;
- h. St. John Triangle: within six (6) months of Conformance Determination approval for the first (1st) building of Block C1 or C2.

SECTION 6. BONDS AND SECURITY.

Developer shall furnish to City the following security separately for each City-Dedicated Open Space, for the purposes, in the amounts, and under the conditions that follow:

A. Type and Amounts.

1. Performance Security. To assure the Developer's faithful performance to the City of this Agreement to Complete the Park Improvements in an amount equal to one hundred percent (100%) of the direct costs reflected in Table 2 of Exhibit E1 for the Park Improvements for the City-Dedicated Open Space(s) included in the final map (hereinafter "Performance Security"), which shall be furnished by Developer to the City prior to approval of the final map and shall be subject to adjustment pursuant to Section 6(B)(2); and
2. Payment Security. To secure Developer's payment to any contractor, subcontractor, person renting or supplying equipment, or furnishing labor and materials for completion of the Park Improvements included in the final map, in the additional amount of one hundred percent (100%) of the direct cost reflected in Table 2 of Exhibit E1 for the subject Park Improvements for the subject City-Dedicated Open Space (hereinafter "Payment Security"), which shall be furnished by Developer to the City prior approval of the final map; and
3. Warranty Security. To warranty the Developer's work to the City with respect to Park Improvements included in the final map, for a period of one (1) year following recordation of the Notice of Acceptance against any defective work or labor done or defective materials furnished in the additional amount of twenty-five percent (25%) of the direct costs reflected in Table 2 of Exhibit E1 for the Park Improvements for the subject City-Dedicated Open Space (hereinafter "Warranty Security"). The Warranty Security shall be furnished by Developer to the City prior to issuance of the Notice of Acceptance.

4. Landscaping Security. To secure Developer's installation and maintenance of landscaping as may be required by the landscaping specifications in the Park Improvement Plans, at such time as any drought restrictions on landscaping installation have been rescinded (hereinafter "Landscaping Security"). The Parties acknowledge that any City restrictions on the installation of landscaping because of drought conditions may delay Developer's installation of the landscaping contemplated by this Agreement. If, due to drought restrictions, Developer is unable to install the landscaping in time to be inspected by the Director of PW for the purposes of accepting the Completed Park Improvements, Developer shall post a bond or other form of security acceptable to the Director of PW.
5. Park Art and Optional Structures Security. To allow for City to install or construct any remaining Park Art and Optional Structures following Completion of a City-Dedicated Open Space, Developer shall post a bond or other form of security acceptable to the Director of PW, and in an amount equal to the cost of the remaining Park Art and Optional Structures. The Park Art and Optional Structures Security shall be furnished by Developer to the City prior to the final Notice of Acceptance for a Park Improvement within the subject City-Dedicated Open Space.

B. Conditions.

1. Developer shall provide the required security on forms approved by City and from sureties authorized by the California Insurance Commissioner to transact the business of insurance. Any bonds furnished by Developer to satisfy the security requirements in this Section 6 shall be in the forms attached hereto as Exhibit E10, as may be amended by City from time to time.
2. A condition of the Developer's security is that any changes in the Park Improvements cost as reflected in the construction contract that do not exceed ten percent (10%) of the original estimated hard cost of the Park Improvements as reflected in Table 2 of Exhibit E1 shall not relieve the security. In the event that the construction contract indicates that the Park Improvements cost is more than ten

percent (10%) over the original estimated cost of the Park Improvements, Developer shall provide security as required by Section 6(A) of this Agreement for One Hundred Percent (100%) of the total estimated cost of the Park Improvements as reflected in the construction contract.

3. Developer's Performance Security pursuant to Section 6(A)(1) shall compensate City for the actual cost of Completing the required Park Improvements in the Event of Default, as defined in Section 7 below, by Developer in the performance of this Agreement, regardless of whether City's cost of Completion exceeds the Park Improvements Value of the Park Improvements.
4. A condition of Developer's security is that any request by Developer for an extension of time for the commencement or Completion of the work under this Agreement may be granted by City without notice to Developer's surety and such extensions shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement.
5. As a condition of granting any extension for the commencement or Completion of any work under this Agreement, Director of PW may require Developer to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by Director of PW.
6. If Developer seeks to replace any security with another security or securities, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by Developer to Director of PW; and (3) upon its written acceptance by Director of PW, be deemed to be a part of this Agreement. Upon Director of PW's acceptance of a replacement security, the former security may be released by City.
7. Upon a Transfer that includes the Transfer of Developer's obligations with respect to a City-Dedicated Open Space that has not yet been Completed, (i) Transferee

shall provide security in accordance with the requirements of this Agreement, or (ii) if Developer has previously provided security in accordance with this Agreement for the subject City-Dedicated Open Space, Transferee shall promptly provide new security, which security shall replace the security provided by Developer for the subject City-Dedicated Open Space. If Transferee provides security as required by (ii), above, upon Director of PW's acceptance of the new security from Transferee, the former security provided by Developer/Transferor shall be released by the City.

C. Release of Securities. City shall release the securities required by this Agreement as follows:

1. Performance Security. City shall release each Performance Security for a Park Improvement upon recordation of the Notice of Acceptance for that Park Improvement, or any portion thereof, or as may otherwise be authorized in accordance with California Government Code Sections 66499.7(a)–(g).
2. Payment Security. City shall release the Payment Security for a Park Improvement included in a final map in accordance with California Government Code Section 66499.7(h).
3. Warranty Security. City shall release the Warranty Security for a Park Improvement upon expiration of the warranty period for that Park Improvement and settlement of any claims filed during the warranty period. City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees, for any claims filed during the warranty period.
4. Landscaping Security. To secure Developer's installation and maintenance of landscaping as may be required by the Project Specifications, at such time when the drought restrictions have been rescinded as further described in Section F(3) of Exhibit E5.

5. Park Art and Optional Structures Security. City shall release the Park Art and Optional Structures Security upon its completed installation or construction of the remaining Park Art and Optional Structures.

D. Injury to Park Improvements, Public Property, or Public Utility Facilities. Until recordation of the Notice of Acceptance of the Park Improvements as provided in Exhibit E5, Developer assumes responsibility for the care and maintenance of, and any damage to, the Park Improvements. Developer shall replace or repair all Park Improvements, public utility facilities, and surveying or subdivision monuments and benchmarks that are destroyed or damaged for any reason, regardless of whether resulting from the acts of the Developer, prior to the recordation of the Notice of Acceptance; provided, however, that if Developer identifies a responsible third party for such damage, Developer may pursue recovery of its repair costs and expenses from such responsible third party at its sole cost and expense. Developer shall bear the entire cost of such replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval of the Director of PW.

Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss, or damage, regardless of cause, occurring to the work or Park Improvements prior to recordation of the Notice of Acceptance of the work or improvements.

SECTION 7. DEFAULT.

A. Developer shall be in default hereunder upon the occurrence of any one or more of the following events (“Event of Default”):

1. Developer’s failure to timely Complete construction of one of more Park Improvements under this Agreement;
2. Developer’s failure to timely cure any defect in any Park Improvement;
3. Developer’s failure to perform construction work for a period of twenty (20) business days after commencement of work;

4. Developer's insolvency, appointment of receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Developer fails to discharge within sixty (60) days;
 5. Developer assigns this Agreement in violation of Section 10; or
 6. Developer fails to perform or satisfy any other term, condition, or obligation under this Agreement.
- B. If an Event of Default occurs and the Event of Default is not cured by Developer in accordance with Section 7(E) below, City in its sole discretion shall be entitled to terminate Developer's control over the Park Improvements described herein and hold Developer and its surety liable for all damages suffered by City as a result of the Event of Default. City shall have the right, at its sole discretion, to draw upon or use the appropriate security to mitigate City's damages in the Event of Default by Developer. City may use the sums provided by the Performance Security in addition to any other remedies available at law or in equity to City for the Completion of the Park Improvements in accordance with the Park Improvements Plans. The Parties acknowledge and agree that the estimated costs and security amounts may not reflect the actual cost of construction of any specific Park Improvement for which the security is provided, and therefore, City's damages in the Event of Default by Developer shall be measured by the actual cost of Completing the required Park Improvements to the satisfaction of City. City may use the sums provided by the securities for the Completion of the Park Improvements for which the security is provided in accordance with the Project Specifications.
- C. City may take over the work and Complete the Park Improvements for which the security is provided, by contract or by any other method City deems appropriate, at the sole cost and expense of Developer. In such event, City, without any liability for any work or actions previously performed by Developer with respect to the subject Park Improvements, may Complete the Park Improvements using any of Developer's materials, appliances, plans, or other property located at the Park Site and that are necessary to Complete the Park

Improvements. The rights and remedies set forth in this Section 7 shall affect and concern only the specific Park Improvement(s) that are the subject of the specific Event of Default.

- D. Unless the PRNS Director determines that the circumstances warrant immediate enforcement of the provisions of this Section 7 in order to preserve the public health, safety, and welfare, the PRNS Director shall give twenty (20) working days' prior written notice of termination to Developer ("Notice Period"), which notice shall state in reasonable detail the nature of Developer's default and the manner in which Developer can cure the default. During the Notice Period, Developer shall have the right to cure any such default; provided, however, if a default is of a nature which cannot reasonably be cured within the Notice Period, Developer shall be deemed to have timely cured such default for purposes of this Section if Developer commences to cure the default within the Notice Period, and prosecutes the same to completion within a reasonable time thereafter.
- E. If an Event of Default occurs and the Event of Default is not cured by Developer in accordance with Section 7(D) above, City in its sole discretion shall be entitled to terminate Developer's control over the specific Park Improvement(s) that is the subject of the Event of Default and hold Developer and its surety liable for all damages suffered by City as a result of the Event of Default. City shall have the right, at its sole discretion, to draw upon or use the appropriate security to mitigate City's damages in the Event of Default by Developer. City may use the sums provided by the Performance Security for the Completion of the Park Improvements in accordance with the Park Improvements Plans.

Following an Event of Default and Developer's failure to cure, City may take over the work and Complete the Park Improvements, by contract or by any other method City deems appropriate. In such event, City may Complete the Park Improvements using any of Developer's materials and/or plans that are necessary to Complete the Park Improvements.

- F. If an Event of Default occurs, Developer agrees to pay any and all costs and expenses incurred by City in securing performance of such terms, conditions, or obligations giving rise to the Event of Default, including but not limited to, fees and charges of architects,

engineers, contractors, and other professionals but specifically excluding legal costs and expenses including attorneys' fees and court costs.

- G. City's rights and remedies specified in this Section 7 shall be deemed cumulative and in addition to any rights or remedies City may have at law or in equity, including but not limited to withholding the approval of Conformance Review for a subsequent residential building.

SECTION 8. INDEMNITY/HOLD HARMLESS.

City, or any officer, employee, or agent thereof shall not be liable for any loss or injury to persons or property occasioned by reason of the acts or omissions of Developer, its agents, employees, contractors, or subcontractors in the performance of this Agreement. Developer further acknowledges and agrees to protect, indemnify, defend and hold City, its officers, agents and employees harmless from and against any and all liability, loss, cost and obligations on account of or arising out of or resulting from any injury or loss caused directly or indirectly by any cause whatsoever in connection with or incidental to the activities performed by Developer under this Agreement, except to the extent such injury or harm is caused by the sole active negligence or willful misconduct of City, its officers, agents, or employees. This Section 8 shall survive the recordation of the Notice of Acceptance, acceptance of any Park Improvement as to that Park Improvement, or sooner termination of this Agreement for a period of one (1) year from the date of such acceptance or termination. Recordation of the Notice of Acceptance by City of any Park Improvement shall not constitute an assumption by City of any responsibility or liability for any loss or damages covered by this Section 8.

Developer shall reimburse City for all reasonable costs and expenses, including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs, incurred by City in enforcing this Section 8.

SECTION 9. NOTICES.

Any notice required or permitted to be given under this Agreement shall be in writing and personally served or sent by U.S. mail, postage prepaid, addressed as follows:

To PRNS Director: City of San José
Department of Parks, Recreation and Neighborhood Services
Attn: PRNS Parks Planning Division Manager
200 East Santa Clara Street, Tower-9th Floor
San José, CA 95113

To Director of PW: City of San José
Department of Public Works
Attn: City Facilities Architectural Services Deputy Director
200 East Santa Clara Street, Tower-6th Floor
San José, CA 95113

To Developer: Google LLC
1600 Amphitheatre Parkway
Mountain View, Ca 94043
Attn: REWS Department / Downtown West SJ Project
Executive

with a copy to:

Google LLC
1600 Amphitheatre Parkway
Mountain View, Ca 94043
Attn: Legal Department / R/E Matters

Attn: Gregg Miller
Coblentz Patch Duffy & Bass LLP
One Montgomery Street, Suite 3000
San Francisco, CA 94104

Notice shall be deemed given upon receipt. The Parties shall notify each other of changes in either their respective addresses or their representatives subject to notification in accordance with the provisions of this Section.

SECTION 10. TRANSFER AND RELEASE.

This Agreement may not be assigned or transferred in part or in whole by Developer except as allowed by the Development Agreement. Any attempts to assign or transfer any terms, conditions, or obligations under this Agreement without compliance with the requirements set forth in the Development Agreement shall be voidable at City's sole discretion.

SECTION 11. BINDING UPON SUCCESSORS.

Subject to Section 10, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors, assignees, transferees, and legal representatives.

SECTION 12. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with California law.

SECTION 13. ENTIRE AGREEMENT.

The Development Agreement and this Agreement, including the exhibits, attachments and appendices, contain the entire agreement of the Parties with respect to the satisfaction of the requirements of the Parkland Dedication Ordinance for the Project and supersedes all prior understandings or representations of the Parties, whether written or oral. Any subsequent modification of this Agreement must be made in writing and signed by all Parties hereto.

SECTION 14. TIME OF ESSENCE.

Time is of the essence in the performance of this Agreement.

SECTION 15. FORCE MAJEURE.

- A. "Force Majeure" has the meaning as set forth in the Development Agreement.
- B. Should a Force Majeure Event prevent performance of this Agreement, in whole or in part, the Party affected by the Force Majeure Event shall be excused or performance under this Agreement shall be suspended to the extent commensurate with the Force Majeure Event; provided that the Party availing itself of this Section promptly notifies the other Party after learning of the occurrence of a Force Majeure Event that actually causes delay; and

provided further that the time of suspension or excuse shall not extend beyond that reasonably necessitated by the Force Majeure Event.

C. Notwithstanding the foregoing, the following shall not excuse or suspend performance under this Agreement:

1. Performance under this Agreement shall not be suspended or excused for a Force Majeure Event pertaining to the Work if such event is not defined as a Force Majeure Event under the applicable contract for the Work.
2. Negligence or failure of Developer to perform its obligations under a contract for the Work (other than for a Force Majeure Event as defined under the applicable contract) shall not constitute a Force Majeure Event.
3. The inability of Developer for any reason to have access to funds necessary to carry out its obligations under this Agreement or the termination of any contract for the prosecution of the Work for such reason or for Developer's default under such contract shall not constitute a Force Majeure Event.

SECTION 16. BOOKS AND RECORDS.

A. Developer shall be solely responsible to implement internal controls and record keeping procedures in order to comply with this Agreement and all applicable laws. Developer shall maintain any and all ledgers, books of account, invoices, vouchers, bids, cancelled checks, and other records or documents evidencing or relating to the activities performed by Developer under this Agreement, including without limitation those relating to the construction of the Park Improvements, for a minimum period of three (3) years, or for any longer period required by law, from the date of termination of this Agreement or the date of the City's acceptance of the Park Improvements, whichever is longer. Notwithstanding this previous sentence, Developer shall retain such records beyond three (3) years so long as any litigation, audit, dispute, or claim is pending.

- B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Developer's address indicated for receipt of notices in this Agreement.
- C. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Developer's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized in writing by Developer, Developer's representatives, or Developer's successor-in-interest.
- D. Developer's obligations under this Section shall be in addition to Developer's obligations specified in Exhibit E5.

SECTION 17. MISCELLANEOUS PROVISIONS.

- A. Captions. Captions and Sections of this Agreement are for convenience only and shall not be considered in resolving any questions of interpretation or construction.
- B. Incorporation of Recitals. The Recitals in this Agreement are hereby incorporated into the terms of this Agreement.
- C. Jurisdiction. In the event that suit shall be brought by any of the Parties, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.
- D. Waiver. Developer agrees that waiver by City of any breach or violation or any term, condition, or obligation of this Agreement shall not be deemed to be a waiver of any other

term, condition, or obligation contained herein or a waiver of any subsequent breach or violation of the same term, condition, or obligation.

- E. Plurality. As used in this Agreement and when required by the context, each number (singular and plural) shall include all numbers.
- F. Compliance with Laws. Developer, its employees, agents, representatives, contractors, and subcontractors shall comply with all local, state and federal laws in the performance of this Agreement.
- G. Nondiscrimination. Developer, its employees, agents, representatives, contractors, and subcontractors shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or any other recognized or protected class in connection with or related to the performance of this Agreement. Developer shall expressly require compliance with the provisions of this Section 1(G) in all agreements with contractors and subcontractors for the performance of the improvements hereunder.
- H. Developer has read each and every part of this Agreement, including without limitation, its exhibits, and Developer freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such Party may have drafted this Agreement or any of its provisions.
- I. Whenever in this Agreement words of obligation or duty are used, such words shall have the force and effect of covenants. Any obligation imposed by either Party shall include the imposition on such Party of the obligation to pay all costs and expenses necessary to perform such obligation, except as otherwise provided herein.
- J. Severability. If any provisions or portions of this Agreement are held to be invalid by a court of competent jurisdiction, the remaining provisions or portions of this Agreement

shall remain in full force and effect unless amended or modified by mutual written consent of the Parties.

- K. This Agreement is entered into pursuant to and shall be governed by the Parkland Dedication Ordinance and the Development Agreement. If not otherwise defined in this Agreement or in the Development Agreement, capitalized terms shall have the meanings set forth in Chapter 19.38 of the San José Municipal Code.

SECTION 18. AGREEMENT'S EXHIBITS.

This Agreement includes the following Exhibits:

- E1 Park Improvements Value and Costs
- E2 Public and Private Open Space Approximate Acreage
- E3 Delivery of City-Dedicated Open Space
 - E3.1 City-Dedicated Open Space Dedication and Improvements Schedule
 - E3.2 Park Dedication/Delivery Triggers Figure
- E4 Dedication Form
- E5 Design and Construction Requirements
- E6 Diagram of Construction Right of Entry Area
- E7 Park Dedication Tracking and Verification Table
- E8 Parkland Dedication Obligation
- E9 List of Required Exceptions from Parkland Dedication Ordinance
- E10 Bond Forms

WITNESS THE EXECUTION HEREOF the day and year hereinafter written by City.

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By: _____

City Clerk

Date: _____

Johnny V. Phan
Chief Deputy City Attorney

DEVELOPER

GOOGLE LLC, a Delaware limited liability
company

By: _____

Name: _____

Title: _____

- * All Developer's signatures must be accompanied by an attached notary acknowledgement.
- * Proof of authorization for Developer's signatures is required to be submitted concurrently with this Agreement.

[illegible]

On _____ before me _____,
(Name, Title of officer – e.g. Jane Doe, Notary Public)

personally appeared _____ 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.

(Signature of Notary) (Seal)

Exhibit E1

Park Improvements Value and Costs

Table 1 - Estimated Credits, Park Improvements Value, and Unit Equivalency¹

Parks and Open Space	Acreage Credit	Units Equivalent	Improvement Costs	Units Equivalent	Total Credits	Total Units Equivalent
LGC Connector ²	\$2,936,320	210	\$5,647,039	405	\$8,583,359	615
LGC Park on G	\$1,189,476	85	\$3,669,093	263	\$4,858,569	348
Social Heart	\$1,387,223	99	\$7,221,778	517	\$8,609,000	617
St. John Triangle	\$4,943,422	354	\$14,544,521	1,042	\$19,487,943	1,396
Northend Park	\$2,856,030	205	\$5,225,147	374	\$8,081,177	579
Subtotal Parks OS	\$13,312,471	954	\$36,307,578	2,601	\$49,620,048	3,555
Los Gatos Creek Trail (E)	\$821,178	59	\$1,781,907	128	\$2,603,085	187
Los Gatos Creek Trail (G)	\$890,886	64	\$2,713,981	194	\$3,604,867	258
Subtotal Trails OS	\$1,712,064	123	\$4,495,888	322	\$6,207,952	445
Total OS	\$15,024,535	1,076	\$40,803,466	2,924	\$55,828,000	4,000

¹ The cost of the Park Improvements (the “Park Improvements Value”) reflected in Table 1 includes, but is not limited to, the City’s Review Fees, direct costs, soft costs, and contingency reflected in Table 2 of this Exhibit E1.

² As set forth in Exhibit E3.1, Los Gatos Creek Connector is anticipated to be improved in two parts -- Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2, which each have different Completion triggers. Upon Completion of Park Improvements in accordance with Exhibit E3.1, each of these spaces shall result in a proportional share of the aggregated Improvement Value credits.

Table 2 - Detailed Cost Estimates

City-Dedicated Open Spaces	Baseline Direct	Soft Cost (18%)	Project Contingency (25%)	City Review Fee (17.5%)	Baseline Construction Budget	Cost/Acre	Cost/SF
Los Gatos Creek Connector	\$3,422,448	\$616,041	\$1,009,622	\$598,928	\$5,647,039	\$6,205,475	\$142
Supply & Installation of Hard Landscaping	\$492,034	\$88,566	\$145,150	\$86,106	\$811,856		
Supply & Installation of Semi Permeable	\$730,136	\$131,425	\$215,390	\$127,774	\$1,204,725		
Supply & Installation of Softscape including Trees & Plant	\$1,104,154	\$198,748	\$325,726	\$193,227	\$1,821,855		
Supply & Installation of FF&E	\$1,096,123	\$197,302	\$323,356	\$191,822	\$1,808,603		
Los Gatos Creek Park on G	\$2,223,693	\$400,265	\$655,989	\$389,146	\$3,669,093	\$9,916,591	\$228
Supply & Installation of Hard Landscaping	\$265,481	\$47,787	\$78,317	\$46,459	\$438,044		
Supply & Installation of Semi Permeable	\$123,376	\$22,208	\$36,396	\$21,591	\$203,571		
Supply & Installation of Softscape including Trees & Plant	\$810,600	\$145,908	\$239,127	\$141,855	\$1,337,489		
Supply & Installation of FF&E	\$1,024,236	\$184,362	\$302,150	\$179,241	\$1,689,989		
Social Heart	\$4,376,832	\$787,830	\$1,291,165	\$765,946	\$7,221,773	\$12,669,879	\$291
Supply & Installation of Hard Landscaping	\$1,261,386	\$227,050	\$372,109	\$220,743	\$2,081,288		
Supply & Installation of Semi Permeable	\$59,570	\$10,723	\$17,573	\$10,425	\$98,291		

Supply & Installation of Softscape including Trees & Plant	\$704,559	\$126,821	\$207,845	\$123,298	\$1,162,523		
Supply & Installation of FF&E	\$2,351,316	\$423,237	\$693,638	\$411,480	\$3,879,671		
St John Triangle	\$8,814,863	\$1,586,675	\$2,600,384	\$1,542,601	\$14,544,523	\$9,506,196	\$218
Supply & Installation of Hard Landscaping	\$1,844,446	\$332,000	\$544,112	\$322,778	\$3,043,336		
Supply & Installation of Semi Permeable	\$437,400	\$78,732	\$129,033	\$76,545	\$721,710		
Supply & Installation of Softscape including Trees & Plant	\$2,550,958	\$459,172	\$752,533	\$446,418	\$4,209,081		
Supply & Installation of FF&E	\$3,982,059	\$716,771	\$1,174,707	\$696,860	\$6,570,397		
Northend Park	\$3,166,751	\$570,015	\$934,191	\$554,181	\$5,225,139	\$5,871,003	\$135
Supply & Installation of Hard Landscaping	\$249,520	\$44,914	\$73,609	\$43,666	\$411,709		
Supply & Installation of Semi Permeable	\$763,579	\$137,444	\$225,256	\$133,626	\$1,259,906		
Supply & Installation of Softscape including Trees & Plant	\$1,231,738	\$221,713	\$363,363	\$215,554	\$2,032,368		
Supply & Installation of FF&E	\$921,913	\$165,944	\$271,964	\$161,335	\$1,521,156		
Los Gatos Creek Trail on E	\$1,079,944	\$194,390	\$318,584	\$188,990	\$1,781,908	\$7,127,632	\$164
Supply & Installation of Hard Landscaping	\$678,167	\$122,070	\$200,059	\$118,679	\$1,118,975		
Supply & Installation of Softscape including Trees & Plant	\$127,238	\$22,903	\$37,535	\$22,267	\$209,942		

Supply & Installation of FF&E	\$274,540	\$49,417	\$80,989	\$48,045	\$452,991		
Los Gatos Creek Trail on G	\$1,644,837	\$296,071	\$485,227	\$287,846	\$2,713,980	\$9,692,787	\$223
Supply & Installation of Hard Landscaping	\$1,033,114	\$185,961	\$304,769	\$180,795	\$1,704,638		
Supply & Installation of Softscape including Trees & Plant	\$193,793	\$34,883	\$57,169	\$33,914	\$319,758		
Supply & Installation of FF&E	\$417,930	\$75,227	\$123,289	\$73,138	\$689,585		
GRAND TOTAL	\$24,729,367	\$4,451,286	\$7,295,163	\$4,327,639	\$40,803,456	\$8,500,728	\$195

Exhibit E2

City-Dedicated Open Space and Covenant Privately-Owned Publicly Accessible Open Space Approximate Acreages

Open Space	City-Dedicated Acreage¹ (AC)	Privately-Owned Open Space Acreage Subject to Restrictive Covenant^{1,2} (AC)
Los Gatos Creek Connector	0.91	0.33
Los Gatos Creek Park	0.37	1.58
The Meander	-	0.87
Social Heart	0.57	-
Creekside Walk at South Autumn Street	-	1.24
Los Gatos Creek East	-	1.09
Gateway Plaza	-	1.01
St. John Triangle	1.53	-
North Montgomery Pocket Park	-	-
Northend Park	0.89	0.88
Los Gatos Creek Trail (E)	0.25	-
Los Gatos Creek Trail (G)	0.28	-
Total	4.80	7.0

¹ Acreages are approximate and will be confirmed pursuant to the verification process described in Section 4(B) and Exhibit E7.

² Acreage for Privately-Owned Publicly Accessible include the following typologies as defined by the DWDSG: Privately-owned Public Park, Los Gatos Creek Riparian Setback, and Los Gatos Creek Riparian Corridor

Exhibit E3

Delivery of City-Dedicated Open Space

Exhibit E3.1

City-Dedicated Open Space Dedication and Improvement Schedule*

Open Space	Outside Date	EIR Phasing	Dedication and Delivery Trigger (Building Parcels)
Los Gatos Creek Trail (E)	12 months after TCO	1	First TCO for any building in E1
Los Gatos Creek Trail (G)	12 months after TCO	1	First TCO for any building in G1
Los Gatos Creek Park	18 months after TCO	1	First TCO for any building in G1
Los Gatos Creek Connector 1	12 months after TCO	1	Dedication of land with 2nd market-rate residential building within the project; Improvements with first TCO for any building in the later of H3 or H5
Social Heart	24 months after TCO	1	Earlier of TCO for 1,500th Units ¹ , or First TCO for any building in D4
Northend Park	18 months after TCO	2	First TCO for any building in A1
Los Gatos Creek Connector 2	12 months after TCO	2	Dedication of land with 2nd market-rate residential building within the project; Improvements with first TCO for any building in H6
St. John Triangle	12 months after TCO	3	Earlier of first TCO for any building in C2, or 3,250 Units ¹

¹ Trigger by residential unit count is subject to the requirements of Section 4(H).

*Except for Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2, offers of dedication shall be made as set forth in Section 3(A) of the Parkland Agreement. The dedication schedule for Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2 is as set forth herein and described in Section 3(D) of the Parkland Agreement.

Exhibit E3.2

Park Dedication/Delivery Triggers Figure

[separate pdf]

Exhibit E4

Dedication Form

RECORDED WITHOUT FEE UNDER
SECTION 6103 GOVERNMENT CODE
OF THE STATE OF CALIFORNIA

**RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO,
AND MAIL TAX/ASSESSMENT
STATEMENTS TO:**

City of San José – Public Works
200 East Santa Clara Street, 3rd Floor
San José, CA 95113-1905

Deed No: _____

3 Dash No: _____

APN(s): _____

Space above this line for Recorder's use

The Undersigned Grantee(s) Declare(s): DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0; Recorded for the benefit of the City of San Jose and is exempt from fee per Government Code Sections 27383 and 6103.

- ☐ computed on the consideration or full value of property conveyed, OR
☐ computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
☐ unincorporated area; ☒ City of San José, and
☐ _____
Signature of Declarant

OFFER OF DEDICATION

GOOGLE LLC, a Delaware limited liability company (“GRANTOR”) does hereby OFFER TO DEDICATE to the CITY OF SAN JOSE, a municipal corporation of the State of California (“CITY”) the real property described in the attached Exhibit “A” for park and open space purposes (the “Park Property”).

Such dedication of the Park Property shall be deemed to have been accepted by CITY upon recordation of a grant deed (“Grant Deed”) in the Santa Clara County, Office of the County-Recorder and the issuance to CITY at GRANTOR’S expense of an owner’s title policy (“Title Policy”) in the amount of the [value of the Property] by [a title company selected by CITY] [_____] [NAME THE TITLE COMPANY WHO WILL HAVE ISSUED THE PTR FROM WHICH THE TITLE EXCEPTIONS ON THE EXHIBIT WILL HAVE BEEN OBTAINED], with the title company’s standard printed title exceptions and the title exceptions described on Exhibit “B” attached hereto, but without any title exceptions that would be omitted based on the title company’s owner’s certificate/affidavit (“Certificate”).

The Certificate and Grant Deed shall be promptly and diligently completed, executed and delivered to the title company by GRANTOR, duly acknowledged, in accordance with Section 3(A) of the Parkland Agreement included as Exhibit E to the Development Agreement between GRANTOR and CITY dated _____, 202__, recorded on _____, 202__ as Document Number Number _____ in the Official Records of Santa Clara County (the "DA"). If necessary for the issuance of the Title Policy, City will provide the title company with a Certificate of Acceptance for the Grant Deed, and GRANTOR shall provide the title company with organizational documents and evidence of duly authorized execution of the Grant Deed and Certificate and any other documents typically required by the title company in order to issue an owner's title policy.

The Grant Deed shall be recorded in such Official Records, and the Title Policy shall be issued, in accordance with written recording instructions by CITY to the title company, which shall condition the recording upon the commitment of the title company to issue the Title Policy at GRANTOR's expense, and which may also condition the recording upon the satisfaction of all or any of the conditions described on EXHIBIT "C".

GRANTOR, with respect to such offer of dedication, retains the right to control the Park Property until this offer of dedication is accepted and the Grant Deed is recorded as described herein. Accordingly, until such Grant Deed is recorded, CITY shall not be responsible for and shall incur no liability with respect to the Park Property, and GRANTOR shall defend, indemnify and hold CITY harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising from or relating to conditions of the Park Property or events occurring on or about the Park Property prior to such recordation (and GRANTOR's obligations hereunder shall survive the recording and acceptance of the Grant Deed).

In accordance with Section 3(A) of the Parkland Agreement included as Exhibit E to the DA, if prior to the expiration or termination of the DA GRANTOR has not undertaken the specific actions set forth in the Parkland Agreement as conditions precedent to CITY'S acceptance of this Offer of Dedication, upon the termination or expiration of the DA this Offer of Dedication shall also terminate and be void regardless of CITY'S later recordation of a notice terminating or vacating this Offer of Dedication.

The provisions hereof shall inure to the benefit of and be binding upon the heirs, successors, assigns and personal representatives of the respective parties hereto, and shall bind the Park Property, and all successors to any portion of or interest in the Park Property.

_____, 20 _____

GOOGLE LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

Address: 1600 Amphitheatre Parkway
Mountain View, CA 94043

Attn: _____

*Proof of authorization for GRANTOR's signature(s) is required to be submitted concurrently with this Agreement.

*All of GRANTOR's signatures must be accompanied by an attached notary acknowledgement.

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)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
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.

Signature _____ (Seal)

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)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
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.

Signature _____ (Seal)

EXHIBIT “A”
LEGAL DESCRIPTION

EXHIBIT “B”

PERMITTED TITLE EXCEPTIONS

[INSERT LIST OF TITLE EXCEPTIONS FROM A PTR FROM THE TITLE COMPANY THAT HAVE BEEN REVIEWED AND APPROVED BY CITY; TITLE COMPANY WILL NEED LEGAL DESCRIPTION OF PROPERTY IN ORDER TO PREPARE THE PTR]

EXHIBIT “C”

ADDITIONAL CONDITIONS TO RECORDING

[INCLUDE HERE CONFIRMATION BY CITY AFTER FURTHER INSPECTION OF THE PROPERTY THAT THE CONDITION OF PROPERTY: (I) COMPLIES WITH RELEVANT SECTION OF THE DA, AND/OR (II) THAT GRANTOR HAS NOT VIOLATED THE DA SECTION REQUIRING THAT GRANTOR NOT ALTER OR PERMIT ALTERATION OF THE PROPERTY, OR RELEASE HAZMAT OR PERMIT THE RELEASE OF HAZMAT ON THE PROPERTY]

1. _____

Any of the foregoing conditions __, __, or __ may be waived by the City Manager, provided that the applicable waiver is in writing.

EXHIBIT E5

DESIGN AND CONSTRUCTION REQUIREMENTS
[TO BE PROVIDED SEPARATELY]

Exhibit E6

Diagram of Construction Right of Entry Area

[separate pdf]

Exhibit E7

Parkland Dedication Tracking and Verification Table

Note: City-Dedicated Open Space (CDOS) sizes as of the Effective Date of this Agreement are listed in the table below. When a CDOS receives approval of Conformance Review, the size will be filled in in column D. The Actual CDOS Size (column D) is calculated by measuring the final land area, subject to any exclusions set forth in the Agreements. Column B lists expected acreages stated in Exhibit E2. Column C lists unit equivalents stated in Table 1 of Exhibit E1. For the purposes of Column F, an Average Unit Equivalent/Acre (AC) has been calculated equal to 833 ⅓ units and will be applied to the adjustment to determine the Final Park Credit value per CDOS. This was derived by dividing 4,000 units by 4.8 acres. Subject to the other requirements, limitations, and/ or exclusions of this Agreement, if the Actual CDOS Size (column D) is less than the Land Expected (column B if in acres), one or more other CDOS areas shall be increased in size such that a minimum of 4.8 acres of CDOS are provided in the Project for the development of 4,000 residential units, subject to the requirements, allowances, and limitations set forth in the Parkland Agreement, including Section 2. In the event that Developer pays Parkland Fees pursuant to Section 2, such fees shall be calculated based on the amount of acquired, or lost acreage, multiplied by one hundred ninety-five dollars (\$195).

A. CDOS Name	B. Expected CDOS Size (AC)	C. Estimated Total Residential Unit Equivalent Per Expected Park	D. Actual CDOS Size (AC)	E. Adjustment (Column D - Column B)	F. Final Park Credit (Column E x Average Unit Equivalent/AC + Column C)
Los Gatos Creek Connector	0.91	615			
Los Gatos Creek Park	0.37	348			
Trail on G in Los Gatos Creek Park	0.28	258			
Social Heart	0.57	617			
Trail on E in Los Gatos Creek East	0.25	187			
St. John Triangle	1.53	1,396			
Northend Park	0.89	579			
Total	4.80	4,000			

Exhibit E8

Parkland Dedication Obligation

Table 1 Calculation of Total Parkland Dedication Obligation			
Assumptions	Mid-Rise	High-Rise	Total
In-Lieu Fee \$/Unit - Market Rate	\$22,600	\$14,600	
In-Lieu Fee \$/Unit - Moderate Income Rate (50% Credits)	\$11,300	\$7,300	
In-Lieu Fee \$/Unit - Affordable BMR Rate (50% Credits)	\$11,300	\$7,300	
MR to HR Ratio - Market Rate Units	3%	97%	
MR to HR Ratio - Moderate Income Units	4%	97%	
MR to HR Ratio - Land Dedicated BMR Units	100%	0%	
# of Market Rate Unit	105	3,095	3,200
# of Moderate Income Unit	7	193	200
# of Land Dedicated BMR Unit	600	-	600
Total Units	712	3,288	4,000
Population/Unit	2.34	1.51	
Total Population (# of Units x Population Ratio)	1,666	4,965	6,631
Parkland Required (0.003 ac/person)	5.00 ac	14.89 ac	19.89 ac
In-Lieu Fee - Market Rate Units	\$2.4M	\$45.2M	\$47.6M
In-Lieu Fee - Inclusionary Units	\$.1M	\$1.4M	\$1.5M
In-Lieu Fee - Land Dedicated BMR Unit	\$6.8M	-	\$6.8M
Total In-Lieu Fee	\$9.2M	\$46.6M	\$55.8M

Table 2 Blended Per Unit In-Lieu Fee Obligation*

In-Lieu Fee	\$13,957
-------------	----------

*The Parkland Dedication Obligation, based on the number of type of units to be provided – such as mid-rise, high-rise, market-rate, and affordable – shall be blended across the Project, regardless of unit type, and administered uniformly based on the number of residential units produced, as reflected in Table 2 to this Exhibit.

Exhibit E9

List of Required Exceptions from Parkland Dedication Ordinance

1. San Jose Municipal Code Section 19.38.300(A) - The Park Improvements to be installed on the City-Dedicated Open Space shall be Completed in accordance with the City-Dedicated Open Space Dedication and Improvements Schedule included as Exhibit E3 to this Agreement. Although the City has determined that dedication of the open spaces and Completion of the Park Improvements in accordance with the Schedule set forth in Exhibit E3 is in the public interest and ultimately will be beneficial to the City, Completion and delivery is not tied directly to production of residential units in the same manner described in Section 19.38.300(A). Therefore, an exception from Section 19.38.300(A) is required to allow Completion and delivery of open space in the manner depicted in Exhibits E3.1 and E3.2.
2. San Jose Municipal Code Section 19.38.330 (B) - The Project requires a waiver from the requirement that real property conveyed to the City be dedicated free and clear of encumbrances. Development of the Project requires (i) utilities easements through portions of some of the City-Dedicated Open Spaces to serve the Project buildings; (ii) emergency vehicle access easements to serve Project buildings and/or DISC Agency facilities; and (iii) easements for utilities, vehicle and pedestrian ingress and egress, and elevator access, among other potential easements and encumbrances, to allow for development of the Social Heart City-Dedicated Open Space, provided however, that surface areas dedicated to such uses set forth in this provision (iii) shall not count toward the Parkland Dedication Obligation.

Exhibit E10

Bond Forms

Bond No. _____

Premium _____

FAITHFUL PERFORMANCE BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and *[insert name of Developer or Contractor, type of entity, and state of incorporation if applicable]* as principal ("Principal") have entered into an agreement entitled *[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]*, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a bond to City for faithful performance of the Contract;

NOW, THEREFORE, we the Principal and *[insert full name of Surety]*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of *[insert bond amount]*, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal, Principal's heirs, executors, administrators, successors, or assigns shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principal in the Contract and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless City, its officers, employees, and agents, as therein provided, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the sum specified above, there shall be included all costs, expenses, and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:

SURETY:

(Principal name) (Seal)

(Surety name) (Seal)

BY: _____
(Signature)

BY: _____
(Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:

Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

PAYMENT (LABOR AND MATERIALS) BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and **[insert name of Developer or Contractor, type of entity, and state of incorporation if applicable]**, as principal ("Principal") have entered into an agreement entitled **[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]**, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a good and sufficient payment bond to the City to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code.

NOW, THEREFORE, we the Principal and **[insert full name of Surety]**, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City, and unto all contractors, subcontractors, suppliers, laborers, materialmen and other persons employed in the performance of the Contract and referred to in the aforesaid Civil Code, as obligees, in the sum of **[insert bond amount]**, on the condition that if Principal shall fail to pay for any materials or equipment furnished or used or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses, and fees, including attorney's fees, reasonably incurred by any obligee in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in the judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect, and shall bind Principal, Surety, their heirs, executors, administrators, successors, and assigns, jointly and severally.

IT IS HEREBY EXPRESSLY STIPULATED AND AGREED that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, and State agencies entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the

specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

Principal name)

(Seal)

(Surety name)

(Seal)

BY: _____

(Signature)

BY: _____

(Signature)

Print name and title)

Principal address and telephone:

Print name and title)

Surety address and telephone:

Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Authority if executed by Attorney-in-Fact

Bond No. _____

Premium _____

WARRANTY BOND

WHEREAS, the City of San Jose, a municipal corporation of the State of California (“City”) and ***[insert name of Developer/Contractor, type of entity, and state of incorporation if applicable]*** as principal (“Principal”) have entered into an agreement entitled ***[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]***, incorporated herein by reference and referred to as the “Contract,” which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond to City to make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work so contracted for, which shall have appeared or been discovered, within the period of one (1) year from and after the completion and final acceptance of the work done under the Contract.

NOW, THEREFORE, we the Principal and ***[insert full name of Surety]***, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California (“Surety”), are held firmly bound unto the City in the sum of ***[insert bond amount – 25% of Faithful Performance Bond]***, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal shall well and truly make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work performed under the Contract, which shall have appeared or been discovered within said one-year period from and after completion of all work under the Contract and final acceptance by City of said work, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:

SURETY:

(Principal name) (Seal)

(Surety name) (Seal)

BY: _____
(Signature)

BY: _____
(Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:

Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact

~~City~~City Comments/Notes From Google Discussion DRAFT 3/15/23/21

RECORDING REQUESTED

BY CITY OF SAN JOSE:

When Recorded, Return To:
City of San José
200 East Santa Clara Street
San José, CA- 95113
Attn: City Clerk, 2nd Floor West Wing

[A1]:
GENERAL-
COMMENT:-
City Staff will
need to review
this again to
ensure issues
have been
addressed and
reserves the
ability to
provide
additional
comments for
discussion.-

PARKLAND AGREEMENT
FOR
TENTATIVE MAP NO. [REDACTED]
BETWEEN
CITY OF SAN JOSE
AND
GOOGLE LLC AND
RESTRICTIONS AND COVENANTS RELATING TO
PRIVATE RECREATIONAL IMPROVEMENTS

This Agreement ("Agreement") is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and GOOGLE LLC, a Delaware limited liability company ("Developer") as of the date of City's execution ("Effective Date"). Each of City and Developer are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

RECITALS

- A. ~~A.~~ In connection with its Downtown West Mixed-Use Plan (herein, the "Project"), City and Developer have entered into a Development Agreement (the "Development Agreement"), adopted by the City Council on _____, 2021, by Ordinance No. _____, approving the Development Agreement and authorizing the City Manager to

~~1~~12255.020 4848-9770-3137.1-4820-7228-9250.1 1

~~1~~

12255.019 4818-9379-2968.1 T 10079.004/727225

execute the Development Agreement on behalf of the City (the "Enacting Ordinance"). The Enacting Ordinance took effect on _____, 2021.

- B. ~~B.~~ In connection with the Project, Developer has filed Vesting Tentative Map Number _____ (the "Tentative Map") with the City's Planning Department for the subdivision of the Project site, as defined in the Development Agreement, and has obtained Planned Development Permit No. PD19-029 ("PD Permit") for the Project. ¶

~~C.~~ ¶

- C. Under the provisions of Chapter 19.38 of the San José Municipal Code ("Parkland Dedication Ordinance"), developers of residential subdivisions are required to dedicate property for neighborhood and community parks, construct park or recreational improvements, and/or pay in-lieu fees ("Parkland Dedication Obligation"). ~~D.~~ —

- D. In order for Developer to satisfy Developer's Parkland Dedication Obligation for the residential units identified on the Tentative Map, Developer and City desire to enter into this Agreement pursuant to which Developer shall satisfy its Parkland Dedication Obligation for development of four thousand ~~-(4,000)~~ residential units as follows:— (i) Developer shall dedicate a minimum of four and eight-tenths (4.8) acres of real property for public parks and trail to the City of San José; and (ii) Developer— shall construct turnkey improvements, enhanced landscaping, and new plantings to these dedicated parks and trail, providing design and programming that would meet or exceed the requirements of the City's Parkland Dedication Ordinance (collectively, the "Park Improvements", and individually a "Park Improvement"); and (iii) for development of residential units in excess of four thousand (4,000), payment of in-lieu fees ("Parkland Fees") or use of credits as set forth in this Agreement. Park Improvements are to have an average value of One hundred Ninety Five Dollars (\$195) ~~-~~per square foot (in 2021 dollars, escalating by the California Construction Cost Index, which is a subset of the Engineering News Record Construction Cost Index), as specified in Table 1 of Exhibit E1 hereto ("Park Improvements Value"). The Park Improvements Value includes, but is not limited to, the City's Review Fees as defined in Section ~~523~~(I), and all fees and costs for design, ~~0~~ and construction materials and labor incurred by Developer ~~regarding in~~ connection with the

[A2]: Google—
concerned about
residential
ramifications of
re-jiggering
everything. ¶
- LTCA—25
residential
equivalent
concept ¶
City agrees
conceptually
that it stays at
4,000; LTCA
conversation
continuing.

[A3]: See LTCA
proposal
incorporated
below.

[A4]: 4,800
units? 4,000
units? 600
assumed to be
affordable
housing sites on
affordable
housing sites?—
800 corporate
housing in or
out? Same
comment
throughout.

[A5]: Stephanie
to followup; ¶
It is not part of
normal value
per City
practice.

[A6]: Insurance
is not included
in Park
Improvements
Value and
Review Fees.

Park Improvements, including direct costs, soft costs, and contingency as reflected in Table 2 of Exhibit E1. Costs associated with any remediation, removal, disposal, or any combination thereof, of contaminated materials to meet applicable regulatory requirements for public park and trails uses shall not be included in the Park Improvements Value or otherwise applied to satisfy the Parkland Dedication Obligation.
~~Additionally, Developer agrees to address recreational needs of eight hundred (800) LTCA units through the payment of per unit fees as set forth in Section 3. O. of this Agreement.~~

- E. ~~E.~~ Developer may also propose certain ~~private recreation improvements~~Private Recreation Improvements as defined in City Resolution- No. 73587-, dated January 9, 2007 (“Private ~~Recreational~~Recreation Improvements”) within the Project in accordance with the requirements of the PD Permit and for which Developer is also eligible to receive credit against its Parkland Dedication Obligation as set forth in the Parkland Dedication Ordinance and this Agreement.
- F. ~~F.~~ City’s Director of Parks, Recreation and Neighborhood Services ("PRNS") (“PRNS Director”) is charged with the administration of this Agreement in conjunction with the Director of Public Works (“Director of PW”).- The Director of PW in coordination with the PRNS Director is responsible for the review, inspection, approval, and acceptance of the proposed City--owned Park Improvements. As described in the Downtown West Planned Development Zoning and General Development Plan for the Plan Area, the Director of PBCE is the decisionmaker for Open Space Conformance Review, following consultation with PRNS Director.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. REPRESENTATIONS AND WARRANTIES OF DEVELOPER.

Developer represents and warrants to City that the following facts are true and correct:

- A. The statements and certificates made on the Tentative Map and documents filed in conjunction with the Tentative Map remain true and correct.
- B. Any and all documents provided to City pursuant to the terms of this Agreement, or in connection with the execution of this Agreement, are now in full force and effect and contain no inaccuracies or misstatements of fact. Developer covenants that at such time City notifies Developer of City's intention to accept any Park ImprovementImprovements, if any of these documents contain inaccuracies, misstatements, or have become obsolete, Developer shall notify City and provide City with the information required to render the documents accurate, complete, and current.-
- C. Developer has the legal ability to enter into this Agreement and Developer's signatory(ies) to this Agreement is (are) duly authorized to sign this Agreement on its behalf. In the event the Developer is not the legal owner of the real property identified in the Development or on the Tentative Map and on which any Park Improvements are to be constructed, then the legal owner shall also be required to execute this Agreement and shall be subject to all terms, conditions, and obligations of this Agreement.

SECTION 2. ~~DEDICATION OF PARKS; DESIGN AND DEVELOPMENT OF PARK IMPROVEMENTS; CREDIT FOR PRIVATE RECREATIONAL IMPROVEMENTS.~~ COLLABORATION AND OBLIGATIONS REGARDING DISC AND CITY-DEDICATED OPEN SPACE.

- A. City and Developer acknowledge and understand that the Project and the Parkland Dedication Obligation described herein may be subject to subsequent proceedings initiated by any of the DISC Partner Agencies (California High-Speed Rail Authority; Valley Transportation Agency; Caltrain; Metropolitan Transportation Commission (MTC)) to acquire one or more portions of the Plan Area, potentially including one or more portions of the proposed City-Dedicated Open Space proximate to an existing rail line. If any DISC Partner Agency(ies) initiates proceedings to acquire any portion of the Plan Area for an approved alignment and expansion of the high speed rail right-of-way or other rail right-of-way, Developer may be unable to proceed in the manner described in this Agreement. In the event that a DISC Partner Agency(ies) initiates acquisition of one

[A7]: PRNS is reviewing this for consistency with DWDSG and This document. Verifying that areas noted are the same everywhere

[A8]: Inconsistencies need to be reconciled.¶ Stephanie to follow up.

[A9]: This is new language from Google. —

[A10]: Need to add language about 4(f).¶

[A11]: Section 3.6 of the DA body —¶

City — ask Jessica/Nicolle for 4(f) language; buffer area within the park is not "park" for 4(f) purposes..¶ - Preserve flexibility for the buffer area

[A12]: See added language below to address 4(f) issues.

or more portions of the proposed City-Dedicated Open Space, City and Developer shall proceed in the following manner. ¶

- a. If a DISC Partner Agency initiates acquisition of all or a portion of a City-Dedicated Open Space prior to Developer's initiation of design for that City-Dedicated Open Space as described in Section 45(AB), the Parties agree to understand that Developer shall be compensated by the condemning authority for the land acquired based on its fair market value as defined in California Code of Civil Procedure Section 1263.320, as may be amended from time to time. In the event of such an acquisition, and that acquisition results in a reduction in the size of a City-Dedicated Open Space as reflected in Exhibit E2, Developer shall (i) pay to the City an amount equal to the fair market value received for the acquired land from the DISC Partner Agency(ies) promptly after such value is received by Developer, and (ii) receive credit toward Parkland Fee obligations based on the acreage credit values set forth in the attached Exhibit E1 prorated for the amount of land acquired, which that value shall then be available for use as credit toward the Project's Parkland Obligation for residential units constructed, or otherwise utilized as set forth in Section 23(DB) upon termination or expiration of the Development Agreement. Any amounts paid to the City in the manner described in this paragraph shall not be subject to the limitations described in Section 34(F) regarding payment of Parkland Fees and use of Private Recreation Improvements credits, and the amount of the acquired acreage shall be counted toward Developer's acreage obligations set forth in Sections 3(O), 4(G)(b) and 4(G)(d) upon payment to the City of the fair market value received for the land. Upon payment by Developer as described in this paragraph, any security(ies) provided by Developer for the acquired land shall be released, or reduced in amount relative to the amount of land acquired. For the portion of the City-Dedicated Open Space that is not acquired by the DISC Partner Agency(ies), Developer shall construct Park Improvements and dedicate that remaining portion in accordance with this Agreement. Any required payment of Parkland Fees for

[A13]: City does not control this. Understand is sufficient here.

[A14]: Is it important to cite to the specific state law? Don't want any issues in the future when Google still gets FMV but not specifically under this state law provision.

[A15]: See edits

[A16]: Section 3(f) say the opposite? Why would this not be subject to the fee limitation to meet parkland obligations?

[A17]: Google-- this is different; there is no other land to substitute within the project; so they should ¶

City gets land value, plus 195\$-- get full value; google can't provide alternate property.

[A18]: Stephanie to look for consistency revisions.

[A19]: City is ok with this because it is for the land. Improvements would still be owed and would be subject to the 50% threshold of 3(F).

the Park Improvements Value associated with the acquired portion of the City-Dedicated Open Space shall be paid to City prior to issuance of a building permit for the Building associated with the subject City-Dedicated Open Space in Exhibit E3.1, and such Parkland Fees shall be calculated based on the amount of acquired, or lost acreage, multiplied by one hundred ninety-five dollars (\$195), subject to escalation based on the California Construction Cost Index.

- b. At least six (6) months prior to initiating design of a City-Dedicated Open Space ~~pursuant to Section 4(A)~~, Developer shall consult with ~~the~~ Department of Parks, Recreation and Neighborhood Services ~~Department~~staff and Department of Transportation staff regarding the status of the DISC. At the time Developer initiates design of a City-Dedicated Open Space as described in Section ~~45~~45(A,B), or any time thereafter but prior to City's issuance of a Notice of Acceptance and recordation of the grant deed for that City-Dedicated Open Space, if Developer and/or City reasonably determines that any portion of the Open Space is reasonably likely to be acquired by a DISC Partner Agency(ies), City and Developer shall meet and confer to reach agreement regarding the manner in which Developer is to satisfy its Parkland Obligation with respect to the subject City-Dedicated Open Space. Such agreement shall be consistent with the intent of this Parkland Agreement, and with the following principles~~:-~~:-
1. Developer and City shall remain in a financially neutral position, meaning that Developer shall not be required to incur higher costs or expenses than it otherwise would incur under this Agreement, or to pay amounts in excess of its Parkland Obligation; and Developer shall not be relieved of satisfying the Parkland Dedication Obligation for residential units constructed as part of the Project~~;-~~;
 2. Both the Project and DISC are to be effectively delivered and accommodated to the extent feasible; and
 3. ~~Minimize~~The Parties intend to minimize impacts of DISC project construction activity on existing and future development within the Project

Site boundary, ~~and the impacts of such construction on Project operations are to otherwise be minimized by allowing Developer to install temporary improvements, visual screening techniques, and/or other measures as determined and agreed upon by City and Developer, so long as such measures are consistent with the Project Approvals, including the DWDSG.~~—

- c. If a DISC Partner Agency initiates acquisition of all or a portion of a City-Dedicated Open Space after City's ~~acceptance~~Acceptance of that City-Dedicated Open Space, Developer shall have no obligation to provide replacement open space area or to pay additional Parkland Fees. ¶

¶

~~d. (Transit Buffer Zone, Temporary Construction Needs, and Parkland (Section 4(f)).) ¶~~

[A20]: Proposed Section 4(f) language—

B. Prior to commencement of construction of a City-Dedicated Open Space, Developer shall again consult with City Parks, Recreation and Neighborhood Services Department and City Department of Transportation staff regarding the status of the DISC. If Developer and City determine that any portion of the Open Space is reasonably likely to require use by a DISC Agency(ies) for construction staging or similar disruptive construction activity, Developer shall remain obligated to dedicate the land to City, and City shall accept such land, in accordance with the terms of this Agreement, including Exhibit E5 hereto; provided, however, that City and Developer shall meet and confer to mutually determine whether Developer ~~shall~~may elect to ~~shall~~ delay commencement of construction of the Park Improvements, including demolition and grading activity, until the DISC Agency activity within the Open Space has ceased, or whether Developer shall instead provide the Park Improvements Value to the City so that the City may itself complete the Park Improvements. If the Parties determine that Developer shall delay commencement of construction and Completion of the Park Improvements, Developer's obligation to construct the Park Improvements within the affected portion of the

City-Dedicated Open Space shall survive the termination or expiration of the Development Agreement; ~~provided, however, that if~~. If City and Developer reasonably determine that use of all or a portion of a City-Dedicated Open Space by a DISC Agency(ies) would delay Completion of construction of the Park Improvements thereon by more than one year beyond the date on which the Development Agreement has terminated or expired, notwithstanding ~~Section 3~~ Section 4(F) of this Agreement, at its option Developer shall be permitted to provide the City with the remaining Park Improvements Value for the affected City-Dedicated Open Space, and the City shall Accept the offer of dedication for the subject City-Dedicated Open Space, or portion thereof, and which the City shall ~~and use the Park Improvements Value to construct the Park Improvements. If this occurs, the City shall release any security associated with such the incomplete~~ such Park Improvements upon receipt of the funds and dedication of the land for Open Space.

C. In furtherance of the collaborative efforts described in Section 3.6~~7~~ of the Development Agreement, as well as the collective goals of ~~the~~ Developer, City, and the DISC Partner Agencies to effectively deliver both the Project and DISC, this section describes the understandings of City and Developer relative to ~~the location, design, and construction of DISC or other transit projects,~~ DISC and the City-Dedicated Open Space:

- a. The Project proposes to dedicate and improve the following City-Dedicated Open Spaces adjacent to the existing and potential future rail alignment: ~~North-End~~ Northend Park, St. John Triangle, and Los Gatos Creek Connector.
- b. DISC Partner Agencies have indicated an intention to elevate the rail tracks and rail structure as part of DISC, providing new opportunities to connect to these parks ~~to~~ to uses located to the west of the current rail alignment.
- c. Timing and phasing of DISC and other potential rail or transit projects (including California High Speed Rail) in the vicinity of the Project have not been finalized; and as of the Effective Date of this Agreement ~~only a conceptual layout of DISC has been made available~~ Concept Layout for the Diridon Integrated Station Concept has been approved by the City (February 2020). ¶



- d. In order to maximize parks and open space, as well as transit and connectivity in the near- and long-term, ~~the Developer, and City, and DISC Partner Agencies propose to maximize functional park space in near term at the Los Gatos Connector by temporarily using land expected to be needed for construction of and the eventual elevated rail structure as open space area; in the long term, the functional park space would extend under the tracks, by way of an easement or other ownership structure agreed to by City and other DISC Partner Agencies. This arrangement is understood to be part of the “joint planning” exemption under Federal Section 4(f) and shall not be construed to present a barrier under that or similar regulations~~ shall proceed in the manner described in Section 2(A) of this Agreement with respect to any acquisition by a DISC Partner Agency(ies); and with respect to any potential DISC construction needs that may affect a City-Dedicated Open Space, Developer and City shall proceed in accordance with Section 2(B) of this Agreement, which Sections includes consultation and meet and confer processes between City and Developer, in addition to the City’s and Developer’s collaborative efforts with the DISC Agency(ies) described in Section 3.6 of the Development Agreement.
- e. New park spaces at St. John Triangle and the North End Park have been planned to be outside of the established Transit Project Buffer Zone, as defined in the Development Agreement.— A temporary construction easement (TCE) may be required by a DISC Partner Agency(ies) for California High Speed Rail or other transit projects, at the western edge of the North End Park; compensation for this potential TCE – including any impact to the ~~public or privately owned open spaces—would be required per standard practices; that aside, this arrangement is understood to be part of the “joint planning” exemption under Federal Section 4(f) and shall not be construed to present a barrier under that or similar regulations~~ City-Dedicated or Privately-Owned Publicly Accessible Open Spaces,

or any other private property – would be required consistent with law. ¶¶ In the event ~~that DISC project necessitates use of any portion of the park lands prior to design and development of any of these three park spaces~~of any permanent acquisition by a DISC Partner Agency(ies), Developer shall negotiate with DISC with regard to temporary or permanent land acquisitions and park areas shall be adjusted per Exhibit E8 or City as landowner, as applicable at the time of acquisition, would proceed in accordance with law and established practices for eminent domain proceedings. ¶

~~If the Developer has dedicated land to the City for future park, but the park has not been constructed when the DISC project proceeds, Developer and City shall meet and confer about the most appropriate path forward. City and Developer may elect to have Developer pay fees for the park improvements that the City would complete at a later date; or City and Developer may elect to delay Developer delivery of the impacted park until after completion of DISC; or some other mutually beneficial resolution in furtherance of the Project's parkland obligations may be identified.~~ ¶

~~In the event that DISC project necessitates use of any portion of the three park spaces after the park is constructed and dedicated to the City then City shall be responsible for managing adjustments in park spaces with the DISC partners.~~ ¶

¶

~~A. Reconfiguration and/or Project redesign also may be necessary in the event Developer is prohibited from building to the maximum heights reflected in the DWDSG as a result of adoption of a construction tower crane policy that prohibits or impacts Developer's ability to construct to such maximum heights. Any reconfiguration or redesign would have a negative impact on Developer's master planning efforts, lessening the amount of square~~

~~footage for both commercial and residential uses, and potentially reducing the number of residential units that may be developed within the Plan Area. Subject to the requirements of Sections 3(F), 3(GH), and 3(HK) of this Agreement, such reconfiguration and/or reduction in residential development would result in shall require a commensurate reduction to Developer's Parkland Dedication Obligation.~~

[A21]: This will be addressed in the Community-Benefit-Adjustment of the DA? How will this be addressed??

[A22]: Consider putting this just in the DA, rather than a separate crane-policy for parks...

SECTION 3. DEDICATION OF PARKS; DESIGN AND DEVELOPMENT OF PARK IMPROVEMENTS; CREDIT FOR PRIVATE RECREATIONAL IMPROVEMENTS; VOLUNTARY CORPORATE ACCOMMODATIONS PARKS CONTRIBUTION.

A. ~~B.~~ Subject to Section 2(A), in satisfaction of its Parkland Dedication Obligation for ~~(development)~~ of four thousand (4,000) residential units Developer affirms its commitment to dedicate to City a minimum of four and eight-tenths (4.8) acres of real property located on Lots A, B, E, F, H, I, P, Q, R, and airspace parcel of Lot 20 ("City-Dedicated Open Space") as identified on the Tentative Map for the Project, and as described in the Downtown West Design Standards and Guidelines. An offer of dedication for each City-Dedicated Open Space shall be made ~~upon concurrent~~ concurrent with the final map that contains the subject City-Dedicated Open Space, and shall be recorded ~~immediately~~ following ~~recording occur upon approval~~ of the final map that contains the Building or development parcel that corresponds with the trigger for that City-Dedicated Open Space as reflected in Exhibits E3.1 and E3.2. The offers for dedication shall be substantially in the form as set forth in Exhibit E4, and shall be recorded in the Official Records, as defined in the Development Agreement. City shall accept an offer of dedication by grant deed only after issuance of a Notice of Acceptance of the Park Improvements thereon and in accordance with the timing requirements set forth in Exhibit E5. Developer shall be responsible for all costs incurred in the conveyance of the City-Dedicated Open Space to City in accordance with the requirements and specifications set forth in this Agreement and the Development Agreement. If the construction and Completion of the City-Dedicated Open Space is not triggered pursuant to Exhibits E3.1 and E3.2 prior to the expiration or termination of the Development Agreement, and Developer has not

[A23]: New language from Google.

[A24]: City text change.

[A25]: City text change

otherwise Completed the City-Dedicated Open Space, ~~in which case such that~~ credits would be provided and administered as set forth in Section 23(DB), upon the termination or expiration of the Development Agreement the offer of dedication for such City-Dedicated Open Space shall also terminate and be void, and City shall promptly execute and record a notice terminating or vacating the offer of dedication. ~~Developer shall be responsible for all costs incurred in the conveyance of the City Dedicated Open Space to City in accordance with the requirements and specifications set forth in this Agreement and the Development Agreement.~~¶

[A26]: This may necessitate changes in the offer of dedication form.

[A27]: why did this go away?

[A28]: Site should be clean before dedication to city; or google should post bond to cover cost of future remediation if they walk away from project before building park. preference is for remediation before granting to city

~~C. As reflected in Exhibit E3 Exhibits E3.1 and E3.2, the land for Los Gatos Creek Trail Connector 1 and Los Gatos Creek Trail Connector 2 is to be dedicated by grant deed to the City prior to construction and dedication to the City of the Park Improvements thereon. The land for the Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2 shall be offered for dedication to the City within thirty (30) days after Final Approval, as defined in the Development Agreement of the Project. The dedication of the the land for Los Gatos Creek Trail Connector 1 and Los Gatos Creek Trail Connector 2 shall occur following any required environmental remediation and removal of any and all debris and waste to meet applicable regulatory requirements for public park and trail use, and shall only be accepted by the City in conjunction with a fully executed lease back agreement for. The intent of the cost to Developer of one dollar (\$1) per year enabling leaseback agreement is to enable Developer to complete the required Park Improvements, allowing allow interim useuses by Developer, and requiring Developer, among other things such as require the same insurance requirements and indemnification of City, as set forth in this Agreement, require Developer to maintain and manage the property, including any necessary security and fencing, until such time as the Park Improvements are accepted by the City in accordance with the terms of this Agreement. Additionally, the parties have mutually agreed that the agreement between the Parties is for a gross leaseback to Developer for a cost of one dollar (\$1.00) per year. To enable Developer's timely construction and completion Completion of the Park Improvements on Los Gatos Creek Trail Connector 1 and Los Gatos Creek Trail~~

[A29]: Stephanie to refer to Exhibit E-5. Will meet dedication requirements at (early) time of dedication.

[A30]: is this indefinite? Part of what the City wanted was to control the land, so there has to be a way to end this leaseback if it becomes apparent that Google is not going to build the improvements

[A31]: Also we should have a right to use the Los Gatos Connectors for construction staging and access for H5 and H6, even if not yet dedicated, since they are asking for flexibility on when they build the road. The improvements aren't due until after the buildings, so this should be fine.

[A32]: Renewable every five years perhaps?

[A33]: Stephanie - City should look at triggers for completion, which provides an end date on the leaseback? ¶ City issue -

~~Connector 2 as set forth in Exhibit E33.1, City shall provide written notice to Developer within ninety (90) days of City's issuance of a building permit for construction of, and also at issuance of a certificate of occupancy for, an affordable housing development developments on Block H5 and on Block H6.~~

B. ~~D.D.~~ In the event Developer Completes and dedicates a City-Dedicated Open Space, and the credit value for the improved City-Dedicated Open Space exceeds the Parkland Dedication Obligation for the Project upon the termination or expiration of the Development Agreement, Developer shall receive credit for the City Dedicated-Open Space, including the Park Improvements Value, and such credits shall be applied toward the Project's Parkland Dedication Obligation as residential units are constructed. Upon the termination or expiration of the Development Agreement, if any credits for land dedication and/or Park Improvements Value remain available and are not utilized to satisfy the Project's Parkland Dedication Obligation, such credits may be used by Developer, or by another developer(s) if transferred by Developer to that other developer(s), to satisfy the obligations under the City's Parkland Dedication Ordinance for new residential development within the Downtown ~~Station Area Plan (DSAP)~~ Area West Planned Development District, with such credits provided at a ratio of one-to-one unit basis.¶

[A35]: Transfer as part of land transfer under the DA, correct? Not selling credit without transfer of land, correct? Clarify.---

[A36]: This is only after the DA Term ; anything before end of DA term it would be transfer issue ---

[A37]: Limit to Google project only.---

[A38]: City Position, ok but limit use of credits to only within Downtown West project area.---

C. ~~Reconfiguration and/or Project redesign also of a City-Dedicated Open Space may be necessary in the event Developer is prohibited from building to the maximum heights reflected in the DWDSG as a result of adoption of a construction tower crane policy that prohibits or impacts Developer's ability to construct to such maximum heights. Any reconfiguration or redesign would have a negative impact on Developer's master planning efforts, lessening the amount of square footage for both commercial and residential uses, and potentially reducing the number of residential units that may be developed within the Plan Area. Subject to the requirements of Sections 3(F), 3(GH), and 3(HK) 4(F), 4(G), and 4(J) of this Agreement, such reconfiguration and/or reduction in residential development would result in shall~~ shall require a commensurate reduction to Developer's Parkland Dedication Obligation.¶

D. As reflected in Exhibits E3.1 and E3.2, the land for Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2 is to be dedicated by grant deed to the City prior to construction and dedication to the City of the Park Improvements thereon. The dedication of Los Gatos Creek Trail Connector 1 and Los Gatos Creek Trail Connector 2 shall be accepted by the City in conjunction with a fully executed leaseback agreement. The intent of the leaseback agreement is to enable Developer to Complete the required Park Improvements; allow non-income producing interim uses by Developer, such as landscaping and/or construction staging; require the same insurance and indemnification as set forth in this Agreement; and to require Developer to maintain and manage the property, including any necessary security and fencing, until such time as the Park Improvements are accepted by the City in accordance with the terms of this Agreement. Additionally, the parties have mutually agreed that the agreement between the Parties is for a gross leaseback to Developer for a cost of one dollar (\$1.00) per year, and any associated property taxes shall not be the responsibility of Developer. To enable Developer's timely construction and Completion of the Park Improvements on Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2 as set forth in Exhibit E3.1, City shall provide written notice to Developer within ninety (90) days of City's issuance of a building permit for construction of, and also at issuance of a Certificate of Occupancy for, affordable housing developments on Block H5 and on Block H6.

E. The Park Improvements to be installed on a City-Dedicated Open Space shall be ~~completed~~CompletedCompleted in accordance with the City-Dedicated Open Space Dedication and Improvements Schedule and Park Dedication/Delivery Triggers Figure set forth in ~~Exhibit E3~~Exhibits E3.1 and E3.2. For clarity, except as otherwise set forth herein, Developer shall not be obligated to install Park Improvements on any City-Dedicated Open Space unless and until Developer undertakes the actions or development set forth in ~~Exhibit E3~~Exhibit E3.1 that ~~triggers~~corresponds to any such Park Improvements. Subject to approval by the Directors of PRNS and PW, completion~~Completion~~City may elect to extend the Delivery trigger reflected in Exhibit E3.1 by twelve (12) months to allow Developer to complete installation of art and other

~~non-functional, sculptural or ornamental features, or kiosks/pavilions or other optional structures, structures, or features~~ that are not essential to the intended use of the park by the public (“Park Art and Optional Structures”). Alternatively, subject to approval of the Directors of PRNS and PW, Completion of Park Improvements upon any City-Dedicated Open Space for purposes of determining compliance with Exhibit E~~53.1~~3.1, and issuance of a Notice of Acceptance for such Park Improvements by Director of PW as outlined in Exhibit E~~155~~ of this Agreement shall ~~not include or require~~ be permitted to occur without first requiring the completed installation of ~~art, kiosks,~~ Park Art and ~~pavilions~~ Optional Structures, so long as (i) final installation of such ~~outstanding art, kiosks, pavilions, or combination thereof~~ Park Art and Optional Structures will not interfere with the safe use of the park by the public.—, and (ii) Developer ~~shall complete the improvements the improvements~~ provides the Park Art and Optional Structures Security as described in this Agreement so that the City may utilize the Security to complete the installation or construction of the Park Art and Optional Structures following City’s acceptance of the Park Improvements, which City shall complete within twelve (12) months of ~~issuance of the Notice of Acceptance. Alternatively, City may, in its sole and absolute discretion, elect to extend the Delivery trigger reflected in Exhibit E3.1 by twelve (12) months to allow Developer to install or construct the elements or features~~ Developer providing the Security; provided however, that City shall release all other bonds and securities as indicated in Exhibit E5. Separately, Completion also does not include or require relinquishment and improvement of any Park Construction Right of Entry, which Right of Entry areas are depicted in Exhibit E6 (referred to therein as “Temporary Construction Easement (TCE)”), so long as the Park Construction Right of Entry is relinquished and improved within six (6) months of issuance of the temporary certificate of occupancy for the fronting building.

E. ~~E.~~ As more particularly described in Exhibit E~~455~~, Developer shall be responsible for the development of Park Improvements Plans for, and the construction of the Park Improvements on the City-Dedicated Open Space, consistent with the Park Improvements ~~Specifications and minimum sizes as set forth in Exhibit E6~~ Plans, and as otherwise

[A39]: NOTE – this does not include the language circulated on 3/13/21. ¶ City position is that ONLY art, kiosks, and pavilions can follow Notice of Acceptance. The broader language circulated 3/13 (that includes “other non-functional, sculptural or ornamental features” and “other optional structures...”) is too broad. This change needs to be carried forward into the Security sections related to these as well.

[A40]: So, then we call their bond and finish it ourselves? The PA should be obligating them to deliver all the park assets as proposed in the DWDSG.

[A41]: Again, we agreed to potential delayed deliver for art, Kiosks and pavilions only

[A42]: Clarify the – Developer obligation first. City can accept bond / obligation at its election in sole and absolute discretion... ¶ City is ok with accepting a bond to complete art only (not kiosks/pavilions), and completing the work provided that the bond must stay in place until the City gets the art and pays the cost of installation.

described in this Agreement and the Development Agreement. Developer shall construct the Park Improvements in conformance with the Park Improvements ~~Specifications~~Plans and Downtown West Design Standards and Guidelines, and all applicable standards and specifications in effect on the Effective Date of this Agreement, except as otherwise set forth herein.

G. ~~F.~~ Developer has no obligation to construct other improvements on the City-Dedicated Open Space beyond the Park Improvements.

H. ~~G.~~ The Parties acknowledge that the exact size, dimensions, and other particular characteristics of the Park Improvements have not been determined as of the Effective Date of this Agreement. The Parties, however, agree that the Park Improvements shall consist of the Park Improvements as conceptually depicted and described in the Downtown West Design Standards and Guidelines, with a minimum cumulative acreage of 4.8 acres for the development of 4,000 units, ~~and as conceptually depicted therein, and in the locations and general dimensions~~ reflected on the Tentative Map for the Project, and ~~as summarized in~~based on the ~~attached~~unit equivalent values reflected in Table 1 of Exhibit XX~~E1. Any As described in Section 4(B), any~~ future adjustments to the conceptual City-Dedicated Open Space sizes, as permitted by the General Development Plan, shall be identified and finally approved at the Conformance Review stage or the processing of a final map that includes the subject City-Dedicated Open Space, whichever occurs first, and shall be tracked using Exhibit ~~XX~~E7, ~~and any reduction in acreage for any one or more City Dedicated Open Space locations shall be made up by an increase in one or more other City Dedicated Open Space locations to maintain a minimum of 4.8 acres of City Dedicated Open Space.~~ which Exhibit ~~XX~~ shall ~~be updated~~ensure compliance with ~~any changes in acreage for any one or more City Dedicated Open Space locations to reflect the number of total residential units for which the Parkland Dedication Obligations are covered by each individual City Dedicated Open Space area~~the requirements of this Agreement.

I. ~~H.~~ Developer shall be responsible for all costs incurred for planning, design, construction, ~~and~~ supervision of the construction of all Park Improvements, including without

[A43]: 4800

[A44]: Doesn't it stay at 4,000, and CLTA counts toward it at .25 per CLTA unit?

[A45]: True up with CLTA final discussions

[A46]: Shouldn't this be E1, which includes the Unit Equivalent information

[A47]: @Google: these concepts are material and should not have been cut; reverse the changes.

[A48]: Stephanie to look at this again; City important to get the small amount of land committed as part of the deal.

[A49]: New language from Google inserted.

limitation, the Review Fees. All such costs are included in, and are part of the Park Improvements Value, ~~however. For clarity, the~~ Park Improvements Value ~~shall include,~~ but is not ~~include~~ limited to, the City's Review Fees and all fees and costs for ~~insurance~~ design and ~~maintenance~~ construction materials and labor incurred by Developer in connection with the Park Improvements, ~~and shall not include any costs~~ including direct costs, soft costs, and contingency as reflected in Table 2 of Exhibit E1. Costs associated with any ~~environmental~~ remediation ~~activities, maintenance, insurance or any~~ improvements that may be ~~triggered by surrounding private developments or outside agencies, removal, disposal, or any combination thereof, of contaminated materials to~~ meet applicable regulatory requirements for public park and ~~trail use, trails uses shall not~~ be included in the Park Improvements Value or otherwise applied to satisfy the Parkland Dedication Obligation. Developer and City agree that the Park Improvements Value shall not be less than the values set forth in Table 1 of Exhibit E1. The Review Fees shall be in an amount equal to seventeen and one-half percent (17.5%) of the direct costs, which Review Fees are reflected in Table 2 of Exhibit E1, and which direct costs and Review Fee shall both escalate by the California Construction Cost Index. Twenty percent (20%) of the Review Fees for each City-Dedicated Open Space shall be paid upon submittal of the Vertical Conformance Review application for the Building ~~associated triggering~~ associated the subject City-Dedicated Open Space in Exhibit E3.1; and the remaining eighty percent (80%) of the Review Fees for each City-Dedicated Open Space shall be paid upon submittal of the Open Space Conformance Review application for the subject City-Dedicated Open Space. Developer shall cause all labor and material incorporated in the Park Improvements to be furnished in accordance with the requirements and specifications set forth in this Agreement. _

[A50]: Added-
insurance.

[A51]:
Triggered._

I. ~~I.~~ As described and depicted in the Downtown West Design Standards and Guidelines, kiosks and/or pavilions are included as optional features in some of the City-Dedicated Open Spaces. The improvement value of such kiosks and/or pavilions is not included in the Park Improvements Value and, therefore, it is understood that the improvement value of any kiosk or pavilion constructed within a City-Dedicated Open Space may exceed the

Park Improvements Value. In its sole discretion, the City may elect to approve Park Improvements Plans for a City-Dedicated Open Space during Conformance Review with a kiosk and/or pavilion. If the City elects to include a kiosk/pavilion in a City-Dedicated Open Space, the improvement value of such kiosk/pavilion shall be permitted to be used to satisfy any outstanding Parkland Dedication Obligation associated with the development of four thousand (4,000) residential units. In the event the improvement value of such kiosk/pavilion exceeds the value of any remaining Parkland Dedication Obligation, Developer may use such value to satisfy any Parkland Dedication Obligation associated with the development of more than four thousand (4,000) residential units. If

[A52]: True-up-
with LTCA-
language as-
appropriate-

Developer does not develop more than four thousand (4,000) residential units, ~~the City shall not be required to reimburse to~~ Developer's shall receive credits for ~~any~~the excess improvement value of a kiosk or pavilion, which shall be available for use consistent with Section 3(B).

K. ~~J.~~ Each individual Park Improvement shall be deemed ~~completed~~CompletedCompleted and accepted by City upon recordation of the Notice of Acceptance by Director of PW as outlined in Exhibit E~~455~~455 of this Agreement. ~~The~~UponUpon Developer's request, the PRNS Director, in consultation with the Director of PW, may, at the their discretion, grant extensions of one or more of the ~~completion~~CompletionCompletion requirements specified in this subsection.

L. ~~K.~~ With respect to any Park Improvements which are owed but which have not been ~~completed~~CompletedCompleted as specified in Exhibit E~~33.13.1~~33.13.1 to the Development Agreement, the credits for the incomplete improvements shall be disallowed and Developer and City shall proceed in accordance with Section ~~67~~67.

M. ~~L.~~ Subject to Section ~~23(NQQ)~~23(NQQ), the Project is eligible to receive credit for ~~private recreation improvements~~PrivatePrivate Recreation Improvements pursuant to the Parkland Dedication Ordinance. The description of the ~~private recreation improvements~~PrivatePrivate Recreation Improvements that may be included in the Project by Developer and that, if included, shall receive credit pursuant to Chapter 19.38 ~~is~~as set forth in City Council Resolution No.- 73587 dated January 9, 2007.- Developer

may request Private Recreation ~~CreditImprovements~~Improvements credit for qualifying ~~private recreation improvements~~PrivatePrivate Recreation Improvements in a residential building at the time of Conformance Review for that building by submitting for review by the PRNS Director documentation including, but not limited to: ~~4~~(i) a written summary of all qualifying on-site Private Recreation ~~amenitiesImprovements~~Improvements, ~~2~~(ii) a table itemizing all proposed Private Recreation ~~amenitiesImprovements~~Improvements by net square footage, ~~3~~(iii) the location~~4~~, (iv) classification type (active classification or non-active elements classification)~~5~~, (v) dimensioned and labeled floor plans showing all private recreational amenities, and ~~6~~(vi) photo simulations or other illustrative examples of proposed recreational accessories.— The PRNS Director will review the Private Recreation ~~CreditImprovements~~Improvements credit documentation and, if in conformance with the criteria in Resolution No. 73587, tentatively approve the recreation credit. —Credits shall be finally approved upon Completion of the Private Recreation Improvements consistent with the Private Recreation Improvements credit documentation and this Agreement, but shall only be available for Developer’s use pursuant to the provisions of Section ~~2-3~~(MO) below. Developer shall complete the installation of the ~~private recreation improvements~~PrivatePrivate Recreation Improvements described in Resolution No. 73587 prior to the issuance of a Final Certificate of Occupancy for the residential building(s) in which the ~~private recreation improvements~~PrivatePrivate Recreation Improvements are located or to which the ~~private recreation improvements~~PrivatePrivate Recreation Improvements are tied.

With respect to any ~~private recreation improvements~~PrivatePrivate Recreation Improvements that have not been ~~completed wprior~~CompletedCompleted prior to— the issuance of a Final Certificate of Occupancy for the residential building of which the improvements are a part, the credits for the incomplete improvements shall be disallowed and Developer shall be required to pay ~~any increase in~~ Parkland Fees, if any such fee is owed,~~()~~ together with additional charges as set forth in the Parkland Dedication Ordinance.

[A53]: ...but may not be applied until the end of the DA, and then only if all the triggered parks have been delivered, and also only if 2.4 acres of parks have been delivered.

[A54]: yes

[A55]: Stephanie— Conceptually ok; verify with other sections.

[A56]: See revised text.

[A57]: This would stay deleted; language re: if fee owed stays in.

[A58]: incorrect-see previous comment

N. ~~M.~~ Developer acknowledges and agrees that Developer shall not receive any credit for eligible ~~private recreation improvements~~Private Private Recreation Improvements pursuant to the Parkland Dedication Ordinance unless ~~1~~(i) constructed in full compliance with this Agreement, or as otherwise creditable to the satisfaction of PRNS Director; and ~~2~~(ii)- subject to a restrictive covenant as set forth below in ~~paragraph P of this~~ Section ~~23~~(P).

O. ~~N.~~ Credit for ~~private recreation improvements~~Private Private Recreation Improvements constructed in accordance with the requirements of this Agreement and the Exhibits hereto shall not be credited against the Parkland Dedication Obligation unless and until (i) at least two and four tenths (2.4) acres of City-Dedicated Open Space have been dedicated and Park Improvements associated with such acreage have been ~~completed~~Completed Completed and ~~accepted~~Accepted by the City, (ii) at least four (4) acres of Privately-Owned ~~Open Space~~Publicly Publicly Accessible Open Space have been ~~completed~~Completed Completed and Delivered and a restrictive covenant(s) ~~or~~ ~~easement(s)~~-as described in Section ~~4.1.3~~ of the Development Agreement has (have) been recorded to maintain public access, and (iii) either (x) the Development Agreement has expired or terminated, or (y) Developer has satisfied its Parkland Dedication Obligation for the development of four thousand ~~(4,000)~~ residential units and thereafter constructs residential units in excess of those four thousand units. With respect to any ~~private recreation improvements~~Private Private Recreation Improvements that have not been ~~completed~~Completed Completed as specified in this Agreement, the credits for the incomplete improvements shall be disallowed.

[A59]: 4800

[A60]: see-my-comment-above

P. ~~O.~~ Prior to receipt of credit for any ~~private recreation improvements and prior to the sale of any portion of the building or authorization of any occupancy of the building or development project for which the private recreation improvement credits are sought~~Private Private Recreation Improvements, Developer acknowledges and agrees that use of the ~~private recreation improvements~~Private Private Recreation Improvements shall be restricted for recreation purposes by a recorded covenant which runs with the land for the life of the subject residential building, and which expressly cannot be defeated or

eliminated without the written consent of the City as described in the Parkland Dedication Ordinance. For clarity, ~~private recreation improvements~~Private Private Recreation Improvements for which Developer does not receive credit toward its Parkland Dedication Obligation are not subject to this, or any other requirements of this Agreement.

Q. ~~P.~~ Developer acknowledges that pursuant to the covenants set forth in Section ~~23~~(P) above, the Developer or Owner shall henceforth be required to maintain all such ~~private recreation improvements~~Private Private Recreation Improvements in safe working order and provide access for regular inspections at the City's request. After any such inspection and pursuant to written request by the City, the Developer or Owner shall promptly provide for any remedial actions, replacement, and/or repair work as may be necessary to ensure that the improvements remain in safe working order for recreational use.

R. ~~Q.~~ In the event that the project contains ~~private recreational improvements~~Private Recreational Improvements designated in this Agreement or associated exhibits as 'publicly accessible,' the Developer or Owner agrees to maintain public access to these amenities for a minimum of 360 days per year. The Developer may however, post reasonable Rules and Regulations for respectful use and maintenance of ~~private recreational improvements~~Private Recreational Improvements and areas as well as conduct occasional extended closures, subject to approval by PRNS Director. This Section shall apply in addition to any Easements or Restrictions which may be in place providing for public access and/or appurtenant uses. ¶

S. In addition to the City-Dedicated Open Space and Park Improvements thereon, and other requirements and obligations set forth in this Agreement for the satisfaction of Developer's Parkland Obligation, as an additional Project Feature Developer agrees to voluntarily contribute to City the amount of four thousand eight hundred fifty dollars (\$4,850) per Limited Term Corporate Accommodation (a non-residential use defined in the Downtown West Planned Development Zoning District- and General Development Plan) (the "Corporate Accommodations Parks Contribution"), which Contribution shall be paid upon issuance of a building permit for a Building containing a Limited-Term

Corporate Accommodation(s). The Corporate Accommodations Parks Contribution shall be vested for the term of the Development Agreement. Pursuant to Section 5.6 of the Development Agreement, Developer shall not be subject to any new Impact Fee for Limited-Term Corporate Accommodations or similar use that City may adopt. Developer's voluntary Corporate Accommodations Parks Contribution would be spent by the City within a three-quarter (3/4)-mile straight line radius from the Project Site boundary for neighborhood serving elements, which include, but are not limited to, neighborhood parks, playgrounds, and open recreation areas and their operations; and within a three-mile straight line radius from the Project Site boundary for community serving elements, which include, but are not limited to community centers, sports fields, and community gardens. The intention of the funds is to support the City network of parks. No more than thirty percent (30%) shall be spent on any one park resource.

SECTION 4. ~~SECTION 3.~~ COMPLIANCE WITH THE PARKLAND DEDICATION ORDINANCE AND SATISFACTION OF PARKLAND OBLIGATION.

- A. Subject to Section 2(A), the Parties acknowledge and agree that the calculation of the Developer's Parkland Dedication Obligation for development of four thousand (4,000) residential units is set forth in Exhibit ~~E588~~, including the calculation of Parkland Fees, ~~and~~. As reflected in Exhibit ~~E3-18~~, the total Parkland Dedication Obligation, based on the number of type of units to be provided – such as mid-rise, high-rise, market-rate, and affordable – shall be blended across the Project, regardless of unit type, and administered uniformly based on the number of residential units produced, as shown in Table 2 in that ~~the Exhibit~~ Exhibit. The Park Improvements Value is set forth in Table 1 of Exhibit E1. Credits for ~~private recreational improvements~~ Private Recreational Improvements, if any, are described in City Council Resolution No. 73587.
- B. The final acreage of each City-Dedicated Open Space shall be verified ~~as part at the~~ Conformance Review stage or the processing of ~~the~~ final map ~~process~~ that includes the subject open space, whichever occurs first. If the size of a City-Dedicated Open Space is different from the acreage set forth in this Agreement and Exhibit ~~XXEE~~2 hereto, which

may occur due to final roadway or parcel alignments, among other reasons, ~~the land value credit and Park Improvements Value for that~~that acreage will be reflected and tracked in Exhibit E7. If the size of a City-Dedicated Open Space ~~shall be proportionally~~is increased or decreased ~~and tracked in Exhibit XX. If this occurs, subject to Section 2(A),~~ Developer ~~shall~~shall adjust other City-Dedicated Open Spaces ~~to provide at least 4.8~~acres so that the total acreage of City-Dedicated Open Space ~~—~~ provided for the development of 4,000 residential units is at least 4.8 acres. Such reallocation shall not require amendment to this Agreement or to the Development Agreement. At the termination or expiration of the Development Agreement, City and Developer shall verify the total City-Dedicated Open Space acreage provided by the Project and calculate any remaining Parkland Dedication Obligation that is owed. Any remaining Parkland Dedication Obligation shall be satisfied in accordance with Section ~~34~~(JML).

[A61]: return to-
SHALL. this-
was the deal

[A62]:
Stephanie to-
confirm.-

- C. Except as otherwise provided herein and in the Development Agreement, provided that Developer is not in material default hereunder, and provided further that Developer satisfies all other terms, conditions, and requirements associated with issuance of a building permit(s), City shall issue all building permits necessary for the residential units identified on the Tentative Map.
- D. City acknowledges and agrees that Developer's performance of this Agreement shall fully satisfy Developer's Parkland Dedication Obligation under the City's Parkland Dedication Ordinance for development of four thousand (4,000) residential units in the Plan Area. The Parties further acknowledge and agree that the Parkland Dedication Obligation set forth in Exhibit E~~58~~8 for development of four thousand (4,000) residential units is based on and assumes the development of six hundred (600) of the 4,000 residential units as affordable housing units on the ~~affordable housing sites H1, H5, and H6 that Developer will dedicate to the City. In the event the City and/or an affordable housing developer causes more than 600 affordable housing units to be developed on the City-Dedicated Affordable Housing Sites~~affordable housing sites, any parkland dedication obligation applicable to such additional affordable housing units shall be the responsibility of, and attributed to the developer of those additional units; and

Developer's Parkland Dedication Obligation shall not be decreased or increased or otherwise affected as a result of such additional affordable housing development on the ~~City-Dedicated Affordable Housing Sites~~affordable housing sites, nor shall such additional units be counted toward or otherwise affect any milestones or triggers set forth in this Agreement, including, but not limited to, the requirements contained in Section ~~34~~(GHH) and in Exhibit E~~688~~ hereto.

- E. Pursuant to the terms of the Development Agreement, the Parkland Fee in effect upon the Effective Date of the Development Agreement, which Fee is reflected in Exhibit E~~588~~, is vested for the term of the Development Agreement, subject to escalation based on the California ~~Construction Cost Index, which is a subset of the Engineering News Record~~ Construction Cost Index. Upon such escalation of the Parkland Fee, ~~[Google-added language from 3-13-21:~~ the land value of any City-Dedicated Open Space dedicated thereafter, and ~~]the~~ Park Improvements Value for any Park Improvements constructed thereafter shall escalate by a commensurate amount using the California Construction Cost Index. ~~¶~~ Further, the following underlying assumptions upon which the Parkland Dedication Obligation is based, and which are set forth in Exhibit A to Resolution Number 73587 and Section 1 of Exhibit A of Resolution No. 75346 as amended by Resolution _____ **[ADD FINAL RESOLUTION NUMBER]**, shall be fixed and vested for the term of the Development Agreement ~~and regardless of typology of the first 4,000 residential units:~~ (i) mid-rise residential units have an occupancy rate of two and thirty-four hundredths (2.34) persons per unit; (ii) high-rise residential units have an occupancy rate of one and fifty-one hundredths (1.51) persons per unit; (iii) the Parkland Fees charged for each deed restricted, low income residential unit shall be set at fifty percent (50%) of the otherwise applicable Parkland Fees for each such unit; and (iv) ~~[INCLUDE IF ADOPTED PRIOR TO APPROVAL]~~ the Parkland Fees charged for each deed restricted, moderate income residential unit shall be set at fifty percent (50%) of the otherwise applicable Parkland Fees for each such ~~unit]~~.

- F. Regardless of any land acquisition or condemnation that may occur as a result of the actions described in Section 2(A) of this Agreement and which affects a portion(s) of the

[A63]: NO! we always said that parkland credit, land and improvements go up at the same amount. We absolutely should not be debating about market value of land. We agreed that everything would lock together and only be adjusted for park size adjustments. From then onward, the contribution of a park would fill the piggy bank with the agreed upon number of units of credit, and the construction of a unit would deduct from the piggy bank. The denomination of the piggy bank is in units.

[A64]: Delete this addition and possibly whole section. Adjustments are addressed in other areas.

[A65]: Issue resolved; Stephanie to provide insert updated language.¶ - City to confirm resolution.

[A66]: See inserted text from Google revisions 3-13-21.

[A67]: City is ok with this.

[A68]: Cite to City resolution.

[A69]: Will be updated...

Plan Area anticipated for development of City-Dedicated Open Space, in no event shall Developer be permitted to satisfy more than fifty ~~(50)~~-percent (50%) of its Parkland Dedication Obligation through the combination of (a) payment of Parkland Fees, and (b) Private Recreation ~~Credit~~Improvements credit. Further, City and Developer acknowledge and agree that, following dedication and acceptance by the City of a City-Dedicated Open Space, the amount of credits received by Developer for such land and any Park Improvements thereon shall be unaffected by any future actions by any DISC Partner Agency that may affect such land. ~~[NOTE: NEED TO ADDRESS DISC~~

~~TEMPORARY CONSTRUCTION IMPACTS/TCE - PROPOSAL TO FOLLOW]~~

[A70]: New-
Google 3-13-21
language-
inserted.-

[A71]: SEE-
NEW GOOGLE-
LANGUAGE-
FOR SECTION-
2.G-¶

~~G.1. Prior to commencement of construction dedication of a City-Dedicated Open Space to the City, Developer shall again consult with City Parks, Recreation and Neighborhood Services Department and City Department of Transportation staff regarding the status of the DISC. If Developer and City determine_s, based on information made available by a DISC Agency(ies), that any portion of the Open Space is reasonably likely to require use by a DISC Agency(ies) for construction staging or similar disruptive construction activity within four years following its anticipated date of Completion, Developer shall remain obligated to dedicate the land to the City, and the City shall accept such land, in accordance with the schedule set forth in Exhibit E3.1 and the terms of this Agreement, including Exhibit E5 hereto; provided, however, that City and Developer shall meet and confer to mutually determine whether Developer shall may elect to delay commencement of construction of the Park Improvements, including demolition and grading activity, or pause construction of the Park Improvements upon the affected portion of the City-Dedicated Open Space, as the case may be, until the DISC Agency activity within the Open Space has ceased, or whether Developer shall instead provide the Park Improvements Value to the City so that the City may itself complete the Park Improvements. Once the DISC Agency(ies) notifies Developer and/or City that it no longer requires use of the affected portion of the City-Dedicated Open Space, or has otherwise indicated that it no longer requires use of the space, the City shall provide Developer with such rights of access as may be needed to allow Developer to timely and diligently Complete the Park Improvements thereon. Thereafter, Developer shall have twelve (12) months or eighteen (18) months, as indicated in accoExhibit E3.1, to Complete the Park Improvements. In the event Developer elects to delay commencement of construction of Park Improvements pursuant to this Section, Developer shall be permitted to furnish the Performance Security required by Section 5(A)(1) upon notification by the DISC Agency(ies) that the DISC Agency(ies) no longer requires use of the property. If the Parties determine that Developer shall delay commencement of construction and Completion of the Park Improvements, Developer's obligation to construct the Park Improvements within the affected portion of the City-Dedicated Open Space shall survive the termination or expiration of the Development Agreement.; provided, however, that if City and Developer reasonably determine that use of all or a portion of a City-Dedicated Open Space by a DISC Agency(ies) would, in the~~

~~reasonable opinion of the Developer, delay Completion of construction of the Park Improvements thereon by more than onethree years beyond the date on which the Development Agreement has terminated or expired, notwithstanding Section 3(F) of this Agreement, at its option Developer shall be permittedmay elect to provide the City with the remaining Park Improvements Value for the affected City Dedicated Open Space, and the City shall accept the offer of dedication for the subject City Dedicated Open Space, or portion thereof, andwhich the City shall use the Park Improvements Value to construct the Park Improvements. If this occursDeveloper elects to provide the City with the remaining Park Improvements Value, the City shall release any security associated with suchthe incomplete Park Improvements upon receipt of the funds and dedication of the land for Open Space. Nothing in this Section shall relieve the City of its obligations to timely accept any Completed Park Improvements as set forth in Section 2(F) of Exhibit E5 hereto and elsewhere in this Agreement, regardless of any potential future action by a DISC Agency(ies).~~ ¶

[A72]: In this context, Land + Improvements should be at escalated value. Everything is locked together - park fee, land and improvements all move at CCI

[A73]: It works both ways. - Nothing here shall relieve Google from its obligations and then City has obligations to accept. -

[A74]: what does this mean?

[A75]: Section G pending further review.

~~¶¶¶¶¶~~

G. ~~G.~~ Developer acknowledges that of the 4,000 housing units covered in this Agreement, approximately 2,900 units are proposed south of Santa Clara Street and approximately 1,100 units are proposed north of Santa Clara Street. ~~The~~While Developer is committed to providing Privately-Owned Publicly Accessible Open Space in addition to its commitments set forth in this Parkland Agreement, as described in Section 4.1.3(a) of the Development Agreement, the Privately-Owned Publicly Accessible Open Space is not counted toward satisfaction of Developer's Parkland Obligation. As a result, the Parkland Dedication Obligation for ~~the 2,900 residential~~ units developed south of Santa Clara Street above the 2,000th residential unit cannot be fully met through the proposed City-Dedicated Open Space located south of Santa Clara Street. - The following provisions address how the Parkland Dedication Obligation may be met while addressing this imbalance.

- a. ~~1. If At~~At the end of the Term of this Agreement, if fewer than two thousand (2,000) residential units are ~~built~~constructedconstructed south of Santa Clara Street, the Developer shall ~~improve and~~dedicate City-Dedicated Open Space and construct Park Improvements thereon sufficient to meet the minimum Parkland Dedication Obligation for the ~~total~~ number of residential units constructed ~~across the entire Project~~ no later than thirty (30) years after the Effective Date of the Development Agreement, which Parkland Dedication Obligation for fewer than

2,000 residential units cannot be met by payment of ~~in-lieu fees~~ Parkland Fees, use of credits for Private ~~Recreational~~ Recreation Improvements, or provision of Privately-Owned Publicly Accessible Open Space; provided, however, if satisfaction of this requirement would obligate Developer to dedicate and/or Complete only a portion of a proposed City-Dedicated Open Space, City and Developer shall cooperate in Good Faith to (i) redesign proposed Park Improvements to Los Gatos Creek Connector 1 and/or Los Gatos Creek Connector 2 so that the ~~remaining Parkland Dedication Obligation that would otherwise require Completion of only a portion of another City-Dedicated Open Space can instead be utilized to install Park Improvements to Los Gatos Creek Connector 1 and/or Los Gatos Creek Connector 2 of a value~~ land value plus the Park Improvements Value does not exceed, and is equivalent to the remaining Parkland Dedication Obligation, in which case the applicable Park Improvements Value reflected in Table 1 of Exhibit E1 would not apply and certain requirements of the DWDSG may need to be waived as permitted by the DWDSG and/or the General Development Plan; (ii) increase the size of a City-Dedicated Open Space(s), or add a City-Dedicated Open Space adjacent to a residential building, in an amount equal to the remaining Parkland Dedication Obligation; (iii) dedicate and improve a portion of a Privately-Owned Publicly Accessible Open Space that is equivalent to the remaining Parkland Dedication Obligation, converting that portion to a City-Dedicated Open Space; and/or (iv) pay Parkland Fees to satisfy the remaining obligation. The obligations under this ~~paragraph G. 1.~~ Section 34(HG)(a) apply even if the buildings that would otherwise trigger the Parkland Dedication Obligation as set forth in Exhibits E3.1 and E3.2 have not been ~~built~~ constructed during the 30-year period after the Effective Date of the Development Agreement.

- b. ~~2. If more than At At~~ At the end of the Term of this Agreement, if two thousand (2,000) or more residential units are ~~built~~ constructed south of Santa Clara Street and Developer does not develop North of Santa Clara Street, then

[A76]: Add-back Open-Space?

[A77]: are they saying that they are going to do more improvements on the existing parks, or convert some of the popos at LGC connector to parks? The latter is ok (as long as it's enough), the former is not

[A78]: I don't like this. They should either dedicate additional land (preferred) or fee out. More improvements at LG connector aren't really possible.

[A79]: Stephanie — Can't fee out; instead of delivering unuseable small area (or over-delivering on park requirement) —
 - City to confirm with Nicole / AP whether this is ok; City ok with a fee out in this situation? —
 - End of Term issue; fractional amount in fee preferable to the LG additional improvement option for a small make up for what's owed? —
 City to circle back.

[A80]: City position is that if Google needs to make up a sliver of park, they can either provide a new park (by converting a POPO), or expand an existing park (including the park at Los Gatos Creek connector) by making it larger, or by shifting area from an adjacent POPO to increase the park size. City is not open to addressing the

Developer shall ~~improve and dedicate Park Improvements on~~ at least two and four tenths (2.4) acres of ~~land~~ City-Dedicated Open Space South of Santa Clara Street City-Dedicated Open Space and construct Park Improvements thereon to ~~meetsatisfysatisfy~~ the Parkland Dedication Obligations for ~~2,000~~ 2,000 residential units, and may improve and dedicate additional parkland, pay ~~in lieu fees~~ Parkland Fees, ~~or~~ apply accrued credits for Private Recreation Improvements ~~or~~ any combination thereof, in order to ~~meetsatisfysatisfy~~ the remaining Parkland Dedication ~~obligations~~ Obligation Obligation for the residential units constructed in excess of ~~2,000~~ 2,000. The obligations under this ~~paragraph G. 2.~~ Section ~~34~~ (HG)(b) cannot be met by the provision of Privately-Owned Publicly Accessible Open Space. The obligations under this ~~paragraph G. 2.~~ Section ~~34~~ (HG)(b) apply even if ~~the buildings that would otherwise trigger the Parkland Dedication Obligation have~~ 2.4 acres of City-Dedicated Open Space has not otherwise been triggered as set forth in Exhibits E3.1 and E3.2 because construction on the development parcels that correspond to the City-Dedicated Open Space has not ~~been built~~ occurred occurred during the 30-year period after the Effective Date of the Development Agreement.

[A81]: This should be South of Santa Clara deletion should be reversed.

- c. ~~3. If~~ At the end of the Term of this Agreement, if more than ~~2,000~~ 2,000 residential units are ~~built~~ constructed constructed south of Santa Clara Street and Developer develops any additional buildings North of Santa Clara Street, then Developer shall ~~first improve~~ have have dedicated the City-Dedicated Open Spaces and ~~dedicate~~ constructed Park Improvements ~~on at least two and four tenths (2.4) acres of land South of Santa Clara Street to meet Parkland Dedication Obligations for 2,000 residential units, then as a second priority, Developer shall improve and dedicate the Northend Park City-Dedicated Open Space and the Saint John Triangle City-Dedicated Open Space pursuant to the schedule in Exhibit E3 as the primary mechanism to fulfil any outstanding parkland obligation. Third, only if no buildings are developed on either of the sites A or C (such that the North End Park thereon thereon~~ in accordance with this

Agreement, including the delivery and Completion triggers set forth in Exhibits E3.1 and E3.2, subject to Section 2(A), ~~(which delivery triggers ensure that 2.4 acres of City-Dedicated Open Space and Saint John Triangle City Dedicated Open Space are not triggered by~~ is provided for the ~~enddevelopment of 30 years)~~ can Developer use Private Recreation Credits or pay an in lieu fee to fulfil the remaining development of 2,000 residential units.)Any outstanding Parkland Dedication Obligation. ¶

~~(For clarity and completeness, if fewer than 2000 residential units are built south of Santa Clara Street, and Developer develops any additional buildings North of Santa Clara Street, then the site A and site C triggers for North End Park City Dedicated Open Space and Saint John Triangle City Dedicated Open Space still apply.))~~ ¶

4 shall be satisfied in accordance with Section 34(ML).

d. In no event shall the use of Private Recreation ~~Credit~~ImprovementsImprovements credit be used ~~before~~priorprior to Developer's Completion of 2.4 acres of City-Dedicated Open Space ~~are delivered south of Santa Clara~~and construction of Park Improvements thereon, nor shall any combination of Parkland Fees and Private Recreation ~~Credit~~ImprovementsImprovements credit be applied to ~~meetsatisfysatisfy~~ more than fifty percent (50%) of the Project's Parkland Dedication Obligation ~~for more than 50% of total units delivered under this Agreement~~, consistent with Section 34(KF).

The obligations of this ~~paragraph~~Section 3Section 4(HG) shall survive the termination or expiration of ~~the~~ this Agreement and/or the Development Agreement.

H. Upon Developer's dedication of three parcels of real property, currently identified as Properties H1, H5 and H6 (the "City-Dedicated Affordable Housing Sites") to the City (or its designee) for use in the production of affordable housing, the combined six hundred (600) affordable housing units that are assumed for these Sites, as reflected in Exhibit E8,

[A82]: This 2.4 is the bare minimum. Preference is still to drive toward 4.8 if units in excess of 2000 are built and development moves north of Santa Clara. This language seems to read that 2.4 is the only goal.

[A83]: Stephanie crossing 2,000 then Google provides per the schedule. Language intended to make that more clear. ¶ Google agrees 2.4 for 2,000, after that it is per the triggers in the Agreement. ¶ Issue/concern is overdelivery. ¶ City to review again.

[A84]: see note above

[A85]: Reverse deletion.

[A86]: See notes above. ¶ Stephanie Deliver per triggers, except for the front loaded for 2,000; ¶ - Duplicative/ and not really adding clarity bottom line is that the triggers control after 2,000

[A87]: This paragraph needs to be reworked to make it clear that if Google constructs more than 2,000 residential units south of Santa Clara street that all 2.4 acres of parks south of Santa Clara Street are improved and delivered. ¶ After that, can't automatically fee out or use private rec credit, and

shall be counted toward the 1,250 residential units that would trigger the Design Outside Date referenced in Section 45(B) and set forth in Section 45(C) for the Social Heart open space, and toward the 1,500 residential units and 3,250 residential units, respectively, that would trigger the dedication and Completion for the Social Heart open space and the St. John Triangle open space, which triggers are set forth in Exhibits E3.1 and E3.2. For clarity, upon dedication of each of the three City-Dedicated Affordable Housing Sites, it shall be assumed, for the limited purpose of triggering the Design Outside Date, dedication, and Completion of the Social Heart, and the dedication and Completion of St. John Triangle, that the residential units assumed for that Site have received Temporary Certificates of Occupancy. Therefore, upon dedication of all three of the City-Dedicated Affordable Housing Sites and issuance of Temporary Certificates of Occupancy for the balance of the residential units indicated in Exhibit E3.1 -- whether issuance of Temporary Certificates of Occupancy for such residential units occurs before or after dedication of the City-Dedicated Affordable Housing Sites, and no matter where such units are located within the Project Site -- the Design Outside Date, and the dedication and Completion requirements for the Social Heart, respectively, shall be triggered and the Social Heart shall be delivered within twenty-four (24) months of issuance of a Temporary Certificate of Occupancy for the 1,500th residential unit, unless earlier triggered by the issuance of a Temporary Certificate of Occupancy for development on Block D4; and the dedication and Completion of St. John Triangle shall be triggered and St. John Triangle shall be delivered within 12 months of issuance of a Temporary Certificate of Occupancy for the 3,250th residential unit, unless earlier triggered by issuance of a Temporary Certificate of Occupancy for a Building on Block C2.

[A88]: wasn't this 12 months?

[A89]: Concerned that subterranean garage can't be build w/in 12 months. ¶
- Practicality / feasibility change based on construction period. ¶
¶ City request -- make this period as short as possible/feasible -

- I. Notwithstanding the Completion timing requirements set forth in Section 34(IH), in Exhibits E3.1 and E3.2, or elsewhere in Development Agreement and other Exhibits thereto, ~~if~~ if the Completion requirement for the Social Heart is triggered by issuance of a Temporary Certificate of Occupancy for the 1,500th residential unit developed in the Project (rather than for issuance of a Temporary Certificate of Occupancy for a Building on Block D4), ~~notwithstanding the Completion timing requirements set forth in Section~~

~~3(I), in Exhibits E3.1 and E3.2, or elsewhere in Development Agreement and other Exhibits thereto,~~ the Completion date for the Social Heart (inclusive of the subterranean garage) shall be extended ~~by one day for each day that completion of the~~ to provide Developer twenty-four (24) months to Complete the Social Heart from the date on which the (VTA's BART Silicon Valley Phase II Extension Project (located adjacent to the south side of West Santa Clara Street, between Autumn Street and the San José Diridon Caltrain Station) ("BART Project")) is ~~completed~~delayed past December 31, 2030~~completed~~, if due to active or reasonably imminent construction staging or other construction-related activity on or in the vicinity of the Social Heart, the BART Project prevents, delays, or otherwise interferes with Developer's timely construction and Completion of the Social Heart and/or the subterranean garage.)

[A90]: Limit this to VTA's BART Diridon Station (or specify that it's located adjacent to the south side of West Santa Clara Street, between Autumn Street and the San José Diridon Caltrain Station).

[A92]: See new language, and comment, above.

[A91]: Revised Language from 3-13-21

- J. ~~H.~~ In addition to adhering to the schedule set forth in ~~Exhibit E3~~ Exhibits E3.1 and E3.2 and the other timing requirements of this Agreement, ~~including the foregoing paragraph G,~~ and the Development Agreement, through ~~completion~~Completion and delivery of a combination of (i) City-Dedicated Open Space and (ii) Privately-Owned Publicly Accessible ~~Open Space~~ that is subject to recorded restrictive covenant(s) ~~or easement(s)~~ as described in Section ~~4.1.3~~ 4.1.3 of the Development Agreement and reflected in ~~Exhibit E677~~ (the "Covenant Privately-Owned Publicly Accessible Open Space"), Developer shall ensure that a cumulative minimum of fifty-two (52) square feet of ~~completed~~Completed open space is provided for each residential unit that is constructed. Continued compliance shall be demonstrated and confirmed through the accounting process required as part of the Conformance Review for vertical development. Final acreage of the open spaces shall be verified in the manner set forth in Section ~~34~~ 34(B). City shall deny ~~any building permit~~Conformance Review for a subsequent residential building that would cause the cumulative minimum square feet of open space for each residential unit to fall below 52 square feet. Further, pursuant to Section 4.1.3(a)(iii) of the Development Agreement, in the event Developer fails to Complete any Covenant Privately-Owned Publicly Accessible Open Space in accordance with the completion schedule set forth in Section 4.1.3(a)(i) therein, Developer shall be required to

pay the Private Open Space Delay Penalty Fee. For clarity, ~~and as reflected in Section 3(JK),~~ it is understood that Privately-Owned Publicly Accessible Open Space, including Covenant Privately-Owned Publicly Accessible Open Space cannot be used to satisfy Developer's Parkland Dedication Obligation.

- K. ~~H.~~ Certain exceptions from the Parkland Dedication Ordinance (San José Municipal Code Chapter 19.38) are necessary in order to provide the City-Dedicated Open Spaces in the manner set forth in the Development Agreement and this Agreement. The exceptions from certain provisions of the Parkland Dedication Ordinance are listed in ~~Exhibit E799.~~ The City has agreed to grant the waivers or exceptions listed in ~~Exhibit E799.~~ With respect to items (i) and (ii) listed in Paragraph 2 of ~~Exhibit E799,~~ the City has further agreed that such exceptions shall not impact the amount of credit that Developer is eligible to receive for land and Park Improvements impacted by those exceptions, except that credit shall not be granted for above-grade existing and/or proposed building footprints, vehicular access ways and aprons, elevators and associated lobbies, and similar non-open, non-park or non-recreational features located within any City-Dedicated Open Space; and for item (iii) in Paragraph 2, the exception shall not impact the amount of the credit that Developer is eligible to receive for the Park Improvements, and the City agrees that it shall provide seventy-five percent (75%) credit for the land value of the Social Heart park. For clarity, credits shall be available for land underlying park-related and recreational structures, which structures may include but are not limited to kiosks/pavilions or similar structures permitted by the DWDSG, park maintenance facilities, or restrooms.

- L. ~~I. Upon Subject Subject~~ to Section ~~34(HG),~~ upon the termination or expiration of the Development Agreement, any outstanding Parkland Dedication Obligation that has accrued based on the number of residential units constructed as of such termination or expiration shall first be satisfied through any then-available credits from dedicated acreage and/or costs of Park Improvements for the City-Dedicated Open Space in accordance with ~~Exhibit E388~~ and this Agreement. Thereafter, subject to Sections ~~23(NQO), 34(F), and 34(GKI),~~ any remaining Parkland Dedication Obligation for the

number of residential units constructed shall be satisfied with ~~private-recreation~~~~Private~~~~Private~~ Recreation Improvements credits, if any, followed by payment of Parkland Fees. This Section ~~34(JML)~~ shall survive the termination or expiration of the Development Agreement.

M. ~~J.~~ Subject to the mutual understandings and acknowledgments set forth in Section ~~34(D)~~ and the other requirements and limitations set forth in this Agreement, in the event Developer intends to develop more than four thousand (4,000) residential units (meaning Developer develops more than 3,400 residential units, subtracting from the 4,000 total units the 600 residential units assumed to be developed on the City-Dedicated Affordable Sites from the 4,000 total units), Developer agrees to immediately notify the PRNS Director. Any additional Parkland Dedication Obligation that may be required shall first be satisfied by ~~private-recreation~~~~excess~~~~excess~~ credit from dedicated acreage and/or costs of Park Improvements for the City-Dedicated Open Space, if any. Any remaining obligation shall then be satisfied by Private Recreation Improvements credits authorized for the first 4,000 units, if any, followed by payment of Parkland Fees.

[A93]: So, the 4000 units assume 600 affordable units. Assume once land is dedicated to City?

N. ~~K.~~ Because of the benefit to the Development that will result from the Park Improvements and land dedication, Developer agrees to design, develop, and construct the Park Improvements on the City-Dedicated Open Space and to dedicate the City-Dedicated Open Space as specified in this Agreement and the exhibits and attachments hereto, and as provided in the Downtown West Design Standards and Guidelines, without any obligation on the part of City with respect to design, development, or construction except as otherwise provided in this Agreement. ¶

~~O. Long Term Corporate Accommodations. [Place holder pending further City/Google discussions.] ¶~~

[A94]: LTCA Placeholder...

~~Subject to the criteria incorporated below, the City proposes the following more streamlined framework to address park obligations only for the currently contemplated 800 LTCA Units: ¶~~

~~1) Google will pay \$4,850 fee, subject to escalation by the California Construction Cost Index, on each of the approved 800 LTCA units that is constructed, which units must meet the following criteria: ¶~~

- ~~a) Each LTCA unit shall be less than 200 square feet in size.¶~~
 - ~~b) Google provides the unit free of charge.¶~~
 - ~~c) Occupants of LTCA units shall be limited to Google's officers, employees, consultants, vendors, contractors, or sponsored guests who do not intend to use it as their domicile and who have not entered into a written rental or lease agreement or provided any payment in a fixed amount of money to occupy the unit, and who are actively participating in Google business or doing business with Google during occupancy of the LTCA unit.¶~~
 - ~~d) Occupancy of a LTCA Unit by any person shall not exceed sixty (60) consecutive days.¶~~
- ~~2) Units that do not meet the criteria set forth in the foregoing paragraph shall be treated as regular residential units for purposes of the unit counts corresponding to each park in Exhibits 3.1 and 3.2. ¶~~
- ~~3) City will spend the fees paid for the up to 800 LTCA units on parks consistent with the City's 2009 Greenprint for Parks, Recreation Facilities and Trails, as it may be amended from time to time.¶~~
- ~~4) In the event that additional capacity in excess of 800 LTCA units is added to the Project, each LTCA unit constructed in excess of 800 shall be treated as a regular residential unit for purposes of the unit counts corresponding to each park in Exhibits 3.1 and 3.2. ¶~~
- ~~5) In the event that the Project is modified to include other types of units that are substantially similar to LTCA units, each such unit constructed shall be treated as a regular residential unit for purposes of the unit counts corresponding to each park in Exhibits 3.1 and 3.2.¶~~
- ~~6) This fee out mechanism is a one-time arrangement for simplicity of treatment of a limited number of LTCA units. This arrangement shall in no way serve as a precedent or guide what might happen with other units or with other development capacity, or in any other agreement. ¶~~

~~4~~
~~4~~
~~4~~
~~-~~

SECTION 5. ~~SECTION 4.~~—REVIEW OF CITY-DEDICATED OPEN SPACE DESIGN; OPEN SPACE IMPROVEMENT CONFORMANCE REVIEW

- A. Prior to initiating design ~~development one of~~ any City-Dedicated Open Space, Developer shall meet with PRNS Staff, after which PRNS Staff will support community outreach and engagement for the park design and naming.— Developer agrees to hold ~~one Community Meeting~~~~two~~ two community meetings prior to ~~the preparation of thirty-five percent (35%) complete Park Improvement Plans for each City-Dedicated Open Space. A second meeting shall be held in the form of a public hearing at a meeting of the Parks and Recreation Commission after completion of submittal~~ submittal of an application for Open Space Improvement Conformance Review pursuant to the provisions of the Downtown West Planned Development Zoning and General Development Plan. — ~~The Developer~~ Developer shall consider the input and comments received from the public during the community meetings when finalizing its application for Open Space Conformance Review. Following submittal of Developer's Open Space Conformance Review application, which application shall contain the thirty-five percent (35%) Park Improvements Plans described in Section ~~45~~(BC), below, the Parks and Recreation Commission shall review ~~and provide comment~~the application and 35% Park Improvements Plans at a public hearing, and shall thereafter make a recommendation to the ~~Directors~~Director Director of ~~PW and PRNS~~PBCEPBCE regarding approval or disapproval of the Open Space Conformance Review. If consistent with all applicable design standards, taking into account input from the public and the Parks and Recreation Commission, the ~~Directors~~Director Director of ~~PW and~~PBCEPBCE, in consultation with the Director of PRNS, shall ~~accept the design~~approveapprove the Open Space

[A95]: Staff is confirming this is ok.

[A96]: Please add a cross-reference to the provision that states when the review fees will be paid to the C- (20% at conformance review of trigger building / 80% at conformance review for park) (Currently Section 2(I)-2)

Conformance Review and 35% Park Improvements Plans contained therein. Technical review of the City-Dedicated Open Space design shall occur in accordance with the provisions of Exhibit E455.

- B. In accordance with the ~~Design~~ Design Outside Date Schedule set forth below, as part of its Open Space Improvement Conformance Review application for the Park Improvements, ~~in addition to paying Review Fees in accordance with Section 3(I),~~ Developer shall submit Park Improvements Plans (defined in Exhibit E455) at thirty-five percent (35%) ~~[TO BE CONFIRMED]~~ consistent with the Design Submittal Requirements set forth in the City's Turnkey Project Process and Submittal Requirements, dated November 5, 2019]. ~~After the third community meeting,~~ and the Conformance Review Implementation Guide for the Project. Following Conformance Review Approval as described in Section 45(A), ~~above,~~ Developer shall submit Park Improvements Plans at sixty-five percent (65%) and ninety-five percent (95%), ~~[TO BE CONFIRMED,~~ consistent with the Design Submittal Requirements set forth in the City's Turnkey Project Process and Submittal Requirements, dated November 5, 2019]. ~~The approved Conformance Plans, sixty-five percent, and ninety-five percent Park Improvements Plans will include any refinements made in response to community comments during the final two community meetings described in Section 4(A). The Open Space Improvement Conformance Review process, including review of plans associated therewith, will follow the procedures set forth in the General Development Plan for the Downtown West Planned Development Zoning District, and~~ the Conformance Review Implementation Guide for the Project, which 65% and 95% Plans ~~and technical specifications~~ shall be reviewed by the Director of PW. The 95% Park Improvements Plans for City-Dedicated Open Space shall be reviewed, approved, and signed by the Director of PW. ~~Approval,~~ and approval from the Director of PW and issuance of a Notice to Proceed shall authorize construction. -

[A97]: And technical specifications

[A98]: To be added in:

- C. The Design Outside Date Schedule referenced in Section 45(B) sets forth the dates by which the ~~complete construction plans~~ Conformance Conformance Review application and 35% Park Improvements Plans for each City-Dedicated Open Space shall be ~~provided to submitted~~ submitted in the ~~Director of PW manner~~ manner described in the General

Development Plan for the Downtown West Planned Development Zoning District.- The Design Outside Date Schedule shall be as follows:-

- a. Los Gatos Creek Trail (Blocks ~~D/E~~): ~~by~~within~~within~~ six (6) months of Conformance ~~Review~~ Determination approval for Block E1;
- b. Los Gatos Creek Trail (Block G): ~~by~~within~~within~~ six (6) months of Conformance ~~Review~~ Determination approval for block G1;
- c. Los Gatos Creek Park: ~~by~~within~~within~~ six (6) months of Conformance ~~Review~~ Determination approval for block G1;
- d. Los Gatos Creek Trail Connector 1: ~~by~~within~~within~~ six (6) months of Conformance ~~Review~~ Determination approval for 1st residential building of H3;
- e. Social Heart: ~~b~~ within six (6) months of the earlier of Temporary Certificate of Occupancy for the ~~seventwelve~~twelve hundred fiftieth (~~7501,2501,250~~)th unit or Conformance ~~Review~~ Determination approval for- Block D4;
- f. Northend Park: ~~by~~within~~within~~ six (6) months of Conformance ~~Review~~ Determination Approval for the first building on Block A1;
- g. Los Gatos Creek Connector 2: ~~by~~within~~within~~ six (6) months of Conformance ~~Review~~ Determination approval for the first (1st) residential building of Block H~~366~~;
- h. St. John Triangle: ~~by~~within~~within~~ six (6) months of Conformance ~~Review~~ Determination approval for the first (1st) building of Block C1 or C2.¶

[A99]: On 3/11 parties- conceptually- agreed- Google- should pay 20%- of the 17.5%- review fees with- conformance- review of- vertical building- associated with- the park. Park- design should- commence- within 6 months- of conformance- review approval- of building- remaining 80%- of park fee- should be paid- at park- conformance- review- submittal. City- goal is to close- the gap between- building- construction and- park- construction as- much as- possible. And- we do NOT- want developer- to indefinitely- delay park- construction if- economic- conditions- change, etc.-

~~A.~~

SECTION 6. ~~SECTION 5.~~ BONDS AND SECURITY.

Developer shall furnish to City the following security separately for each City-Dedicated Open Space, for the purposes, in the amounts, and under the conditions that follow:

- A. Type and Amounts.
 1. Performance Security. To assure the Developer's faithful performance to the City of this Agreement to ~~complete~~CompleteComplete the Park Improvements in an

[A100]: SEE- REVISED- LANGUAGE- FOR SECTION- 5-A -FROM- GOOGLE- 3-13-21:¶

amount ~~of equal to~~ one hundred percent (100%) of the direct costs reflected in Table 2 of Exhibit E1 for the Park Improvements ~~Value set forth in Exhibit E1 cost~~ for the City-Dedicated Open Space(s) included in the final map (hereinafter "Performance Security"), ~~[Google proposed edits from 3/13/21: as such cost is reflected in the construction contract for the subject City-Dedicated Open Space,~~ which shall be furnished by Developer to the City prior to ~~the issuance of a building permit for the superstructure for the Building that triggers the City-Dedicated Open Space obligation]~~ approval of the final map and shall be subject to adjustment pursuant to Section 6(B)(2); and

2. Payment Security. To secure Developer's payment to any contractor, subcontractor, person renting or supplying equipment, or furnishing labor and materials for completion of the Park Improvements included in the final map, in the additional amount of one hundred percent (100%) of the ~~Park Improvements~~ ~~[Google proposed edits from 3/13/21: direct cost as such cost is reflected in the construction contract for~~ Table 2 of Exhibit E1 for the subject Park Improvements ~~for the subject City-Dedicated~~ Dedicated Open Space (hereinafter "Payment Security"), which shall be furnished by Developer to the City prior to ~~approval of the issuance of a building permit for the superstructure for the Building that triggers the City-Dedicated Open Space obligation as set forth in Exhibit E3 Exhibits E3.1 and E3.2 final map;~~ approval of the final map; and

3. Warranty Security. To warranty the Developer's work to the City with respect to Park Improvements included in the final map, for a period of one (1) year following recordation of the Notice of Acceptance against any defective work or labor done or defective materials furnished in the additional amount of twenty-five percent (25%) of the direct costs reflected in Table 2 of Exhibit E1 for the Park Improvements ~~[Google proposed edits from 3/13/21: cost as such cost is reflected in the construction contract for~~ for the subject City-Dedicated Dedicated Open Space (hereinafter "Warranty Security"). The Warranty Security shall be furnished by Developer to the City prior to issuance of the Notice of Acceptance.

[A101]: I'm not sure that there is any cost on the final map, and in any case the table governs, not some value determined in the future.

[A102]: Agreed. Costs are proposed to be presented in Exhibit E1. This should be the primary reference for any improvement costs. Exhibit E8 - the adjustments table - should flow from E1. No costs on mapping

[A103]: seems to be addressed in revised language from Google 3-13-21

[A104]: Costretion Contract issue - addressed in the Google 3-13-21 timing issue. ¶ Stephanie to consider Final Map - Bonding issue - ¶ - Cost estimate - 195\$ time square footage of park shown on that final map ¶ - Discuss addition of 10% above, per City typical policy. ¶ - Bond would be provided at final map.

4. ~~Landscaping Security.~~ To secure Developer's installation and maintenance of landscaping as may be required by the landscaping specifications in the Park Improvement Plans, at such time as any drought restrictions on landscaping installation have been rescinded (hereinafter "Landscaping Security").~~—~~ The Parties acknowledge that any City~~—~~ restrictions on the installation of landscaping because of drought conditions may delay Developer's installation of the landscaping contemplated by this Agreement.~~—~~ If, due to drought restrictions, Developer is unable to install the landscaping in time to be inspected by the Director of PW for the purposes of accepting the ~~completed~~~~Completed~~~~Completed~~ Park Improvements, Developer shall post a bond or other form of security acceptable to the ~~Direct~~~~Director~~~~Director~~ of PW.
5. ~~(Park ~~Art~~~~Design Elements~~~~Art~~ and Optional Structures Security.~~ To allow for City to install or construct any remaining ~~park design elements, art and other non-functional, sculptural or ornamental features, or kiosks/pavilions or other optional structures, structures, or features~~~~Park Art and Optional Structures~~ following Completion of a City-Dedicated Open Space, Developer shall post a bond or other form of security acceptable to the Director of PW, and in an amount equal to the cost of the remaining Park Art and Optional ~~Structures~~~~park design elements, art, structures, or features~~~~Structures~~. The Park Art and Optional ~~Design Elements and Structures~~~~Features~~~~Structures~~ Security shall be furnished by Developer to the City prior to the final Notice of Acceptance for a Park Improvement within the subject City-Dedicated Open Space.)

[A105]: New-
Google-
Language-
-3-13-21¶
¶
Need-
consistency-
edits for art,
kiosks and
pavillions as the
scope...

B. ~~B.~~ Conditions.

1. Developer shall provide the required security on forms approved by City and from sureties authorized by the California Insurance Commissioner to transact the business of insurance. Any bonds furnished by Developer to satisfy the security requirements in this Section ~~656~~ shall be in the forms attached hereto as Exhibit ~~E81010~~, as may be amended by City from time to time.

2. ~~2.~~ A condition of the Developer's security is that any changes in the Park Improvements cost as reflected in the construction contract that do not exceeding ~~exceed~~ ten percent (10%) of the original estimated hard cost of the Park Improvements as reflected in Table 2 of Exhibit E1 shall not relieve the security. In the event that ~~changes to the Improvement Plans cause an increase of~~ construction contract indicates that the Park Improvements cost is more than ten percent (10%) over the original estimated cost of the Park Improvements, Developer shall provide security as required by Section ~~56~~ 56(A) of this Agreement for One Hundred Percent (100%) of the total estimated cost of the Park Improvements as ~~changed.~~ ¶

[A106]: Why delete standard language? - Allows 10% flexibility but need new security if changes exceed 10%. Security is no good at that point.

[A107]: Same issue as discussed above with respect to bonds at final map... ¶ - Issue when there are design changes (which may be at developer election).

~~2.~~ ~~3~~ reflected in the construction contract. ¶

3. Developer's Performance Security pursuant to Section ~~656~~ 656(A)(1) shall compensate City for the actual cost of ~~completing~~ Completing Completing the required Park Improvements in the Event of Default, as defined in Section ~~657~~ 657 below, by Developer in the performance of this Agreement, regardless of whether City's cost of ~~completion~~ Completion Completion exceeds the Park Improvements Value of the Park Improvements.

4. ~~3-4.~~ A condition of Developer's security is that any request by Developer for an extension of time for the commencement or ~~completion~~ Completion Completion of the work under this Agreement may be granted by City without notice to Developer's surety and such extensions shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement.

5. ~~4-5.~~ As a condition of granting any extension for the commencement or ~~completion~~ Completion Completion of any work under this Agreement, Director of PW may require Developer to furnish new security guaranteeing performance of

this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by Director of PW.

6. ~~5-6.~~ If Developer seeks to replace any security with another security or securities, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by Developer to Director of PW; and (3) upon its written acceptance by Director of PW, be deemed to be a part of this Agreement. Upon Director of PW's acceptance of a replacement security, the former security may be released by City.

7. ~~—~~ ~~(New Section 5(B)(6):~~ Upon a Transfer that includes the Transfer of Developer's obligations with respect to a City-Dedicated Open Space that has not yet been Completed, (i) Transferee shall provide security in accordance with the requirements of this Agreement, or (ii) if Developer has previously provided security in accordance with this Agreement for the subject City-Dedicated Open Space, Transferee shall promptly provide new security, which security shall replace the security provided by Developer for the subject City-Dedicated Open Space. If Transferee provides security as required by (ii), above, upon Director of PW's acceptance of the new security from Transferee, the former security provided by Developer/Transferor shall be released by the City. ~~4~~

[A108]: New Language from Google Note - Still subject to City discussion regarding transfers.

~~46.~~

- C. ~~C.~~ Release of Securities. City shall release the securities required by this Agreement as follows:

1. Performance Security. City shall release each Performance Security for a Park Improvement upon recordation of the Notice of Acceptance for that Park Improvement, or any portion thereof, or as may otherwise be authorized in accordance with California Government Code Sections 66499.7(a)–(g).
2. Payment Security. City shall release the Payment Security for a Park Improvement included in a final map in accordance with California Government Code Section 66499.7(h).

3. Warranty Security. City shall release the Warranty Security for a Park Improvement upon expiration of the warranty period for that Park Improvement and settlement of any claims filed during the warranty period. City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees, for any claims filed during the warranty period.

4. Landscaping Security. To secure Developer's installation and maintenance of landscaping as may be required by the Project Specifications, at such time when the drought restrictions have been rescinded as further described in Section F(3) of Exhibit E4 (hereinafter "Landscaping Security")5.

5. Park Art and Optional Design Elements and Structures Features Optional Structures Security. City shall release the Park Art and Optional Design Elements and Structures Features Optional Structures Security upon its completed installation or construction of the remaining Park Art and Optional Structures park design elements, art, structures, or features Structures.

[A109]: New Google Language inserted. ¶
¶
Need consistency throughout with respect to "art, kiosks and pavillions" as to scope.

[A110]: Need consistency throughout with respect to "art, kiosks and pavillions" as to scope.

D. Injury to Park Improvements, Public Property, or Public Utility Facilities. Until recordation of the Notice of Acceptance of the Park Improvements as provided in Exhibit E455, Developer assumes responsibility for the care and maintenance of, and any damage to, the Park Improvements. Developer shall replace or repair all Park Improvements, public utility facilities, and surveying or subdivision monuments and benchmarks that are destroyed or damaged for any reason, regardless of whether resulting from the acts of the Developer, prior to the recordation of the Notice of Acceptance; provided, however, that if Developer identifies a responsible third party for such damage, Developer may pursue, at its sole cost and expense, recovery of its repair costs and expenses from such responsible third party at its sole cost and expense. Developer shall bear the entire cost of such replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval of the Director of PW.

[A111]: Stephanie to further consider.

[A112]: It's your land until City accepts, its your responsibility.

Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss, or damage, regardless of cause, occurring to the work or Park Improvements prior to recordation of the Notice of Acceptance of the work or improvements.

SECTION 7. ~~SECTION 6.~~ DEFAULT.

A. Developer shall be in default hereunder upon the occurrence of any one or more of the following events ("Event of Default"):

1. ~~1.~~ Developer's failure to timely ~~commence or complete~~CompleteComplete construction of one of more Park Improvements under this Agreement;
2. ~~2.~~ Developer's failure to timely cure any defect in any Park Improvement;
3. ~~3.~~ Developer's failure to perform ~~substantial~~ construction work for a period of twenty (20) ~~calendar~~businessbusiness days after commencement of work;
4. ~~4.~~ Developer's insolvency, appointment of receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Developer fails to discharge within ~~thirtysixtysixty~~ (~~306060~~) days;
5. ~~5.~~ Developer assigns this Agreement in violation of Section ~~9~~;
- ~~6. Developer fails to deliver the Privately Owned Open Space as required by Section XX of the Development Agreement~~ 10; or ~~or~~ *
6. ~~7.~~ Developer fails to perform or satisfy any other term, condition, or obligation under this Agreement.

B. If an Event of Default occurs and the Event of Default is not cured by Developer in accordance with Section ~~6~~7(E) below, City in its sole discretion shall be entitled to terminate Developer's control over the Park Improvements described herein and hold Developer and its surety liable for all damages suffered by City as a result of the Event of Default. City shall have the right, at its sole discretion, to draw upon or use the appropriate security to mitigate City's damages in the Event of Default by Developer. City may use the sums provided by the Performance Security in addition to any other

[A113]: still unresolved. they don't want undelivered popos to be a default, but it's too easy for them to not perform and sell the land to someone else at a profit. is there anything in the DWDSG that has enough teeth to prevent this?

[A114]: no there is not. We need language in the DA

[A115]: @Google—reverse deletion

[A116]: Google Doesn't want POPOs to be a default; ¶ Protections to City: ¶ 1) -Delay penalty up to the full value; -Google understood this to be negotiation for not treating it as default. ¶ 2) Requirement of 52sf (through dedication and POPO) numbers don't work unless POPOs are provided. ¶ Google believes these protections warrant not treating failure to provide POPO as a default. ¶ City—interested in insuring that the improvements actually occur and not just through a fee-out. ¶ Stephanie—52 SF not met; ability to stop reviews if not met is strong backstop. ¶ City to followup internally ¶

[A117]: City could get comfortable carving out POPO delivery from default only if the Delay Penalties would

remedies available at law or in equity to City for the ~~completion~~~~Completion~~~~Completion~~ of the Park Improvements in accordance with the Park Improvements ~~Specifications and~~ ~~Park Improvements~~ Plans.— The Parties acknowledge and agree that the estimated costs and security amounts may not reflect the actual cost of construction of any specific Park Improvement for which the security is provided, and therefore, City's damages in the Event of Default by Developer shall be measured by the actual cost of ~~completing~~~~Completing~~~~Completing~~ the required Park Improvements to the satisfaction of City.— City may use the sums provided by the securities for the ~~completion~~~~Completion~~~~Completion~~ of the Park Improvements for which the security is provided in accordance with the Project Specifications.

C. City may take over the work and ~~complete~~~~Complete~~~~Complete~~ the Park Improvements for ~~with~~~~which~~~~which~~ the security is provided, by contract or by any other method City deems appropriate, at the sole cost and expense of Developer.— In such event, City, without any liability ~~whatsoever~~~~for~~~~for~~ any work or actions previously performed by Developer with respect to the subject Park Improvements, may ~~complete~~~~Complete~~~~Complete~~ the Park Improvements using any of Developer's materials, appliances, plans, or other property located at the Park Site and that are necessary to ~~complete~~~~Complete~~~~Complete~~ the Park Improvements. The rights and remedies set forth in this Section ~~67~~ shall affect and concern only the specific Park Improvement(s) that are the subject of the specific Event of Default. ~~D.~~—

D. ~~E.~~—Unless the PRNS Director determines that the circumstances warrant immediate enforcement of the provisions of this Section ~~67~~ in order to preserve the public health, safety, and welfare, the PRNS Director shall give ~~twent~~~~twenty~~ (20–~~2020~~) working days' prior written notice of termination to Developer ("Notice Period"), which notice shall state in reasonable detail the nature of Developer's default and the manner in which Developer can cure the default. During the Notice Period, Developer shall have the right to cure any such default; provided, however, if a default is of a nature which cannot reasonably be cured within the Notice Period, Developer shall be deemed to have timely cured such default for purposes of this Section if Developer commences to cure the

default within the Notice Period, and prosecutes the same to completion within a reasonable time thereafter. ~~F.~~

- E. ~~G.~~ If an Event of Default occurs and the Event of Default is not cured by Developer in accordance with Section ~~67~~(~~E~~D) above, City in its sole discretion shall be entitled to terminate Developer's control over the specific Park Improvement(s) that is the subject of the Event of Default and hold Developer and its surety liable for all damages suffered by City as a result of the Event of Default. City shall have the right, at its sole discretion, to draw upon or use the appropriate security to mitigate City's damages in the Event of Default by Developer. ~~City may use the sums provided by the Performance Security for the~~ ~~completion~~~~Completion~~Completion of the Park Improvements in accordance with the Park Improvements ~~Specifications and~~PlansPlans.

[A118]:
Stephanie--
understood--

[A119]: It may
not fully
compensate--
Delete.

Following an Event of Default and Developer's failure to cure, City may take over the work and ~~complete~~~~Complete~~Complete the Park Improvements, by contract or by any other method City deems appropriate. In such event, City may ~~complete~~~~Complete~~Complete the Park Improvements using any of Developer's materials and/or plans that are necessary to ~~complete~~~~Complete~~Complete the Park Improvements.

- F. ~~H.~~ If an Event of Default occurs, Developer agrees to pay any and all costs and expenses incurred by City in securing performance of such terms, conditions, or obligations giving rise to the Event of Default, including but not limited to, fees and charges of architects, engineers, contractors, and other professionals but specifically excluding legal costs and expenses including attorneys' fees and court costs.

[A120]: Google
-Concerns re:
cross defaults;
transferee
issues; ¶
- Will be an
issue for
Google, unless
limited to the
triggering
building? ¶

¶
Revise to limit
to triggering
building;
subject to city
seeing language.

- G. ~~I.~~ City's rights and remedies specified in this Section ~~67~~ shall be deemed cumulative and in addition to any rights or remedies City may have at law or in equity, including but not limited to withholding the ~~issuance~~approval of ~~any additional building permits or~~ ~~certificate of occupancy for the Project~~Conformance Review for a subsequent residential building.

[A121]: Why
delete. This is
the deal. If you
are in default,
we withhold
permits.

SECTION 8. ~~SECTION 7.~~ **INDEMNITY/HOLD HARMLESS.**

City, or any officer, employee, or agent thereof shall not be liable for any loss or injury to persons or property occasioned by reason of the acts or omissions of Developer, its agents, employees, contractors, or subcontractors in the performance of this Agreement. Developer further acknowledges and agrees to protect, indemnify, defend and hold City, its officers, agents and employees harmless from and against any and all liability, loss, cost and obligations on account of or arising out of or resulting from any injury or loss caused directly or indirectly by any cause whatsoever in connection with or incidental to the activities performed by Developer under this Agreement, except to the extent such injury or harm is caused ~~or contributorily caused~~ by the sole active **negligence** or willful misconduct of City, its officers, agents, or employees. This Section ~~78~~ shall survive the recordation of the Notice of Acceptance, acceptance of— any Park Improvement as to that Park Improvement, or sooner termination of this Agreement for a period of one (1) year from the date of such acceptance or termination. Recordation of the Notice of Acceptance by City of any Park Improvement shall not constitute an assumption by City of any responsibility or liability for any loss or damages covered by this Section ~~78~~.

Developer shall reimburse City for all reasonable **costs** and expenses, including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs, incurred by City in enforcing this Section ~~78~~.

SECTION 9. ~~SECTION 8.~~ **NOTICES.**

Any notice required or permitted to be given under this Agreement shall be in writing and personally served or sent by U.S. mail, postage prepaid, addressed as follows:

To PRNS Director: City of San José
Department of Parks, Recreation and Neighborhood Services
Attn: PRNS Parks Planning Division Manager
200 East Santa Clara Street, Tower-9th Floor
San José, CA 95113

To Director of PW: City of San José
Department of Public Works

[A122]: No. Do not shift risk and liability to City on a standard park dedication. This the same risk for all developers dedicating to City. ¶

[A123]: @ Google reverse the changes here.

[A124]: Google internal say can't agree to it. City's position remains unchanged.

[A125]: If its unreasonable, the Court can decide.

[A126]: "reasonable" is ok.

Attn: City Facilities Architectural Services Deputy Director _____
200 East Santa Clara Street, Tower-6th Floor
San José, CA 95113

To Developer:

Google LLC
1600 Amphitheatre Parkway
Mountain View, Ca 94043
Attn: REWS Department / Downtown West SJ Project
Executive

with a copy to:

Google LLC
1600 Amphitheatre Parkway
Mountain View, Ca 94043
Attn: Legal Department / R/E Matters

Attn: Gregg Miller
Coblentz Patch Duffy & Bass LLP
One Montgomery Street, Suite 3000
San Francisco, CA 94104

Notice shall be deemed given upon receipt. The Parties shall notify each other of changes in either their respective addresses or their representatives subject to notification in accordance with the provisions of this Section.

SECTION 10. ~~SECTION 9.~~—TRANSFER AND RELEASE.

This Agreement may not be assigned or transferred in part or in whole by Developer except as allowed by the Development Agreement.— Any attempts to assign or transfer any terms, conditions, or obligations under this Agreement without compliance with the requirements set forth in the Development Agreement shall be voidable at City’s sole discretion.

SECTION 11. ~~SECTION 10.~~—BINDING UPON SUCCESSORS.

Subject to Section ~~9~~10, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors, assignees, transferees, and legal representatives.

SECTION 12. ~~SECTION 11.~~—GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with California law.

SECTION 13. ~~SECTION 12.~~—ENTIRE AGREEMENT.

The Development Agreement and this Agreement, including the exhibits, attachments and appendices, contain— the entire agreement of the Parties with respect to the satisfaction of the requirements of the Parkland Dedication Ordinance for the Project and supersedes all prior understandings or representations of the Parties, whether written or oral. Any subsequent modification of this Agreement must be made in writing and signed by all Parties hereto.

SECTION 14. ~~SECTION 13.~~—TIME OF ESSENCE.

Time is of the essence in the performance of this Agreement.

SECTION 15. ~~SECTION 14.~~—FORCE MAJEURE.

- A. ~~A.~~ “Force Majeure” has the meaning as set forth in the Development Agreement.
- B. ~~B.~~ Should a Force Majeure ~~event~~EventEvent prevent performance of this Agreement, in whole or in part, the Party affected by the Force Majeure ~~event~~EventEvent shall be excused or performance under this Agreement shall be suspended to the extent commensurate with the Force Majeure ~~event~~EventEvent; provided that the Party availing

itself of this Section ~~shall notify promptly~~ promptly notifies the other Party ~~within ten (10) days after~~ after learning of the ~~affected Party's knowledge of the commencement of the occurrence~~ occurrence of a Force Majeure Event that actually causes delay; and provided further that the time of suspension or excuse shall not extend beyond that reasonably necessitated by the Force Majeure Event.

C. ~~C.~~ Notwithstanding the foregoing, the following shall not excuse or suspend performance under this Agreement:

1. ~~1.~~ Performance under this Agreement shall not be suspended or excused for a Force Majeure Event pertaining to the Work if such event is not defined as a Force Majeure Event under the applicable contract for the Work.
2. ~~2.~~ Negligence or failure of Developer to perform its obligations under a contract for the Work (other than for a Force Majeure Event as defined under the applicable contract) shall not constitute a Force Majeure Event.
3. ~~3.~~ The inability of Developer for any reason to have access to funds necessary to carry out its obligations under this Agreement or the termination of any contract for the prosecution of the Work for such reason or for Developer's default under such contract shall not constitute a Force Majeure Event.

SECTION 16. ~~SECTION 15.~~ **BOOKS AND RECORDS.**

A. Developer shall be solely responsible to implement internal controls and record keeping procedures in order to comply with this Agreement and all applicable laws. Developer shall maintain any and all ledgers, books of account, invoices, vouchers, bids, cancelled checks, and other records or documents evidencing or relating to the activities performed by Developer under this Agreement, including without limitation those relating to the construction of the Park Improvements, for a minimum period of three (3) years, or for any longer period required by law, from the date of termination of this Agreement or the date of the City's acceptance of the Park Improvements, whichever is longer. Notwithstanding this previous sentence, Developer shall retain such records beyond three (3) years so long as any litigation, audit, dispute, or claim is pending.

- B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Developer's address indicated for receipt of notices in this Agreement.
- C. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Developer's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized in writing by Developer, Developer's representatives, or Developer's successor-in-interest.
- D. Developer's obligations under this Section shall be in addition to Developer's obligations specified in Exhibit E5.

SECTION 17. ~~SECTION 16.~~ MISCELLANEOUS PROVISIONS.

- A. ~~A. Captions.~~ Captions and Sections of this Agreement are for convenience only and shall not be considered in resolving any questions of interpretation or construction.
- B. ~~B. Incorporation of Recitals.~~ The Recitals in this Agreement are hereby incorporated into the terms of this Agreement.
- C. ~~C. Jurisdiction.~~ In the event that suit shall be brought by any of the Parties, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.
- D. ~~D. Waiver.~~ Developer agrees that waiver by City of any breach or violation or any term, condition, or obligation of this Agreement shall not be deemed to be a waiver of any other term, condition, or obligation contained herein or a waiver of any subsequent breach or violation of the same term, condition, or obligation. ~~E.~~

- E. Plurality. As used in this Agreement and when required by the context, each number (singular and plural) shall include all numbers.
- F. ~~F.~~ Compliance with Laws. Developer, its employees, agents, representatives, contractors, and subcontractors shall comply with all local, state and federal laws in the performance of this Agreement.
- G. ~~G.~~ Nondiscrimination. Developer, its employees, agents, representatives, contractors, and subcontractors shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or any other recognized or protected class in connection with or related to the performance of this Agreement. Developer shall expressly require compliance with the provisions of this Section ~~17161~~(G) in all agreements with contractors and subcontractors for the performance of the improvements hereunder.
- H. ~~H.~~ Developer has read each and every part of this Agreement, including without limitation, its exhibits, and Developer freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such Party may have drafted this Agreement or any of its provisions.
- I. ~~I.~~ Whenever in this Agreement words of obligation or duty are used, such words shall have the force and effect of covenants. Any obligation imposed by either Party shall include the imposition on such Party of the obligation to pay all costs and expenses necessary to perform such obligation, except as otherwise provided herein.
- J. ~~J.~~ Severability. If any provisions or portions of this Agreement are held to be invalid by a court of competent jurisdiction, the remaining provisions or portions of this Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the Parties.
- K. ~~K.~~ This Agreement is entered into pursuant to and shall be governed by the Parkland Dedication Ordinance and the Development Agreement. If not otherwise defined in this

Agreement or in the Development Agreement, capitalized terms shall have the meanings set forth in Chapter 19.38 of the San José Municipal Code.

SECTION 18. ~~SECTION 17.~~ AGREEMENT'S EXHIBITS.

This Agreement includes the following Exhibits:

E1 Park Improvements Value ~~[TO FOLLOW IN SEPARATE TRANSMITTAL]~~ and Costs ¶

[A127]: Exhibit E2 deleted and addressed with reference to Resolution No. 73587 re: Private Recreation Improvements.

~~E3~~

E2 Public and Private Open Space Approximate Acreage

E3 Delivery of City-Dedicated Open Space

E3.1 City-Dedicated Open Space Dedication and Improvements Schedule ¶

E3.2 Park Dedication/Delivery Triggers Figure

E4 Dedication Form

E5 Design and Construction Requirements ~~[TO FOLLOW IN SEPARATE TRANSMITTAL]~~ ¶

~~E5~~

E6 Diagram of Construction Right of Entry Area

E7 Park Dedication Tracking and Verification Table

E8 Parkland Dedication Obligation ¶

~~E6 — Public and Private Open Space Approximate Acreage~~

~~E7~~ 99 List of Required Exceptions from Parkland Dedication Ordinance

~~E8~~ 10 10 Bond Forms

[A128]: I missed reference to this in body of doc. can we make sure they are correctly reference?



-WITNESS THE EXECUTION HEREOF the day and year hereinafter written by City.

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By: _____

Johnny V. Phan
Chief Deputy City Attorney

City Clerk

Date: _____

DEVELOPER

GOOGLE LLC, a Delaware limited liability
company

By: _____

Name: _____

Title: _____



* All Developer's signatures must be accompanied by an attached notary acknowledgement.

* Proof of authorization for Developer's signatures is required to be submitted concurrently with this Agreement.

[illegible]

On _____ before me _____,
(Name, Title of officer – e.g. Jane Doe, Notary Public)

personally appeared _____ 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.

(Signature of Notary)

~~EXHIBIT E4~~ Exhibit E1

~~DESIGN AND CONSTRUCTION REQUIREMENTS~~

Park Improvements ~~Value and Costs~~

Table 1 - Estimated Credits, Park Improvements Value, and Unit Equivalency¹

Parks and Open Space	Acreage Credit	Units Equivalent	Improvement Costs	Units Equivalent	Total Credits	Total Units Equivalent
LGC Connector ²	\$2,936,320	210	\$5,647,039 ¹	405	\$8,583,359	615
LGC Park on G	\$1,189,476	85	\$3,669,093	263	\$4,858,569	348
Social Heart	\$1,387,223	99	\$7,221,778	517	\$8,609,000	617
St. John Triangle	\$4,943,422	354	\$14,544,521	1,042	\$19,487,943	1,396
Northend Park	\$2,856,030	205	\$5,225,147	374	\$8,081,177	579
Subtotal Parks OS	\$13,312,471	954	\$36,307,578	2,601	\$49,620,048	3,555
Los Gatos Creek Trail (E)	\$821,178	59	\$1,781,907	128	\$2,603,085	187
Los Gatos Creek Trail (G)	\$890,886	64	\$2,713,981	194	\$3,604,867	258
Subtotal Trails OS	\$1,712,064	123	\$4,495,888	322	\$6,207,952	445
Total OS	\$15,024,535	1,076	\$40,803,466	2,924	\$55,828,000	4,000

~~¶
(As set forth in the DWDSG, the Publicly Dedicated Parks shall include the programmatic elements listed for each Park below, which elements are factored into the Park Improvement Values. An amendment to the DWDSG shall not require an amendment to this Exhibit, and such amendment as it affects the information contained herein shall be automatically incorporated. ¶)~~

~~Los Gatos Creek Connector ¶~~

~~The City-dedicated portion of Los Gatos Creek Connector shall include the following programmatic elements: walking path, nature play, and planting strategy as described in the~~

¹The cost of the Park Improvements (the "Park Improvements Value") reflected in Table 1 includes, but is not limited to, the City's Review Fees, direct costs, soft costs, and contingency reflected in Table 2 of this Exhibit E1.

²As set forth in Exhibit E3.1, Los Gatos Creek Connector is anticipated to be improved in two parts -- Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2, which each have different Completion triggers. Upon Completion of Park Improvements in accordance with Exhibit E3.1, each of these spaces shall result in a proportional share of the aggregated Improvement Value credits.

[A129]: General Note - The exhibits have been renumbered, but not re-ordered at this point so as to avoid a bunch of redlining associated with that. ON the next iteration, the exhibits should be put in the proper order.

[A130]: This exhibit needs follow on pages that provide some context on the improvements value. Not the full breakdown but enough detail for someone in the future can sort of understand what was included in these #'s

[A131]: Google team agreed to this week of 3/8

[A132]: NOTE these are included in the Google Responses document from 3-13-21; however staff requests additional information/clarification of that information.

[A133]: Improvements credit needs to be split in two for LG Connector 1 and 2. Then we can delete the note below.

~~DWDSG. One of the following two elements must also be included: entry plaza or neighborhood amenity.~~ ¶

~~¶~~

~~Los Gatos Creek Park~~ ¶

~~The City dedicated portion of Los Gatos Creek Park shall include the following programmatic elements: entry plaza, program deck, walking path, and planting strategies of riparian planting and understory planting as described in the DWDSG. Four of the following seven programmatic elements must also be included: outdoor program area, neighborhood amenity, nature play, art, serviced pavilion structure, kiosk, or creek overlook / viewing platform.~~ ¶

~~¶~~

~~Social Heart~~ ¶

~~The Social Heart shall include the following programmatic elements: Enhance views and experience to the Southern Pacific Depot, Downtown to Diridon Station Shared Use Path, Program deck, Outdoor program area, Planting strategy, Programmatic element requirements. Four of the following six programmatic elements must also be included: anchor plaza, flexible lawn; event, rotating vendor, or food truck access; kiosk; art; and water feature.~~ ¶

~~¶~~

~~St. John Triangle~~ ¶

~~St. John Triangle shall include the following programmatic elements: Anchor plaza, Flexible lawn, a Secondary flexible lawn shall also be permitted to allow for additional programming, Program deck, Canopy structures, Outdoor performance area, Planting strategy as required by DWDSG. Three of the following six programmatic elements must also be included: informal recreation, neighborhood amenity, art, unserviced pavilion structures, kiosk, and tree grove.~~ ¶

~~¶~~

~~Northend Park~~ ¶

~~The City dedicated portion of Northend Park shall include the following programmatic elements: flexible lawn, outdoor program area, informal recreation, tree grove, and planting strategy—re-oaking as required by DWDSG. Four of the following six programmatic elements must also be included: program deck, makerspace, art, serviced pavilion structures, kiosk, and ecological demonstration.~~ ¶

~~¶~~

~~Los Gatos Creek Trail (E/G)~~ ¶

~~The Trail will be designed in accordance with Table 4.1 of the 2018 City of San Jose Trail Network Toolkit, including those recommendations for width, slope and drainage.~~ ¶

~~¶~~

~~Addition to Exhibit E1, new footnote 1.~~ ¶

~~¶~~

~~1 Review Fees are as follows, subject to escalation based on the California Construction Cost Index: LGC Connector, \$598,928; LGC Park, \$389,146; Social Heart, \$765,946; St. John Triangle, \$1,542,601; Northend Park, \$554,182; Los Gatos Creek Trail (E), \$188,990; and Los Gatos Creek Trail (G), \$287,846.~~ ¶

~~¶~~

~~¶~~

[A135]: This language is not what City wanted. We want a table of assets that were factored into the cost estimates. As written this just parrots back the DWDSG

[A136]: These need to be revised based on conversation between Nicole and Sheela to provide actual line items. Google to provide language.



~~1. As set forth in Exhibit E3.1, Los Gatos Creek Connector is anticipated to be improved in two parts — Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2, which each have different Completion triggers. Upon Completion of Park Improvements in accordance with Exhibit E3.1, each of these spaces shall result in a proportional share of the aggregated Improvement Value credits.~~

[A137]: this note seems confusing. why not spell out how much each segment is worth to avoid confusion later?



Table 2 - Detailed Cost Estimates

<u>City-Dedicat ed Open Spaces</u>	<u>Baseline Direct</u>	<u>Soft Cost (18%)</u>	<u>Project Contingency (25%)</u>	<u>City Review Fee (17.5%)</u>	<u>Baseline Construction Budget</u>	<u>Cost/Acre</u>	<u>Cost/SE</u>
<u>Los Gatos Creek Connector</u>	<u>\$3,422,448</u>	<u>\$616,041</u>	<u>\$1,009,622</u>	<u>\$598,928</u>	<u>\$5,647,039</u>	<u>\$6,205,475</u>	<u>\$142</u>
<u>Supply & Installation of Hard Landscaping</u>	<u>\$492,034</u>	<u>\$88,566</u>	<u>\$145,150</u>	<u>\$86,106</u>	<u>\$811,856</u>		
<u>Supply & Installation of Semi- Permeable</u>	<u>\$730,136</u>	<u>\$131,425</u>	<u>\$215,390</u>	<u>\$127,774</u>	<u>\$1,204,725</u>		
<u>Supply & Installation of Softscape including Trees & Plant</u>	<u>\$1,104,154</u>	<u>\$198,748</u>	<u>\$325,726</u>	<u>\$193,227</u>	<u>\$1,821,855</u>		
<u>Supply & Installation of FF&E</u>	<u>\$1,096,123</u>	<u>\$197,302</u>	<u>\$323,356</u>	<u>\$191,822</u>	<u>\$1,808,603</u>		
<u>Los Gatos</u>	<u>\$2,223,693</u>	<u>\$400,265</u>	<u>\$655,989</u>	<u>\$389,146</u>	<u>\$3,669,093</u>	<u>\$9,916,591</u>	<u>\$228</u>

~~12255.020.4811-7216-7647.1~~ 12255.020.4820-~~0475-2349.2~~7228-9250.1

12255.019.4818-9379-2968.1 T ~~7656/727225~~



Creek Park on G							
Supply & Installation of Hard Landscaping	<u>\$265,481</u>	<u>\$47,787</u>	<u>\$78,317</u>	<u>\$46,459</u>	<u>\$438,044</u>		
Supply & Installation of Semi Permeable	<u>\$123,376</u>	<u>\$22,208</u>	<u>\$36,396</u>	<u>\$21,591</u>	<u>\$203,571</u>		
Supply & Installation of Softscape including Trees & Plant	<u>\$810,600</u>	<u>\$145,908</u>	<u>\$239,127</u>	<u>\$141,855</u>	<u>\$1,337,489</u>		
Supply & Installation of FF&E	<u>\$1,024,236</u>	<u>\$184,362</u>	<u>\$302,150</u>	<u>\$179,241</u>	<u>\$1,689,989</u>		
Social Heart	<u>\$4,376,832</u>	<u>\$787,830</u>	<u>\$1,291,165</u>	<u>\$765,946</u>	<u>\$7,221,773</u>	<u>\$12,669,879</u>	<u>\$291</u>
Supply & Installation of Hard Landscaping	<u>\$1,261,386</u>	<u>\$227,050</u>	<u>\$372,109</u>	<u>\$220,743</u>	<u>\$2,081,288</u>		
Supply & Installation of Semi Permeable	<u>\$59,570</u>	<u>\$10,723</u>	<u>\$17,573</u>	<u>\$10,425</u>	<u>\$98,291</u>		
Supply & Installation of Softscape including Trees & Plant	<u>\$704,559</u>	<u>\$126,821</u>	<u>\$207,845</u>	<u>\$123,298</u>	<u>\$1,162,523</u>		
Supply & Installation of FF&E	<u>\$2,351,316</u>	<u>\$423,237</u>	<u>\$693,638</u>	<u>\$411,480</u>	<u>\$3,879,671</u>		
St John Triangle	<u>\$8,814,863</u>	<u>\$1,586,675</u>	<u>\$2,600,384</u>	<u>\$1,542,601</u>	<u>\$14,544,523</u>	<u>\$9,506,196</u>	<u>\$218</u>
Supply & Installation of Hard Landscaping	<u>\$1,844,446</u>	<u>\$332,000</u>	<u>\$544,112</u>	<u>\$322,778</u>	<u>\$3,043,336</u>		
Supply & Installation of Semi Permeable	<u>\$437,400</u>	<u>\$78,732</u>	<u>\$129,033</u>	<u>\$76,545</u>	<u>\$721,710</u>		
Supply & Installation of Softscape	<u>\$2,550,958</u>	<u>\$459,172</u>	<u>\$752,533</u>	<u>\$446,418</u>	<u>\$4,209,081</u>		

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12255.019 4818-9379-2968.1 ~~T-7656/727225~~

including Trees & Plant							
Supply & Installation of FF&E	<u>\$3,982,059</u>	<u>\$716,771</u>	<u>\$1,174,707</u>	<u>\$696,860</u>	<u>\$6,570,397</u>		
Northend Park	<u>\$3,166,751</u>	<u>\$570,015</u>	<u>\$934,191</u>	<u>\$554,181</u>	<u>\$5,225,139</u>	<u>\$5,871,003</u>	<u>\$135</u>
Supply & Installation of Hard Landscaping	<u>\$249,520</u>	<u>\$44,914</u>	<u>\$73,609</u>	<u>\$43,666</u>	<u>\$411,709</u>		
Supply & Installation of Semi Permeable	<u>\$763,579</u>	<u>\$137,444</u>	<u>\$225,256</u>	<u>\$133,626</u>	<u>\$1,259,906</u>		
Supply & Installation of Softscape including Trees & Plant	<u>\$1,231,738</u>	<u>\$221,713</u>	<u>\$363,363</u>	<u>\$215,554</u>	<u>\$2,032,368</u>		
Supply & Installation of FF&E	<u>\$921,913</u>	<u>\$165,944</u>	<u>\$271,964</u>	<u>\$161,335</u>	<u>\$1,521,156</u>		
Los Gatos Creek Trail on E	<u>\$1,079,944</u>	<u>\$194,390</u>	<u>\$318,584</u>	<u>\$188,990</u>	<u>\$1,781,908</u>	<u>\$7,127,632</u>	<u>\$164</u>
Supply & Installation of Hard Landscaping	<u>\$678,167</u>	<u>\$122,070</u>	<u>\$200,059</u>	<u>\$118,679</u>	<u>\$1,118,975</u>		
Supply & Installation of Softscape including Trees & Plant	<u>\$127,238</u>	<u>\$22,903</u>	<u>\$37,535</u>	<u>\$22,267</u>	<u>\$209,942</u>		
Supply & Installation of FF&E	<u>\$274,540</u>	<u>\$49,417</u>	<u>\$80,989</u>	<u>\$48,045</u>	<u>\$452,991</u>		
Los Gatos Creek Trail on G	<u>\$1,644,837</u>	<u>\$296,071</u>	<u>\$485,227</u>	<u>\$287,846</u>	<u>\$2,713,980</u>	<u>\$9,692,787</u>	<u>\$223</u>
Supply & Installation of Hard Landscaping	<u>\$1,033,114</u>	<u>\$185,961</u>	<u>\$304,769</u>	<u>\$180,795</u>	<u>\$1,704,638</u>		
Supply & Installation of Softscape including Trees	<u>\$193,793</u>	<u>\$34,883</u>	<u>\$57,169</u>	<u>\$33,914</u>	<u>\$319,758</u>		

~~12255.020 4811-7216-7647.1~~ 12255.020 4820-~~0475-2349.2~~ 7228-9250.1

12255.019 4818-9379-2968.1 ~~T-7656/727225~~

& Plant							
Supply & Installation of FF&E	<u>\$417,930</u>	<u>\$75,227</u>	<u>\$123,289</u>	<u>\$73,138</u>	<u>\$689,585</u>		
<u>GRAND TOTAL</u>	<u>\$24,729,367</u>	<u>\$4,451,286</u>	<u>\$7,295,163</u>	<u>\$4,327,639</u>	<u>\$40,803,456</u>	<u>\$8,500,728</u>	<u>\$195</u>

Exhibit E2



Public and Private[¶]
City-Dedicated Open Space and ¶
Covenant Privately-Owned Publicly Accessible Open Space Approximate Acreages

Open Space	City-Dedicated Acreage ¹ (AC)	Privately-Owned Open Space Acreage Subject to Restrictive Covenant ^{1,2} (AC)
Los Gatos Creek Connector	0.91	0.33
Los Gatos Creek Park	0.37	1.58
The Meander	-	0.87
Social Heart	0.57	-
Creekside Walk at South Autumn Street	-	1.24
Los Gatos Creek East	-	1.09
Gateway Plaza	-	1.01
St. John Triangle	1.53	-
North Montgomery Pocket Park	-	-
Northend Park	0.89	0.88
Los Gatos Creek Trail (E)	0.25	-
Los Gatos Creek Trail (G)	0.28	-
Total	4.80	7.0

¹ Acreages are approximate and will be confirmed pursuant to the verification process described in Section ~~34~~(B) and Exhibit E7.

² Acreage for Privately-Owned Publicly Accessible include the following typologies as defined by the DWDSG: Privately-owned Public Park, Los Gatos Creek Riparian Setback, and Los Gatos Creek Riparian Corridor

Exhibit E3

Delivery of City-Dedicated Open Space

Exhibit E3.1

City-Dedicated Open Space Dedication and Improvement Schedule*

Open Space	Outside Date	EIR Phasing	Dedication and Delivery Trigger (Building Parcels)
Los Gatos Creek Trail (E)	12 months after TCO	1	First TCO for any building in E1
Los Gatos Creek Trail (G)	12 months after TCO	1	First TCO for any building in G1
Los Gatos Creek Park	18 months after TCO	1	First TCO for any building in G1
Los Gatos Creek Trail Connector 1	12 months after TCO	1	Dedication of land with 2nd market-rate residential building within the project; Improvements with first TCO for any building in the later of H3 or H5
Social Heart	24 months after TCO	1	Earlier of TCO for 1,500th Units ¹ , or First TCO for any building in D4
Northend Park	18 months after TCO	2	First TCO for any building in A1
Los Gatos Creek Connector 2	12 months after TCO	2	Dedication of land with 2nd market-rate residential building within the project; Improvements with first TCO for any building in H6
St. John Triangle	12 months after TCO	3	Earlier of first TCO for any building in C2, or 3,250 Units ¹

¹

¹ Trigger by residential unit count is subject to the requirements of Section 4(H).

*Except for Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2, offers of dedication shall be made as set forth in Section 23(CA) of the Parkland Agreement. The dedication schedule for Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2 is as set forth herein and described in Section 23(D) of the Parkland Agreement.

[A138]: - Change in dedication requirement from 1st market-rate residential building to 2nd is not acceptable without some explanation and discussion.

[A139]: 1,500th unit change (from 1,000th) is ok provided there is a footnote added noting that "Any residential sites to be dedicated for affordable housing under the IHO count toward the 1,500 trigger from the time that Google has satisfied the 'conditions precedent to transfer' (which is when Google gets the IHO credit for those site, including the value of the parks improvement)."

[A140]: Change in dedication requirement from 1st market-rate residential building to 2nd is not acceptable without some explanation and discussion.

[A141]: Add a new footnote noting that "Any residential sites to be dedicated for affordable housing under the IHO count toward the 3,250 trigger from the time that Google has satisfied the 'conditions precedent to transfer' (which is when Google gets the IHO credit for those sites, including the value of the parks improvement)."

Exhibit E3.2

Park Dedication/Delivery Triggers Figure

[separate pdf]

Exhibit E4

Dedication Form

RECORDED WITHOUT FEE UNDER
SECTION 6103 GOVERNMENT CODE
OF THE STATE OF CALIFORNIA

**RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO,
AND MAIL TAX/ASSESSMENT
STATEMENTS TO:**

City of San José – Public Works
200 East Santa Clara Street, 3rd Floor
San José, CA 95113-1905

Deed No: _____
3 Dash No: _____

APN(s): _____

Space above this line for Recorder's use

The Undersigned Grantee(s) Declare(s): DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0; Recorded for the benefit of the City of San Jose and is exempt from fee per Government Code Sections 27383 and 6103.

- ☐ computed on the consideration or full value of property conveyed, OR
☐ computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
☐ unincorporated area; ☒ **City of San José**, and
☐ _____
Signature of Declarant

[A142]: Johnny

[A143]:
Stephanie—
confirm whether
any changes
were made¶
¶
- Additional
changes may be
needed to
address
termination if
obligation
ultimately not
triggered.¶
-

~~IRREVOCABLE~~ OFFER OF DEDICATION

GOOGLE LLC, a Delaware limited liability company (“GRANTOR”) does hereby ~~IRREVOCABLY~~ OFFER TO DEDICATE to the CITY OF SAN JOSE, a municipal corporation of the State of California (“CITY”) the real property described in the attached Exhibit “A” for park and open space purposes (the “Park Property”).

Such dedication of the Park Property shall be deemed to have been accepted by CITY upon recordation of a grant deed (“Grant Deed”) in the Santa Clara County, Office of the County-Recorder and the issuance to CITY at GRANTOR’S expense of an owner’s title policy (“Title Policy”) in the amount of the [value of the Property] by [a title company selected by CITY] [_____] [NAME THE TITLE COMPANY WHO WILL HAVE ISSUED THE PTR FROM WHICH THE TITLE EXCEPTIONS ON THE EXHIBIT WILL HAVE BEEN OBTAINED], with the title company’s standard printed title exceptions and the title exceptions described on Exhibit “B” attached hereto, but without any title exceptions that would be omitted based on the title company’s owner’s certificate/affidavit (“Certificate”).

The Certificate and Grant Deed shall be promptly and diligently completed, executed and delivered to the title company by GRANTOR, duly acknowledged, ~~[when requested by CITY]~~ in accordance with Section 3(A) of the Parkland Agreement included as Exhibit E to the Development Agreement between GRANTOR and CITY dated , 202~~2~~, ~~between CITY and GRANTOR~~, recorded on , 202~~2~~ as Document Number Number in the Official Records of Santa Clara County (the "DA"). If necessary for the issuance of the Title Policy, City will provide the title company with a Certificate of Acceptance for the Grant Deed, and GRANTOR shall provide the title company with organizational documents and evidence of duly authorized execution of the Grant Deed and Certificate and any other documents typically required by the title company in order to issue an owner's title policy.

The Grant Deed shall be recorded in such Official Records, and the Title Policy shall be issued, in accordance with written recording instructions by CITY to the title company, which shall condition the recording upon the commitment of the title company to issue the Title Policy at GRANTOR's expense, and which may also condition the recording upon the satisfaction of all or any of the conditions described on EXHIBIT "C".

GRANTOR, with respect to such offer of dedication, retains the right to control the Park Property until this offer of dedication is accepted and the Grant Deed is recorded as described herein. Accordingly, until such Grant Deed is recorded, CITY shall not be responsible for and shall incur no liability with respect to the Park Property, and GRANTOR shall defend, indemnify and hold CITY harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising from or relating to conditions of the Park Property or events occurring on or about the Park Property prior to such recordation (and GRANTOR's obligations hereunder shall survive the recording and acceptance of the Grant Deed).

In accordance with Section 3(A) of the Parkland Agreement included as Exhibit E to the DA, if prior to the expiration or termination of the DA GRANTOR has not undertaken the specific actions set forth in the Parkland Agreement as conditions precedent to CITY'S acceptance of this Offer of Dedication, upon the termination or expiration of the DA this Offer of Dedication shall also terminate and be void regardless of CITY'S later recordation of a notice terminating or vacating this Offer of Dedication.

The provisions hereof shall inure to the benefit of and be binding upon the heirs, successors, assigns and personal representatives of the respective parties hereto, and shall bind the Park Property, and all successors to any portion of or interest in the Park Property.

_____, 20____

GOOGLE LLC,
a Delaware limited liability company

By: _____
Print Name: _____
Title: _____

Address: 1600 Amphitheatre Parkway
Mountain View, CA 94043

Attn: _____

*Proof of authorization for GRANTOR's signature(s) is required to be submitted concurrently with this Agreement.

*All of GRANTOR's signatures must be accompanied by an attached notary acknowledgement.

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)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
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.

Signature _____ (Seal)

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)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
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.

Signature _____ (Seal)

~~EXHIBIT~~ “A”

LEGAL DESCRIPTION

EXHIBIT “B”

PERMITTED TITLE EXCEPTIONS

[INSERT LIST OF TITLE EXCEPTIONS FROM A PTR FROM THE TITLE COMPANY THAT HAVE BEEN REVIEWED AND APPROVED BY CITY; TITLE COMPANY WILL NEED LEGAL DESCRIPTION OF PROPERTY IN ORDER TO PREPARE THE PTR].....

[A144]: City-
Still needs
information on
this from
Google.

EXHIBIT "C"

ADDITIONAL CONDITIONS TO RECORDING

[INCLUDE HERE CONFIRMATION BY CITY AFTER FURTHER INSPECTION OF THE PROPERTY THAT THE CONDITION OF PROPERTY: (I) COMPLIES WITH RELEVANT SECTION OF THE DA, AND/OR (II) THAT GRANTOR HAS NOT VIOLATED THE DA SECTION REQUIRING THAT GRANTOR NOT ALTER OR PERMIT ALTERATION OF THE PROPERTY, OR RELEASE HAZMAT OR PERMIT THE RELEASE OF HAZMAT ON THE PROPERTY]

1. _____

Any of the foregoing conditions __, __, or __ may be waived by the City Manager, provided that the applicable waiver is in writing.

EXHIBIT E5 ~~4~~

~~Design and Construction Requirements~~

DESIGN AND CONSTRUCTION REQUIREMENTS

[TO BE PROVIDED SEPARATELY]

Exhibit E6

Diagram of Construction Right of Entry Area

[separate pdf]

Exhibit E7

Parkland~~Parkland~~ Dedication Tracking and Verification Table

Note: City-Dedicated Open Space (CDOS) sizes as of the Effective Date of this Agreement are listed table below. When a CDOS receives approval of Conformance Review, the size will be filled in in column 4D. The Actual CDOS Size (column 4D) is calculated by measuring the final land area, subject to the exclusions set forth in the Agreements. Column B lists expected acreages stated in Exhibit E2. Column C lists unit equivalents stated in Table 1 of Exhibit E1. For the purposes of Column E, an Average Equivalent/Acre (AC) has been calculated equal to 833 1/4 units and will be applied to the adjustment to determine the Final Park Credit value per CDOS. This was derived by dividing 4,000 units by 4.8 acres. Subject to the other requirements, limitations, and/ or exclusions of this Agreement, if the Actual CDOS Size (column 4D) is less than the Land Expected (column 2B if in acres, ~~or 3 if in square feet~~), one or more other CDOS areas shall be increased in size such that a minimum of 4.8 acres of CDOS are provided for the Project for the development of 4,000 residential units, subject to the requirements, allowances, and limitations set forth in the Parkland Agreement, including Section 2(~~A~~). In the event that Developer is required to pay Parkland Fees pursuant to Section 2(~~A~~), such fees shall be calculated based on the amount of acquired land lost acreage, multiplied by one hundred ninety-five dollars (\$195).

1. A. CDOS Name	2B. Land Expected CDOS Size (Ac AC)	3C. Land SE Estimated Total Residential Unit Equivalent Per Expected (SE)Park	4D. Actual CDOS Size (AC)	5. Adjustment (Column D - Column B)	6. Final Park Credit (Column E Average Unit Equivalent + Column D)
Los Gatos Creek Connector	0.91	615	39,680	-	
Los Gatos Creek Park	0.37	348	16,074	-	
Trail on G in Los Gatos Creek Park	0.28	258	12,039	-	
Social Heart	0.57	617	24,995	-	
Trail on E in Los Gatos Creek East	0.25	187	11,097	-	

[A145]:
Updated Table
to be inserted.

[A146]: New
Table has not
been inserted
yet.

[A147]: We
need
clarification on
dedicated areas.

The VTM says
LGC Connector
is expected to
dedicate 0.93,
1.01, or 0.96 ac
to the City with
DISC impacts.

If additional
land is
dedicated then
0.26, 0.33, or
0.29 ac can be
reduced in other
city-dedicated
parks.

This would lead
to a net decrease
in dedicated
parkland. Can
we get more
clarify on these
numbers?

[A148]: Seems
like we lost a
few columns
here that are
needed.

[A149]: There is
a new exhibit
E7 developed by
Larissa and
Thomas and
agreed to with
Amanda +
Google team on
3/11

St. John Triangle	1.53	66,803 <u>1,396</u>		-	
Northend Park	0.89	<u>579</u>	38,595	-	
Total	4.80	209,283 <u>4,000</u>		-	

99

Exhibit E8

Parkland Dedication Obligation

Table 1 Calculation of Total Parkland Dedication Obligation			
Assumptions	Mid-Rise	High-Rise	Total
In-Lieu Fee \$/Unit - Market Rate	\$22,600	\$14,600	
In-Lieu Fee \$/Unit - Moderate Income Rate (50% Credits)	\$11,300	\$7,300	
In-Lieu Fee \$/Unit - Affordable BMR Rate (50% Credits)	\$11,300	\$7,300	
MR to HR Ratio - Market Rate Units	3%	97%	
MR to HR Ratio - Moderate Income Units	4%	97%	
MR to HR Ratio - Land Dedicated BMR Units	100%	0%	
# of Market Rate Unit	105	3,095	3,200
# of Moderate Income Unit	7	193	200
# of Land Dedicated BMR Unit	600	-	600
Total Units	712	3,288	4,000
Population/Unit	2.34	1.51	
Total Population (# of Units x Population Ratio)	1,666	4,965	6,631
Parkland Required (0.003 ac/person)	5.00 ac	14.89 ac	19.89 ac
In-Lieu Fee - Market Rate Units	\$2.4M	\$45.2M	\$47.6M
In-Lieu Fee - Inclusionary Units	\$1.1M	\$1.4M	\$1.5M
In-Lieu Fee - Land Dedicated BMR Unit	\$6.8M	-	\$6.8M
Total In-Lieu Fee	\$9.2M	\$46.6M	\$55.8M

Table 2 Blended Per Unit In-Lieu Fee Obligation*

[A150]: I'd be inclined to take this out, even with the footnote that everything converts to UNITS. Also as a reminder, none of this document or this table has the complicated new language about corporate housing.¶ Also, edit the reference to "table 2" in the footnote, needs to be changed to an exhibit reference.

[A151]: We do need to document how we reached the fee calculation so I think it needs to stay in

[A152]: We need this and it should be updated to reflect total obligation including \$00 units of LTCA at \$4850 per unit. Obligation to be met via cash payment. Still need google ok on this

In-Lieu Fee	\$13,957
-------------	----------

*The Parkland Dedication Obligation, based on the number of type of units to be provided – such as mid-rise, high-rise, market-rate, and affordable – shall be blended across the Project, regardless of unit type, and administered uniformly based on the number of residential units produced, as reflected in Table 2 [to this Exhibit](#).

Exhibit E9

List of Required Exceptions from Parkland Dedication Ordinance ~~¶~~ and Private Recreation Credit Guidelines

San Jose Municipal Code Section 19.38.300(A) - The Park Improvements to be installed on the City-Dedicated Open Space shall be ~~completed~~CompletedCompleted in accordance with the City-Dedicated Open Space Dedication and Improvements Schedule included as Exhibit E3 to this Agreement. Although the City has determined that dedication of the open spaces and ~~completion~~CompletionCompletion of the Park Improvements in accordance with the Schedule set forth in Exhibit E3 is in the public interest and ultimately will be beneficial to the City, ~~completion~~CompletionCompletion and delivery is not tied directly to production of residential units in the same manner described in Section 19.38.300(A). Therefore, an exception from Section 19.38.300(A) is required to allow ~~completion~~CompletionCompletion and delivery of open space in the manner depicted in ~~Exhibit E3~~Exhibits E3.1 and E3.2.

San Jose Municipal Code Section 19.38.330 (B) - The Project requires a waiver from the requirement that real property conveyed to the City be dedicated free and clear of encumbrances. Development of the Project requires (i) utilities easements through portions of some of the City-Dedicated Open Spaces to serve the Project buildings; (ii) emergency vehicle access easements to serve Project buildings and/or DISC Agency facilities; and (iii) easements for utilities, vehicle and pedestrian ingress and egress, and elevator access, among other potential easements and encumbrances, to allow for development of the Social Heart City-Dedicated Open Space, provided however, that surface areas dedicated to such uses set forth in this provision (iii) shall not count toward the Parkland Dedication Obligation. ~~-Any such encumbrances shall be limited only to areas within thirty (30) feet of a property boundary-~~

~~EXHIBIT E-510~~
~~Exhibit E-510~~
Parkland Dedication Obligation

Assumptions	Mid-Rise	High-Rise	Total
In-Lieu Fee \$/Unit—Market Rate	\$22,600	\$14,600	
In-Lieu Fee \$/Unit—Moderate Income Rate (50% Credits)	\$22,600	\$14,600	
In-Lieu Fee \$/Unit—Affordable BMR Rate (50% Credits)	\$11,300	\$7,300	
MR to HR Ratio—Market Rate Units	3%	97%	
MR to HR Ratio—Moderate Income Units	4%	97%	
MR to HR Ratio—Land Dedicated BMR Units	100%	0%	
# of Market Rate Unit	105	3,095	3,200
# of Moderate Income Unit	7	193	200
# of Land Dedicated BMR Unit	600	-	600
Total Units	712	3,288	4,000
Population/Unit	2.34	1.51	
Total Population (# of Units x Population Ratio)	1,666	4,965	6,631
Parkland Required (0.003 ac/person)	5.00 ac	14.89 ac	19.89 ac
In-Lieu Fee—Market Rate Units	\$2.4M	\$45.2M	\$47.6M
In-Lieu Fee—Inclusionary Units	\$.2M	\$2.8M	\$3.0M
In-Lieu Fee—Land Dedicated BMR Unit	\$6.8M	-	\$6.8M
Total In-Lieu Fee	\$9.3M	\$48.0M	\$57.3M

Bond Forms

~~EXHIBIT E1~~

~~PARK IMPROVEMENTS VALUE~~

~~¶~~

~~¶~~

~~¶~~

~~EXHIBIT E3~~

~~CITY DEDICATED OPEN SPACE
DEDICATION AND IMPROVEMENT SCHEDULE~~

Open Space	Outside Date	EIR- Phasing	Dedication and Delivery Trigger (Building Parcels)
Los Gatos Creek- Trail (D/E)	12 months- after TCO	1	First TCO for any building in E1
Los Gatos Creek- Trail (G)	12 months- after TCO	1	First TCO for any building in G1
Los Gatos Creek- Park	12 months- after TCO	1	First TCO for any building in G1
Los Gatos Creek- Trail Connector 1	12 months- after TCO	1	Dedication of land with 1st market rate residential- building within the project; Improvements with first TCO for any building in- the later of H3 or H5
Social Heart	12 months- after TCO	1	Earlier of 1,000 Units, or First TCO for any- building in D4
Northend Park	12 months- after TCO	2	First TCO for any building in A1
Los Gatos Creek- Connector 2	12 months- after TCO	2	Dedication of land with 1st market rate residential- building within the project; Improvements with first TCO for any building in- H3
St. John Triangle	12 months- after TCO	3	Earlier of first TCO for any building in C2 or 3,250- Units

|



|

12255.020 ~~4811-4820-7216-7647-1~~7228-9250.1

Ex. E-~~410~~10- 3

[A154]: Google-will-need-to-verify-acreages-based-on-recent-changes-and-the-final-DWDSDG.

EXHIBIT E6

PUBLIC AND PRIVATE OPEN SPACE APPROXIMATE ACREAGES

Open Space	City-Dedicated Acreage ¹	Privately-Owned Open-Space Acreage Subject to Restrictive Covenant ^{1,2}
Los Gatos Creek Connector	0.76	0.00
Los Gatos Creek Park	0.54	0.51
The Meander	0.00	1.04
Social Heart	0.57	0.00
Creekside Walk at South Autumn Street	0.00	0.70
Los Gatos Creek East	0.25	1.09
Gateway Plaza	0.00	0.65
St. John Triangle	1.53	0.00
North Montgomery Pocket Park	0.00	0.35
Northend Park	0.89	1.10
Los Gatos Creek Trail	0.28	0.00

Need to add one row:

Riparian Corridor and Setback : City portion = 0.00; POPO = 2.49

¹ Acreages are approximate and will be confirmed pursuant to the verification process described in Section 3(B) and Exhibit XX.

² Acreage for Privately-Owned Open Space include the following typologies as defined by the DWDSDG: Privately-owned Public Park, Los Gatos Creek Riparian Setback, and Los Gatos Creek Riparian Corridor

FAITHFUL PERFORMANCE BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and— *[insert name of Developer or Contractor, type of entity, and state of incorporation if applicable]* as principal ("Principal") have entered into an agreement entitled *[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]*, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees;- and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a bond to City for faithful performance of the Contract;

NOW, THEREFORE, we the Principal and *[insert full name of Surety]*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of *[insert bond amount]*, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal, Principal's heirs, executors, administrators, successors, or assigns shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principal in the Contract and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless City, its officers, employees, and agents, as therein provided, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the sum specified above, there shall be included all costs, expenses, and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:

SURETY:

(Principal name)

(Seal)

(Surety name)

(Seal)

BY: _____
(Signature)

BY: _____
(Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:



Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

PAYMENT (LABOR AND MATERIALS) BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and— insert name of Developer or Contractor, type of entity, and state of incorporation if applicable, as principal ("Principal") have entered into an agreement entitled insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees;- and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a good and sufficient payment bond to the City to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code.

NOW, THEREFORE, we the Principal and insert full name of Surety, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City, and unto all contractors, subcontractors, suppliers, laborers, materialmen and other persons employed in the performance of the Contract and referred to in the aforesaid Civil Code, as obligees, in the sum of insert bond amount, on the condition that if Principal shall fail to pay for any materials or equipment furnished or used or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department— from the wages of employees of the Principal and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses, and fees, including attorney's fees, reasonably incurred by any obligee in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in the judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void;- otherwise, it shall be and remain in full force and effect, and shall bind Principal, Surety, their heirs, executors, administrators, successors, and assigns, jointly and severally.

IT IS HEREBY EXPRESSLY STIPULATED AND AGREED that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, and State agencies entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension

of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

Principal name)

(Seal)

(Surety name)

(Seal)

BY: _____

(Signature)

BY: _____

(Signature)

Print name and title)

Principal address and telephone:

Print name and title)

Surety address and telephone:

☞☞ Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

WARRANTY BOND

WHEREAS, the City of San Jose, a municipal corporation of the State of California ("City") and *[insert name of Developer/Contractor, type of entity, and state of incorporation if applicable]* as principal ("Principal") have entered into an agreement entitled *[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]*, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond to City to make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work so contracted for, which shall have appeared or been discovered, within the period of one (1) year from and after the completion and final acceptance of the work done under the Contract.

NOW, THEREFORE, we the Principal and *[insert full name of Surety]*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of- *[insert bond amount – 25% of Faithful Performance Bond]*, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal shall well and truly make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work performed under the Contract, which shall have appeared or been discovered within said one-year period from and after completion of all work under the Contract and final acceptance by City of said work, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or

the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

(Principal name) (Seal)

(Surety name) (Seal)

BY: _____
(Signature)

BY: _____
(Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:

|||

Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact||

||

||

||

¶

Exhibit XX¶

¶

¶

[See separate file with the exhibit, which will be inserted here.]¶

¶

¶

¶

¶

¶

-

Document comparison by Workshare 10.0 on Saturday, March 6, 2021 4:28:11 PM

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Description	2509801_2
Document 2 ID	file://C:\Users\kallin\Desktop\2509800_1.DOCX
Description	2509800_1
Rendering set	Standard



Legend:	
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Deletion	
Moved from	
Moved to	
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Format change	
Moved deletion	
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Deleted cell	-
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	549
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Format changes	0
Total changes	1378



Document comparison by Workshare 10.0 on Tuesday, March 23, 2021 6:03:37 PM

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Document 2 ID	netdocuments://4820-7228-9250/1
Description	Google - DW - Exhibit E Parkland Agreement 3.23.21
Rendering set	CPDB Set

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Split/Merged cell	
Padding cell	

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Moved to	41
Style change	0
Format changed	0
Total changes	2163

~~City~~City Comments/Notes From Google Discussion DRAFT 3/15/23/21

RECORDING REQUESTED

BY CITY OF SAN JOSE:

When Recorded, Return To:
City of San José
200 East Santa Clara Street
San José, CA- 95113
Attn: City Clerk, 2nd Floor West Wing

[A1]:
GENERAL-
COMMENT:-
City Staff will
need to review
this again to
ensure issues
have been
addressed and
reserves the
ability to
provide
additional
comments for
discussion.-

PARKLAND AGREEMENT
FOR
TENTATIVE MAP NO. [REDACTED]
BETWEEN
CITY OF SAN JOSE
AND
GOOGLE LLC AND
RESTRICTIONS AND COVENANTS RELATING TO
PRIVATE RECREATIONAL IMPROVEMENTS

This Agreement ("Agreement") is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and GOOGLE LLC, a Delaware limited liability company ("Developer") as of the date of City's execution ("Effective Date"). Each of City and Developer are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

RECITALS

- A. ~~A.~~ In connection with its Downtown West Mixed-Use Plan (herein, the "Project"), City and Developer have entered into a Development Agreement (the "Development Agreement"), adopted by the City Council on _____, 2021, by Ordinance No. _____, approving the Development Agreement and authorizing the City Manager to

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12255.019 4818-9379-2968.1 T 10079.004/727225

execute the Development Agreement on behalf of the City (the "Enacting Ordinance"). The Enacting Ordinance took effect on _____, 2021.

- B. ~~B.~~ In connection with the Project, Developer has filed Vesting Tentative Map Number _____ (the "Tentative Map") with the City's Planning Department for the subdivision of the Project site, as defined in the Development Agreement, and has obtained Planned Development Permit No. PD19-029 ("PD Permit") for the Project. ¶

~~C.~~ ¶

- C. Under the provisions of Chapter 19.38 of the San José Municipal Code ("Parkland Dedication Ordinance"), developers of residential subdivisions are required to dedicate property for neighborhood and community parks, construct park or recreational improvements, and/or pay in-lieu fees ("Parkland Dedication Obligation"). ~~D.~~ —

- D. In order for Developer to satisfy Developer's Parkland Dedication Obligation for the residential units identified on the Tentative Map, Developer and City desire to enter into this Agreement pursuant to which Developer shall satisfy its Parkland Dedication Obligation for development of four thousand ~~-(4,000)~~ residential units as follows:— (i)

Developer shall dedicate a minimum of four and eight-tenths (4.8) acres of real property for public parks and trail to the City of San José; and (ii) Developer— shall construct turnkey improvements, enhanced landscaping, and new plantings to these dedicated parks and trail, providing design and programming that would meet or exceed the requirements of the City's Parkland Dedication Ordinance (collectively, the "Park Improvements", and individually a "Park Improvement"); and (iii) for development of residential units in excess of four thousand (4,000), payment of in-lieu fees ("Parkland Fees") or use of credits as set forth in this Agreement. Park Improvements are to have an average value of One hundred Ninety Five Dollars (\$195) ~~-~~per square foot (in 2021 dollars, escalating by the California Construction Cost Index, which is a subset of the Engineering News Record Construction Cost Index), as specified in Table 1 of Exhibit E1 hereto ("Park Improvements Value"). The Park Improvements Value includes, but is not limited to, the City's Review Fees as defined in Section ~~523~~(I), and all fees and costs for design, ~~0~~ and construction materials and labor incurred by Developer ~~regarding in~~ connection with the

[A2]: Google—
concerned about
residential
ramifications of
re-jiggering
everything. ¶
- LTCA—25
residential
equivalent
concept ¶
City agrees
conceptually
that it stays at
4,000; LTCA
conversation
continuing.

[A3]: See LTCA
proposal
incorporated
below.

[A4]: 4,800
units? 4,000
units? 600
assumed to be
affordable
housing sites on
affordable
housing sites?—
800 corporate
housing in or
out? Same
comment
throughout.

[A5]: Stephanie
to followup; ¶
It is not part of
normal value
per City
practice.

[A6]: Insurance
is not included
in Park
Improvements
Value and
Review Fees.

Park Improvements, including direct costs, soft costs, and contingency as reflected in Table 2 of Exhibit E1. Costs associated with any remediation, removal, disposal, or any combination thereof, of contaminated materials to meet applicable regulatory requirements for public park and trails uses shall not be included in the Park Improvements Value or otherwise applied to satisfy the Parkland Dedication Obligation.
~~Additionally, Developer agrees to address recreational needs of eight hundred (800) LTCA units through the payment of per unit fees as set forth in Section 3. O. of this Agreement.~~

- E. ~~E.~~ Developer may also propose certain ~~private recreation improvements~~Private Recreation Improvements as defined in City Resolution- No. 73587-, dated January 9, 2007 (“Private ~~Recreational~~Recreation Improvements”) within the Project in accordance with the requirements of the PD Permit and for which Developer is also eligible to receive credit against its Parkland Dedication Obligation as set forth in the Parkland Dedication Ordinance and this Agreement.
- F. ~~F.~~ City’s Director of Parks, Recreation and Neighborhood Services ("PRNS") (“PRNS Director”) is charged with the administration of this Agreement in conjunction with the Director of Public Works (“Director of PW”).- The Director of PW in coordination with the PRNS Director is responsible for the review, inspection, approval, and acceptance of the proposed City--owned Park Improvements. As described in the Downtown West Planned Development Zoning and General Development Plan for the Plan Area, the Director of PBCE is the decisionmaker for Open Space Conformance Review, following consultation with PRNS Director.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. REPRESENTATIONS AND WARRANTIES OF DEVELOPER.

Developer represents and warrants to City that the following facts are true and correct:

- A. The statements and certificates made on the Tentative Map and documents filed in conjunction with the Tentative Map remain true and correct.
- B. Any and all documents provided to City pursuant to the terms of this Agreement, or in connection with the execution of this Agreement, are now in full force and effect and contain no inaccuracies or misstatements of fact. Developer covenants that at such time City notifies Developer of City's intention to accept any Park ImprovementImprovements, if any of these documents contain inaccuracies, misstatements, or have become obsolete, Developer shall notify City and provide City with the information required to render the documents accurate, complete, and current.-
- C. Developer has the legal ability to enter into this Agreement and Developer's signatory(ies) to this Agreement is (are) duly authorized to sign this Agreement on its behalf. In the event the Developer is not the legal owner of the real property identified in the Development or on the Tentative Map and on which any Park Improvements are to be constructed, then the legal owner shall also be required to execute this Agreement and shall be subject to all terms, conditions, and obligations of this Agreement.

SECTION 2. ~~DEDICATION OF PARKS; DESIGN AND DEVELOPMENT OF PARK IMPROVEMENTS; CREDIT FOR PRIVATE RECREATIONAL IMPROVEMENTS.~~ COLLABORATION AND OBLIGATIONS REGARDING DISC AND CITY-DEDICATED OPEN SPACE.

- A. City and Developer acknowledge and understand that the Project and the Parkland Dedication Obligation described herein may be subject to subsequent proceedings initiated by any of the DISC Partner Agencies (California High-Speed Rail Authority; Valley Transportation Agency; Caltrain; Metropolitan Transportation Commission (MTC)) to acquire one or more portions of the Plan Area, potentially including one or more portions of the proposed City-Dedicated Open Space proximate to an existing rail line. If any DISC Partner Agency(ies) initiates proceedings to acquire any portion of the Plan Area for an approved alignment and expansion of the high speed rail right-of-way or other rail right-of-way, Developer may be unable to proceed in the manner described in this Agreement. In the event that a DISC Partner Agency(ies) initiates acquisition of one

[A7]: PRNS is reviewing this for consistency with DWDSG and This document. Verifying that areas noted are the same everywhere

[A8]: Inconsistencies need to be reconciled.¶
¶ Stephanie to follow up.

[A9]: This is new language from Google. —

[A10]: Need to add language about 4(f).¶

[A11]: Section 3.6 of the DA body —¶

¶ City — ask Jessica/Nicolle for 4(f) language; buffer area within the park is not "park" for 4(f) purposes..¶
¶ - Preserve flexibility for the buffer area

[A12]: See added language below to address 4(f) issues.

or more portions of the proposed City-Dedicated Open Space, City and Developer shall proceed in the following manner. ¶

- a. If a DISC Partner Agency initiates acquisition of all or a portion of a City-Dedicated Open Space prior to Developer's initiation of design for that City-Dedicated Open Space as described in Section 45(AB), the Parties agree to understand that Developer shall be compensated by the condemning authority for the land acquired based on its fair market value as defined in California Code of Civil Procedure Section 1263.320, as may be amended from time to time. In the event of such an acquisition, and that acquisition results in a reduction in the size of a City-Dedicated Open Space as reflected in Exhibit E2, Developer shall (i) pay to the City an amount equal to the fair market value received for the acquired land from the DISC Partner Agency(ies) promptly after such value is received by Developer, and (ii) receive credit toward Parkland Fee obligations based on the acreage credit values set forth in the attached Exhibit E1 prorated for the amount of land acquired, which that value shall then be available for use as credit toward the Project's Parkland Obligation for residential units constructed, or otherwise utilized as set forth in Section 23(DB) upon termination or expiration of the Development Agreement. Any amounts paid to the City in the manner described in this paragraph shall not be subject to the limitations described in Section 34(F) regarding payment of Parkland Fees and use of Private Recreation Improvements credits, and the amount of the acquired acreage shall be counted toward Developer's acreage obligations set forth in Sections 3(O), 4(G)(b) and 4(G)(d) upon payment to the City of the fair market value received for the land. Upon payment by Developer as described in this paragraph, any security(ies) provided by Developer for the acquired land shall be released, or reduced in amount relative to the amount of land acquired. For the portion of the City-Dedicated Open Space that is not acquired by the DISC Partner Agency(ies), Developer shall construct Park Improvements and dedicate that remaining portion in accordance with this Agreement. Any required payment of Parkland Fees for

[A13]: City does not control this. Understand is sufficient here.

[A14]: Is it important to cite to the specific state law? Don't want any issues in the future when Google still gets FMV but not specifically under this state law provision.

[A15]: See edits

[A16]: Section 3(f) say the opposite? Why would this not be subject to the fee limitation to meet parkland obligations?

[A17]: Google-- this is different; there is no other land to substitute within the project; so they should ¶

City gets land value, plus 195\$-- get full value; google can't provide alternate property.

[A18]: Stephanie to look for consistency revisions.

[A19]: City is ok with this because it is for the land. Improvements would still be owed and would be subject to the 50% threshold of 3(F).

the Park Improvements Value associated with the acquired portion of the City-Dedicated Open Space shall be paid to City prior to issuance of a building permit for the Building associated with the subject City-Dedicated Open Space in Exhibit E3.1, and such Parkland Fees shall be calculated based on the amount of acquired, or lost acreage, multiplied by one hundred ninety-five dollars (\$195), subject to escalation based on the California Construction Cost Index.

- b. At least six (6) months prior to initiating design of a City-Dedicated Open Space ~~pursuant to Section 4(A)~~, Developer shall consult with ~~the~~ Department of Parks, Recreation and Neighborhood Services ~~Department~~staff and Department of Transportation staff regarding the status of the DISC. At the time Developer initiates design of a City-Dedicated Open Space as described in Section ~~45~~45(A,B), or any time thereafter but prior to City's issuance of a Notice of Acceptance and recordation of the grant deed for that City-Dedicated Open Space, if Developer and/or City reasonably determines that any portion of the Open Space is reasonably likely to be acquired by a DISC Partner Agency(ies), City and Developer shall meet and confer to reach agreement regarding the manner in which Developer is to satisfy its Parkland Obligation with respect to the subject City-Dedicated Open Space. Such agreement shall be consistent with the intent of this Parkland Agreement, and with the following principles~~:-~~:-
1. Developer and City shall remain in a financially neutral position, meaning that Developer shall not be required to incur higher costs or expenses than it otherwise would incur under this Agreement, or to pay amounts in excess of its Parkland Obligation; and Developer shall not be relieved of satisfying the Parkland Dedication Obligation for residential units constructed as part of the Project~~;-~~;
 2. Both the Project and DISC are to be effectively delivered and accommodated to the extent feasible; and
 3. ~~Minimize~~The Parties intend to minimize impacts of DISC project construction activity on existing and future development within the Project

Site boundary, ~~and the impacts of such construction on Project operations are to otherwise be minimized by allowing Developer to install temporary improvements, visual screening techniques, and/or other measures as determined and agreed upon by City and Developer, so long as such measures are consistent with the Project Approvals, including the DWDSG.~~

- c. If a DISC Partner Agency initiates acquisition of all or a portion of a City-Dedicated Open Space after City's ~~acceptance~~ Acceptance of that City-Dedicated Open Space, Developer shall have no obligation to provide replacement open space area or to pay additional Parkland Fees. ¶

¶

~~d. (Transit Buffer Zone, Temporary Construction Needs, and Parkland (Section 4(f)).) ¶~~

[A20]: Proposed Section 4(f) language-

B. Prior to commencement of construction of a City-Dedicated Open Space, Developer shall again consult with City Parks, Recreation and Neighborhood Services Department and City Department of Transportation staff regarding the status of the DISC. If Developer and City determine that any portion of the Open Space is reasonably likely to require use by a DISC Agency(ies) for construction staging or similar disruptive construction activity, Developer shall remain obligated to dedicate the land to City, and City shall accept such land, in accordance with the terms of this Agreement, including Exhibit E5 hereto; provided, however, that City and Developer shall meet and confer to mutually determine whether Developer ~~shall~~ may elect to ~~shall~~ delay commencement of construction of the Park Improvements, including demolition and grading activity, until the DISC Agency activity within the Open Space has ceased, or whether Developer shall instead provide the Park Improvements Value to the City so that the City may itself complete the Park Improvements. If the Parties determine that Developer shall delay commencement of construction and Completion of the Park Improvements, Developer's obligation to construct the Park Improvements within the affected portion of the

City-Dedicated Open Space shall survive the termination or expiration of the Development Agreement; ~~provided, however, that if~~. If City and Developer reasonably determine that use of all or a portion of a City-Dedicated Open Space by a DISC Agency(ies) would delay Completion of construction of the Park Improvements thereon by more than one year beyond the date on which the Development Agreement has terminated or expired, notwithstanding ~~Section 3~~ Section 4(F) of this Agreement, at its option Developer shall be permitted to provide the City with the remaining Park Improvements Value for the affected City-Dedicated Open Space, and the City shall Accept the offer of dedication for the subject City-Dedicated Open Space, or portion thereof, and which the City shall ~~and use the Park Improvements Value to construct the Park Improvements. If this occurs, the City shall release any security associated with such the incomplete~~ such Park Improvements upon receipt of the funds and dedication of the land for Open Space.

C. In furtherance of the collaborative efforts described in Section 3.6~~7~~ of the Development Agreement, as well as the collective goals of ~~the~~ Developer, City, and the DISC Partner Agencies to effectively deliver both the Project and DISC, this section describes the understandings of City and Developer relative to ~~the location, design, and construction of DISC or other transit projects,~~ DISC and the City-Dedicated Open Space:

- a. The Project proposes to dedicate and improve the following City-Dedicated Open Spaces adjacent to the existing and potential future rail alignment: ~~North-End~~ Northend Park, St. John Triangle, and Los Gatos Creek Connector.
- b. DISC Partner Agencies have indicated an intention to elevate the rail tracks and rail structure as part of DISC, providing new opportunities to connect to these parks ~~to~~ to uses located to the west of the current rail alignment.
- c. Timing and phasing of DISC and other potential rail or transit projects (including California High Speed Rail) in the vicinity of the Project have not been finalized; and as of the Effective Date of this Agreement ~~only a conceptual layout of DISC has been made available~~ Concept Layout for the Diridon Integrated Station Concept has been approved by the City (February 2020). ¶



- d. In order to maximize parks and open space, as well as transit and connectivity in the near- and long-term, ~~the Developer, and City, and DISC Partner Agencies propose to maximize functional park space in near term at the Los Gatos Connector by temporarily using land expected to be needed for construction of and the eventual elevated rail structure as open space area; in the long term, the functional park space would extend under the tracks, by way of an easement or other ownership structure agreed to by City and other DISC Partner Agencies. This arrangement is understood to be part of the “joint planning” exemption under Federal Section 4(f) and shall not be construed to present a barrier under that or similar regulations~~ shall proceed in the manner described in Section 2(A) of this Agreement with respect to any acquisition by a DISC Partner Agency(ies); and with respect to any potential DISC construction needs that may affect a City-Dedicated Open Space, Developer and City shall proceed in accordance with Section 2(B) of this Agreement, which Sections includes consultation and meet and confer processes between City and Developer, in addition to the City’s and Developer’s collaborative efforts with the DISC Agency(ies) described in Section 3.6 of the Development Agreement.
- e. New park spaces at St. John Triangle and the North End Park have been planned to be outside of the established Transit Project Buffer Zone, as defined in the Development Agreement.— A temporary construction easement (TCE) may be required by a DISC Partner Agency(ies) for California High Speed Rail or other transit projects, at the western edge of the North End Park; compensation for this potential TCE – including any impact to the ~~public or privately owned open spaces—would be required per standard practices; that aside, this arrangement is understood to be part of the “joint planning” exemption under Federal Section 4(f) and shall not be construed to present a barrier under that or similar regulations~~ City-Dedicated or Privately-Owned Publicly Accessible Open Spaces,

or any other private property – would be required consistent with law. ¶¶ In the event ~~that DISC project necessitates use of any portion of the park lands prior to design and development of any of these three park spaces~~of any permanent acquisition by a DISC Partner Agency(ies), Developer shall negotiate with DISC with regard to temporary or permanent land acquisitions and park areas shall be adjusted per Exhibit E8 or City as landowner, as applicable at the time of acquisition, would proceed in accordance with law and established practices for eminent domain proceedings. ¶

~~If the Developer has dedicated land to the City for future park, but the park has not been constructed when the DISC project proceeds, Developer and City shall meet and confer about the most appropriate path forward. City and Developer may elect to have Developer pay fees for the park improvements that the City would complete at a later date; or City and Developer may elect to delay Developer delivery of the impacted park until after completion of DISC; or some other mutually beneficial resolution in furtherance of the Project's parkland obligations may be identified.~~ ¶

~~In the event that DISC project necessitates use of any portion of the three park spaces after the park is constructed and dedicated to the City then City shall be responsible for managing adjustments in park spaces with the DISC partners.~~ ¶

¶

~~A. Reconfiguration and/or Project redesign also may be necessary in the event Developer is prohibited from building to the maximum heights reflected in the DWDSG as a result of adoption of a construction tower crane policy that prohibits or impacts Developer's ability to construct to such maximum heights. Any reconfiguration or redesign would have a negative impact on Developer's master planning efforts, lessening the amount of square~~

~~footage for both commercial and residential uses, and potentially reducing the number of residential units that may be developed within the Plan Area. Subject to the requirements of Sections 3(F), 3(GH), and 3(HK) of this Agreement, such reconfiguration and/or reduction in residential development would result inshall require a commensurate reduction to Developer's Parkland Dedication Obligation.~~

[A21]: This will be addressed in the Community-Benefit-Adjustment of the DA? How will this be addressed??

[A22]: Consider putting this just in the DA, rather than a separate crane-policy for parks...

SECTION 3. DEDICATION OF PARKS; DESIGN AND DEVELOPMENT OF PARK IMPROVEMENTS; CREDIT FOR PRIVATE RECREATIONAL IMPROVEMENTS; VOLUNTARY CORPORATE ACCOMMODATIONS PARKS CONTRIBUTION.

A. ~~B.~~ Subject to Section 2(A), in satisfaction of its Parkland Dedication Obligation for ~~(development)~~ of four thousand (4,000) residential units Developer affirms its commitment to dedicate to City a minimum of four and eight-tenths (4.8) acres of real property located on Lots A, B, E, F, H, I, P, Q, R, and airspace parcel of Lot 20 ("City-Dedicated Open Space") as identified on the Tentative Map for the Project, and as described in the Downtown West Design Standards and Guidelines. An offer of dedication for each City-Dedicated Open Space shall be made ~~upon concurrent~~ concurrent with the final map that contains the subject City-Dedicated Open Space, and shall be recorded ~~immediately~~ following ~~recording occur upon approval~~ of the final map that contains the Building or development parcel that corresponds with the trigger for that City-Dedicated Open Space as reflected in Exhibits E3.1 and E3.2. The offers for dedication shall be substantially in the form as set forth in Exhibit E4, and shall be recorded in the Official Records, as defined in the Development Agreement. City shall accept an offer of dedication by grant deed only after issuance of a Notice of Acceptance of the Park Improvements thereon and in accordance with the timing requirements set forth in Exhibit E5. Developer shall be responsible for all costs incurred in the conveyance of the City-Dedicated Open Space to City in accordance with the requirements and specifications set forth in this Agreement and the Development Agreement. If the construction and Completion of the City-Dedicated Open Space is not triggered pursuant to Exhibits E3.1 and E3.2 prior to the expiration or termination of the Development Agreement, and Developer has not

[A23]: New language from Google.

[A24]: City text change.

[A25]: City text change

otherwise Completed the City-Dedicated Open Space, ~~in which case such that~~ credits would be provided and administered as set forth in Section 23(DB), upon the termination or expiration of the Development Agreement the offer of dedication for such City-Dedicated Open Space shall also terminate and be void, and City shall promptly execute and record a notice terminating or vacating the offer of dedication. ~~Developer shall be responsible for all costs incurred in the conveyance of the City Dedicated Open Space to City in accordance with the requirements and specifications set forth in this Agreement and the Development Agreement.~~¶

[A26]: This may necessitate changes in the offer of dedication form.

[A27]: why did this go away?

[A28]: Site should be clean before dedication to city; or google should post bond to cover cost of future remediation if they walk away from project before building park. preference is for remediation before granting to city

~~C. As reflected in Exhibit E3 Exhibits E3.1 and E3.2, the land for Los Gatos Creek Trail Connector 1 and Los Gatos Creek Trail Connector 2 is to be dedicated by grant deed to the City prior to construction and dedication to the City of the Park Improvements thereon. The land for the Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2 shall be offered for dedication to the City within thirty (30) days after Final Approval, as defined in the Development Agreement of the Project. The dedication of the the land for Los Gatos Creek Trail Connector 1 and Los Gatos Creek Trail Connector 2 shall occur following any required environmental remediation and removal of any and all debris and waste to meet applicable regulatory requirements for public park and trail use, and shall only be accepted by the City in conjunction with a fully executed lease back agreement for. The intent of the cost to Developer of one dollar (\$1) per year enabling leaseback agreement is to enable Developer to complete the required Park Improvements, allowing allow interim useuses by Developer, and requiring Developer, among other things such as require the same insurance requirements and indemnification of City, as set forth in this Agreement, require Developer to maintain and manage the property, including any necessary security and fencing, until such time as the Park Improvements are accepted by the City in accordance with the terms of this Agreement. Additionally, the parties have mutually agreed that the agreement between the Parties is for a gross leaseback to Developer for a cost of one dollar (\$1.00) per year. To enable Developer's timely construction and completion Completion of the Park Improvements on Los Gatos Creek Trail Connector 1 and Los Gatos Creek Trail~~

[A29]: Stephanie to refer to Exhibit E-5. Will meet dedication requirements at (early) time of dedication.

[A30]: is this indefinite? Part of what the City wanted was to control the land, so there has to be a way to end this leaseback if it becomes apparent that Google is not going to build the improvements

[A31]: Also we should have a right to use the Los Gatos Connectors for construction staging and access for H5 and H6, even if not yet dedicated, since they are asking for flexibility on when they build the road. The improvements aren't due until after the buildings, so this should be fine.

[A32]: Renewable every five years perhaps?

[A33]: Stephanie City should look at triggers for completion, which provides an end date on the leaseback? ¶ City issue

~~Connector 2 as set forth in Exhibit E33.1, City shall provide written notice to Developer within ninety (90) days of City's issuance of a building permit for construction of, and also at issuance of a certificate of occupancy for, an affordable housing development developments on Block H5 and on Block H6.~~

B. ~~D.D.~~ In the event Developer Completes and dedicates a City-Dedicated Open Space, and the credit value for the improved City-Dedicated Open Space exceeds the Parkland Dedication Obligation for the Project upon the termination or expiration of the Development Agreement, Developer shall receive credit for the City Dedicated-Open Space, including the Park Improvements Value, and such credits shall be applied toward the Project's Parkland Dedication Obligation as residential units are constructed. Upon the termination or expiration of the Development Agreement, if any credits for land dedication and/or Park Improvements Value remain available and are not utilized to satisfy the Project's Parkland Dedication Obligation, such credits may be used by Developer, or by another developer(s) if transferred by Developer to that other developer(s), to satisfy the obligations under the City's Parkland Dedication Ordinance for new residential development within the Downtown ~~Station Area Plan (DSAP)~~ Area West Planned Development District, with such credits provided at a ratio of one-to-one unit basis.¶

C. ~~Reconfiguration and/or Project redesign also of a City-Dedicated Open Space may be necessary in the event Developer is prohibited from building to the maximum heights reflected in the DWDSG as a result of adoption of a construction tower crane policy that prohibits or impacts Developer's ability to construct to such maximum heights. Any reconfiguration or redesign would have a negative impact on Developer's master planning efforts, lessening the amount of square footage for both commercial and residential uses, and potentially reducing the number of residential units that may be developed within the Plan Area. Subject to the requirements of Sections 3(F), 3(GH), and 3(HK) 4(F), 4(G), and 4(J) of this Agreement, such reconfiguration and/or reduction in residential development would result in shall~~ shall require a commensurate reduction to Developer's Parkland Dedication Obligation.¶

[A35]: Transfer as part of land transfer under the DA, correct? Not selling credit without transfer of land, correct? Clarify.---

[A36]: This is only after the DA Term ; anything before end of DA term it would be transfer issue ---

[A37]: Limit to Google project only.---

[A38]: City Position, ok but limit use of credits to only within Downtown West project area.---

D. As reflected in Exhibits E3.1 and E3.2, the land for Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2 is to be dedicated by grant deed to the City prior to construction and dedication to the City of the Park Improvements thereon. The dedication of Los Gatos Creek Trail Connector 1 and Los Gatos Creek Trail Connector 2 shall be accepted by the City in conjunction with a fully executed leaseback agreement. The intent of the leaseback agreement is to enable Developer to Complete the required Park Improvements; allow non-income producing interim uses by Developer, such as landscaping and/or construction staging; require the same insurance and indemnification as set forth in this Agreement; and to require Developer to maintain and manage the property, including any necessary security and fencing, until such time as the Park Improvements are accepted by the City in accordance with the terms of this Agreement. Additionally, the parties have mutually agreed that the agreement between the Parties is for a gross leaseback to Developer for a cost of one dollar (\$1.00) per year, and any associated property taxes shall not be the responsibility of Developer. To enable Developer's timely construction and Completion of the Park Improvements on Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2 as set forth in Exhibit E3.1, City shall provide written notice to Developer within ninety (90) days of City's issuance of a building permit for construction of, and also at issuance of a Certificate of Occupancy for, affordable housing developments on Block H5 and on Block H6.

E. The Park Improvements to be installed on a City-Dedicated Open Space shall be ~~completed~~CompletedCompleted in accordance with the City-Dedicated Open Space Dedication and Improvements Schedule and Park Dedication/Delivery Triggers Figure set forth in ~~Exhibit E3~~Exhibits E3.1 and E3.2. For clarity, except as otherwise set forth herein, Developer shall not be obligated to install Park Improvements on any City-Dedicated Open Space unless and until Developer undertakes the actions or development set forth in ~~Exhibit E3~~Exhibit E3.1 that ~~triggers~~corresponds to any such Park Improvements. Subject to approval by the Directors of PRNS and PW, completion~~Completion~~City may elect to extend the Delivery trigger reflected in Exhibit E3.1 by twelve (12) months to allow Developer to complete installation of art and other

~~non-functional, sculptural or ornamental features, or kiosks/pavilions or other optional structures, structures, or features~~ that are not essential to the intended use of the park by the public (“Park Art and Optional Structures”). Alternatively, subject to approval of the Directors of PRNS and PW, Completion of Park Improvements upon any City-Dedicated Open Space for purposes of determining compliance with Exhibit E~~53.1~~3.1, and issuance of a Notice of Acceptance for such Park Improvements by Director of PW as outlined in Exhibit E~~155~~ of this Agreement shall ~~not include or require~~be permitted to occur without first requiring the completed installation of ~~art, kiosks,~~Park Art and ~~pavilions~~Optional Structures, so long as (i) final installation of such ~~outstanding art, kiosks, pavilions, or combination thereof~~Park Art and Optional Structures will not interfere with the safe use of the park by the public.—, and (ii) Developer ~~shall completes the improvements the improvements~~provides the Park Art and Optional Structures Security as described in this Agreement so that the City may utilize the Security to complete the installation or construction of the Park Art and Optional Structures following City’s acceptance of the Park Improvements, which City shall complete within twelve (12) months of ~~issuance of the Notice of Acceptance. Alternatively, City may, in its sole and absolute discretion, elect to extend the Delivery trigger reflected in Exhibit E3.1 by twelve (12) months to allow Developer to install or construct the elements or features~~Developer providing the Security; provided however, that City shall release all other bonds and securities as indicated in Exhibit E5. Separately, Completion also does not include or require relinquishment and improvement of any Park Construction Right of Entry, which Right of Entry areas are depicted in Exhibit E6 (referred to therein as “Temporary Construction Easement (TCE)”), so long as the Park Construction Right of Entry is relinquished and improved within six (6) months of issuance of the temporary certificate of occupancy for the fronting building.

E. ~~E.~~As more particularly described in Exhibit E~~455~~, Developer shall be responsible for the development of Park Improvements Plans for, and the construction of the Park Improvements on the City-Dedicated Open Space, consistent with the Park Improvements ~~Specifications and minimum sizes as set forth in Exhibit E6~~Plans, and as otherwise

[A39]: NOTE – this does not include the language circulated on 3/13/21. ¶ City position is that ONLY art, kiosks, and pavilions can follow Notice of Acceptance. The broader language circulated 3/13 (that includes “other non-functional, sculptural or ornamental features” and “other optional structures...”) is too broad. This change needs to be carried forward into the Security sections related to these as well.

[A40]: So, then we call their bond and finish it ourselves? The PA should be obligating them to deliver all the park assets as proposed in the DWDSG.

[A41]: Again, we agreed to potential delayed deliver for art, Kiosks and pavilions only

[A42]: Clarify the – Developer obligation first. City can accept bond / obligation at its election in sole and absolute discretion... ¶ City is ok with accepting a bond to complete art only (not kiosks/pavilions), and completing the work provided that the bond must stay in place until the City gets the art and pays the cost of installation.

described in this Agreement and the Development Agreement. Developer shall construct the Park Improvements in conformance with the Park Improvements ~~Specifications~~Plans and Downtown West Design Standards and Guidelines, and all applicable standards and specifications in effect on the Effective Date of this Agreement, except as otherwise set forth herein.

G. ~~F.~~ Developer has no obligation to construct other improvements on the City-Dedicated Open Space beyond the Park Improvements.

H. ~~G.~~ The Parties acknowledge that the exact size, dimensions, and other particular characteristics of the Park Improvements have not been determined as of the Effective Date of this Agreement. The Parties, however, agree that the Park Improvements shall consist of the Park Improvements as conceptually depicted and described in the Downtown West Design Standards and Guidelines, with a minimum cumulative acreage of 4.8 acres for the development of 4,000 units, ~~and as conceptually depicted therein, and in the locations and general dimensions~~ reflected on the Tentative Map for the Project, and ~~as summarized in~~based on the ~~attached~~unit equivalent values reflected in Table 1 of Exhibit XX~~E1. Any As described in Section 4(B), any~~ future adjustments to the conceptual City-Dedicated Open Space sizes, as permitted by the General Development Plan, shall be identified and finally approved at the Conformance Review stage or the processing of a final map that includes the subject City-Dedicated Open Space, whichever occurs first, and shall be tracked using Exhibit ~~XXE~~E7, ~~and any reduction in acreage for any one or more City Dedicated Open Space locations shall be made up by an increase in one or more other City Dedicated Open Space locations to maintain a minimum of 4.8 acres of City Dedicated Open Space.~~ which Exhibit ~~XX~~ shall ~~be updated~~ensure compliance with ~~any changes in acreage for any one or more City Dedicated Open Space locations to reflect the number of total residential units for which the Parkland Dedication Obligations are covered by each individual City Dedicated Open Space area~~the requirements of this Agreement.

I. ~~H.~~ Developer shall be responsible for all costs incurred for planning, design, construction, ~~and~~ supervision of the construction of all Park Improvements, including without

[A43]: 4800

[A44]: Doesn't it stay at 4,000, and CLTA counts toward it at .25 per CLTA unit?

[A45]: True up with CLTA final discussions

[A46]: Shouldn't this be E1, which includes the Unit Equivalent information

[A47]: @Google: these concepts are material and should not have been cut; reverse the changes.

[A48]: Stephanie to look at this again; City important to get the small amount of land committed as part of the deal.

[A49]: New language from Google inserted.

limitation, the Review Fees. All such costs are included in, and are part of the Park Improvements Value, ~~however. For clarity, the~~ Park Improvements Value ~~shall include,~~ but is not ~~include~~ limited to, the City's Review Fees and all fees and costs for ~~insurance~~ design and ~~maintenance~~ construction materials and labor incurred by Developer in connection with the Park Improvements, ~~and shall not include any costs~~ including direct costs, soft costs, and contingency as reflected in Table 2 of Exhibit E1. Costs associated with any ~~environmental~~ remediation ~~activities, maintenance, insurance or any~~ improvements that may be ~~triggered by surrounding private developments or outside agencies, removal, disposal, or any combination thereof, of contaminated materials to~~ meet applicable regulatory requirements for public park and ~~trail use, trails uses shall not~~ be included in the Park Improvements Value or otherwise applied to satisfy the Parkland Dedication Obligation. Developer and City agree that the Park Improvements Value shall not be less than the values set forth in Table 1 of Exhibit E1. The Review Fees shall be in an amount equal to seventeen and one-half percent (17.5%) of the direct costs, which Review Fees are reflected in Table 2 of Exhibit E1, and which direct costs and Review Fee shall both escalate by the California Construction Cost Index. Twenty percent (20%) of the Review Fees for each City-Dedicated Open Space shall be paid upon submittal of the Vertical Conformance Review application for the Building ~~associated triggering~~ associated the subject City-Dedicated Open Space in Exhibit E3.1; and the remaining eighty percent (80%) of the Review Fees for each City-Dedicated Open Space shall be paid upon submittal of the Open Space Conformance Review application for the subject City-Dedicated Open Space. Developer shall cause all labor and material incorporated in the Park Improvements to be furnished in accordance with the requirements and specifications set forth in this Agreement. _

[A50]: Added-
insurance.

[A51]:
Triggered._

I. ~~I.~~ As described and depicted in the Downtown West Design Standards and Guidelines, kiosks and/or pavilions are included as optional features in some of the City-Dedicated Open Spaces. The improvement value of such kiosks and/or pavilions is not included in the Park Improvements Value and, therefore, it is understood that the improvement value of any kiosk or pavilion constructed within a City-Dedicated Open Space may exceed the

Park Improvements Value. In its sole discretion, the City may elect to approve Park Improvements Plans for a City-Dedicated Open Space during Conformance Review with a kiosk and/or pavilion. If the City elects to include a kiosk/pavilion in a City-Dedicated Open Space, the improvement value of such kiosk/pavilion shall be permitted to be used to satisfy any outstanding Parkland Dedication Obligation associated with the development of four thousand (4,000) residential units. In the event the improvement value of such kiosk/pavilion exceeds the value of any remaining Parkland Dedication Obligation, Developer may use such value to satisfy any Parkland Dedication Obligation associated with the development of more than four thousand (4,000) residential units. If

[A52]: True-up-
with LTCA-
language as-
appropriate-

Developer does not develop more than four thousand (4,000) residential units, ~~the City shall not be required to reimburse to~~ Developer's shall receive credits for ~~any~~the excess improvement value of a kiosk or pavilion, which shall be available for use consistent with Section 3(B).

K. ~~J.~~ Each individual Park Improvement shall be deemed ~~completed~~CompletedCompleted and accepted by City upon recordation of the Notice of Acceptance by Director of PW as outlined in Exhibit E~~455~~455 of this Agreement. ~~The~~UponUpon Developer's request, the PRNS Director, in consultation with the Director of PW, may, at the their discretion, grant extensions of one or more of the ~~completion~~CompletionCompletion requirements specified in this subsection.

L. ~~K.~~ With respect to any Park Improvements which are owed but which have not been ~~completed~~CompletedCompleted as specified in Exhibit E~~33.13.1~~33.13.1 to the Development Agreement, the credits for the incomplete improvements shall be disallowed and Developer and City shall proceed in accordance with Section ~~67~~67.

M. ~~L.~~ Subject to Section ~~23(NQQ)~~23(NQQ), the Project is eligible to receive credit for ~~private recreation improvements~~PrivatePrivate Recreation Improvements pursuant to the Parkland Dedication Ordinance. The description of the ~~private recreation improvements~~PrivatePrivate Recreation Improvements that may be included in the Project by Developer and that, if included, shall receive credit pursuant to Chapter 19.38 ~~is~~as set forth in City Council Resolution No.- 73587 dated January 9, 2007.- Developer

may request Private Recreation ~~CreditImprovements~~Improvements credit for qualifying ~~private recreation improvements~~PrivatePrivate Recreation Improvements in a residential building at the time of Conformance Review for that building by submitting for review by the PRNS Director documentation including, but not limited to: ~~4~~(i) a written summary of all qualifying on-site Private Recreation ~~amenitiesImprovements~~Improvements, ~~2~~(ii) a table itemizing all proposed Private Recreation ~~amenitiesImprovements~~Improvements by net square footage, ~~3~~(iii) the location~~4~~, (iv) classification type (active classification or non-active elements classification)~~5~~, (v) dimensioned and labeled floor plans showing all private recreational amenities, and ~~6~~(vi) photo simulations or other illustrative examples of proposed recreational accessories.— The PRNS Director will review the Private Recreation ~~CreditImprovements~~Improvements credit documentation and, if in conformance with the criteria in Resolution No. 73587, tentatively approve the recreation credit. —Credits shall be finally approved upon Completion of the Private Recreation Improvements consistent with the Private Recreation Improvements credit documentation and this Agreement, but shall only be available for Developer’s use pursuant to the provisions of Section ~~2-3~~(MO) below. Developer shall complete the installation of the ~~private recreation improvements~~PrivatePrivate Recreation Improvements described in Resolution No. 73587 prior to the issuance of a Final Certificate of Occupancy for the residential building(s) in which the ~~private recreation improvements~~PrivatePrivate Recreation Improvements are located or to which the ~~private recreation improvements~~PrivatePrivate Recreation Improvements are tied.

With respect to any ~~private recreation improvements~~PrivatePrivate Recreation Improvements that have not been ~~completed wprior~~CompletedCompleted prior to— the issuance of a Final Certificate of Occupancy for the residential building of which the improvements are a part, the credits for the incomplete improvements shall be disallowed and Developer shall be required to pay ~~any increase in~~ Parkland Fees, if any such fee is owed,~~()~~ together with additional charges as set forth in the Parkland Dedication Ordinance.

[A53]: ...but may not be applied until the end of the DA, and then only if all the triggered parks have been delivered, and also only if 2.4 acres of parks have been delivered.

[A54]: yes

[A55]: Stephanie— Conceptually ok; verify with other sections.

[A56]: See revised text.

[A57]: This would stay deleted; language re: if fee owed stays in.

[A58]: incorrect-see previous comment

N. ~~M.~~ Developer acknowledges and agrees that Developer shall not receive any credit for eligible ~~private recreation improvements~~Private Private Recreation Improvements pursuant to the Parkland Dedication Ordinance unless ~~1~~(i) constructed in full compliance with this Agreement, or as otherwise creditable to the satisfaction of PRNS Director; and ~~2~~(ii)- subject to a restrictive covenant as set forth below in ~~paragraph P of this~~ Section ~~23~~(P).

O. ~~N.~~ Credit for ~~private recreation improvements~~Private Private Recreation Improvements constructed in accordance with the requirements of this Agreement and the Exhibits hereto shall not be credited against the Parkland Dedication Obligation unless and until (i) at least two and four tenths (2.4) acres of City-Dedicated Open Space have been dedicated and Park Improvements associated with such acreage have been ~~completed~~Completed Completed and ~~accepted~~Accepted by the City, (ii) at least four (4) acres of Privately-Owned ~~Open Space~~Publicly Publicly Accessible Open Space have been ~~completed~~Completed Completed and Delivered and a restrictive covenant(s) ~~or~~ ~~easement(s)~~-as described in Section ~~4.1.3~~ of the Development Agreement has (have) been recorded to maintain public access, and (iii) either (x) the Development Agreement has expired or terminated, or (y) Developer has satisfied its Parkland Dedication Obligation for the development of four thousand ~~(4,000)~~ residential units and thereafter constructs residential units in excess of those four thousand units. With respect to any ~~private recreation improvements~~Private Private Recreation Improvements that have not been ~~completed~~Completed Completed as specified in this Agreement, the credits for the incomplete improvements shall be disallowed.

[A59]: 4800

[A60]: see-my-comment-above

P. ~~O.~~ Prior to receipt of credit for any ~~private recreation improvements and prior to the sale of any portion of the building or authorization of any occupancy of the building or development project for which the private recreation improvement credits are sought~~Private Private Recreation Improvements, Developer acknowledges and agrees that use of the ~~private recreation improvements~~Private Private Recreation Improvements shall be restricted for recreation purposes by a recorded covenant which runs with the land for the life of the subject residential building, and which expressly cannot be defeated or

eliminated without the written consent of the City as described in the Parkland Dedication Ordinance. For clarity, ~~private recreation improvements~~Private Private Recreation Improvements for which Developer does not receive credit toward its Parkland Dedication Obligation are not subject to this, or any other requirements of this Agreement.

Q. ~~P.~~ Developer acknowledges that pursuant to the covenants set forth in Section ~~23~~(P) above, the Developer or Owner shall henceforth be required to maintain all such ~~private recreation improvements~~Private Private Recreation Improvements in safe working order and provide access for regular inspections at the City's request. After any such inspection and pursuant to written request by the City, the Developer or Owner shall promptly provide for any remedial actions, replacement, and/or repair work as may be necessary to ensure that the improvements remain in safe working order for recreational use.

R. ~~Q.~~ In the event that the project contains ~~private recreational improvements~~Private Recreational Improvements designated in this Agreement or associated exhibits as 'publicly accessible,' the Developer or Owner agrees to maintain public access to these amenities for a minimum of 360 days per year. The Developer may however, post reasonable Rules and Regulations for respectful use and maintenance of ~~private recreational improvements~~Private Recreational Improvements and areas as well as conduct occasional extended closures, subject to approval by PRNS Director. This Section shall apply in addition to any Easements or Restrictions which may be in place providing for public access and/or appurtenant uses. ¶

S. In addition to the City-Dedicated Open Space and Park Improvements thereon, and other requirements and obligations set forth in this Agreement for the satisfaction of Developer's Parkland Obligation, as an additional Project Feature Developer agrees to voluntarily contribute to City the amount of four thousand eight hundred fifty dollars (\$4,850) per Limited Term Corporate Accommodation (a non-residential use defined in the Downtown West Planned Development Zoning District- and General Development Plan) (the "Corporate Accommodations Parks Contribution"), which Contribution shall be paid upon issuance of a building permit for a Building containing a Limited-Term

Corporate Accommodation(s). The Corporate Accommodations Parks Contribution shall be vested for the term of the Development Agreement. Pursuant to Section 5.6 of the Development Agreement, Developer shall not be subject to any new Impact Fee for Limited-Term Corporate Accommodations or similar use that City may adopt. Developer's voluntary Corporate Accommodations Parks Contribution would be spent by the City within a three-quarter (3/4)-mile straight line radius from the Project Site boundary for neighborhood serving elements, which include, but are not limited to, neighborhood parks, playgrounds, and open recreation areas and their operations; and within a three-mile straight line radius from the Project Site boundary for community serving elements, which include, but are not limited to community centers, sports fields, and community gardens. The intention of the funds is to support the City network of parks. No more than thirty percent (30%) shall be spent on any one park resource.

SECTION 4. ~~SECTION 3.~~ COMPLIANCE WITH THE PARKLAND DEDICATION ORDINANCE AND SATISFACTION OF PARKLAND OBLIGATION.

- A. Subject to Section 2(A), the Parties acknowledge and agree that the calculation of the Developer's Parkland Dedication Obligation for development of four thousand (4,000) residential units is set forth in Exhibit ~~E588~~, including the calculation of Parkland Fees, ~~and~~. As reflected in Exhibit ~~E3-18~~, the total Parkland Dedication Obligation, based on the number of type of units to be provided – such as mid-rise, high-rise, market-rate, and affordable – shall be blended across the Project, regardless of unit type, and administered uniformly based on the number of residential units produced, as shown in Table 2 in that ~~the Exhibit~~ Exhibit. The Park Improvements Value is set forth in Table 1 of Exhibit E1. Credits for ~~private recreational improvements~~ Private Recreational Improvements, if any, are described in City Council Resolution No. 73587.
- B. The final acreage of each City-Dedicated Open Space shall be verified ~~as part of the~~ Conformance Review stage or the processing of ~~the~~ final map ~~process~~ that includes the subject open space, whichever occurs first. If the size of a City-Dedicated Open Space is different from the acreage set forth in this Agreement and Exhibit ~~XXEE~~2 hereto, which

may occur due to final roadway or parcel alignments, among other reasons, ~~the land value credit and Park Improvements Value for that~~that acreage will be reflected and tracked in Exhibit E7. If the size of a City-Dedicated Open Space ~~shall be proportionally~~is increased or decreased ~~and tracked in Exhibit XX. If this occurs, subject to Section 2(A),~~ Developer ~~shall~~shall adjust other City-Dedicated Open Spaces ~~to provide at least 4.8~~acres so that the total acreage of City-Dedicated Open Space ~~—~~ provided for the development of 4,000 residential units is at least 4.8 acres. Such reallocation shall not require amendment to this Agreement or to the Development Agreement. At the termination or expiration of the Development Agreement, City and Developer shall verify the total City-Dedicated Open Space acreage provided by the Project and calculate any remaining Parkland Dedication Obligation that is owed. Any remaining Parkland Dedication Obligation shall be satisfied in accordance with Section ~~34~~(JML).

[A61]: return to-
SHALL. this-
was the deal

[A62]:
Stephanie to-
confirm.-

- C. Except as otherwise provided herein and in the Development Agreement, provided that Developer is not in material default hereunder, and provided further that Developer satisfies all other terms, conditions, and requirements associated with issuance of a building permit(s), City shall issue all building permits necessary for the residential units identified on the Tentative Map.
- D. City acknowledges and agrees that Developer's performance of this Agreement shall fully satisfy Developer's Parkland Dedication Obligation under the City's Parkland Dedication Ordinance for development of four thousand (4,000) residential units in the Plan Area. The Parties further acknowledge and agree that the Parkland Dedication Obligation set forth in Exhibit E~~588~~8 for development of four thousand (4,000) residential units is based on and assumes the development of six hundred (600) of the 4,000 residential units as affordable housing units on the ~~affordable housing sites H1, H5, and H6 that Developer will dedicate to the City. In the event the City and/or an affordable housing developer causes more than 600 affordable housing units to be developed on the City-Dedicated Affordable Housing Sites~~affordable affordable housing sites, any parkland dedication obligation applicable to such additional affordable housing units shall be the responsibility of, and attributed to the developer of those additional units; and

Developer's Parkland Dedication Obligation shall not be decreased or increased or otherwise affected as a result of such additional affordable housing development on the ~~City-Dedicated Affordable Housing Sites~~affordable housing sites, nor shall such additional units be counted toward or otherwise affect any milestones or triggers set forth in this Agreement, including, but not limited to, the requirements contained in Section ~~34~~(GHH) and in Exhibit E~~688~~ hereto.

- E. Pursuant to the terms of the Development Agreement, the Parkland Fee in effect upon the Effective Date of the Development Agreement, which Fee is reflected in Exhibit E~~588~~, is vested for the term of the Development Agreement, subject to escalation based on the California ~~Construction Cost Index, which is a subset of the Engineering News Record~~ Construction Cost Index. Upon such escalation of the Parkland Fee, ~~[Google-added language from 3-13-21:~~ the land value of any City-Dedicated Open Space dedicated thereafter, and ~~]the~~ Park Improvements Value for any Park Improvements constructed thereafter shall escalate by a commensurate amount using the California Construction Cost Index. ~~¶~~ Further, the following underlying assumptions upon which the Parkland Dedication Obligation is based, and which are set forth in Exhibit A to Resolution Number 73587 and Section 1 of Exhibit A of Resolution No. 75346 as amended by Resolution _____ **[ADD FINAL RESOLUTION NUMBER]**, shall be fixed and vested for the term of the Development Agreement ~~and regardless of typology of the first 4,000 residential units:~~ (i) mid-rise residential units have an occupancy rate of two and thirty-four hundredths (2.34) persons per unit; (ii) high-rise residential units have an occupancy rate of one and fifty-one hundredths (1.51) persons per unit; (iii) the Parkland Fees charged for each deed restricted, low income residential unit shall be set at fifty percent (50%) of the otherwise applicable Parkland Fees for each such unit; and (iv) **[INCLUDE IF ADOPTED PRIOR TO APPROVAL]** the Parkland Fees charged for each deed restricted, moderate income residential unit shall be set at fifty percent (50%) of the otherwise applicable Parkland Fees for each such ~~unit]~~.

- F. Regardless of any land acquisition or condemnation that may occur as a result of the actions described in Section 2(A) of this Agreement and which affects a portion(s) of the

[A63]: NO! we always said that parkland credit, land and improvements go up at the same amount. We absolutely should not be debating about market value of land. We agreed that everything would lock together and only be adjusted for park size adjustments. From then onward, the contribution of a park would fill the piggy bank with the agreed upon number of units of credit, and the construction of a unit would deduct from the piggy bank. The denomination of the piggy bank is in units.

[A64]: Delete this addition and possibly whole section. Adjustments are addressed in other areas.

[A65]: Issue resolved; Stephanie to provide insert updated language.¶ - City to confirm resolution.

[A66]: See inserted text from Google revisions 3-13-21.

[A67]: City is ok with this.

[A68]: Cite to City resolution.

[A69]: Will be updated...

Plan Area anticipated for development of City-Dedicated Open Space, in no event shall Developer be permitted to satisfy more than fifty ~~(50)~~-percent (50%) of its Parkland Dedication Obligation through the combination of (a) payment of Parkland Fees, and (b) Private Recreation ~~Credit~~Improvements credit. Further, City and Developer acknowledge and agree that, following dedication and acceptance by the City of a City-Dedicated Open Space, the amount of credits received by Developer for such land and any Park Improvements thereon shall be unaffected by any future actions by any DISC Partner Agency that may affect such land. ~~[NOTE: NEED TO ADDRESS DISC~~

~~TEMPORARY CONSTRUCTION IMPACTS/TCE - PROPOSAL TO FOLLOW]~~

[A70]: New-
Google 3-13-21
language-
inserted.-

[A71]: SEE-
NEW GOOGLE-
LANGUAGE-
FOR SECTION-
2.G-¶

~~G.1. Prior to commencement of construction dedication of a City-Dedicated Open Space to the City, Developer shall again consult with City Parks, Recreation and Neighborhood Services Department and City Department of Transportation staff regarding the status of the DISC. If Developer and City determine_s, based on information made available by a DISC Agency(ies), that any portion of the Open Space is reasonably likely to require use by a DISC Agency(ies) for construction staging or similar disruptive construction activity within four years following its anticipated date of Completion, Developer shall remain obligated to dedicate the land to the City, and the City shall accept such land, in accordance with the schedule set forth in Exhibit E3.1 and the terms of this Agreement, including Exhibit E5 hereto; provided, however, that City and Developer shall meet and confer to mutually determine whether Developer shall may elect to delay commencement of construction of the Park Improvements, including demolition and grading activity, or pause construction of the Park Improvements upon the affected portion of the City-Dedicated Open Space, as the case may be, until the DISC Agency activity within the Open Space has ceased, or whether Developer shall instead provide the Park Improvements Value to the City so that the City may itself complete the Park Improvements. Once the DISC Agency(ies) notifies Developer and/or City that it no longer requires use of the affected portion of the City-Dedicated Open Space, or has otherwise indicated that it no longer requires use of the space, the City shall provide Developer with such rights of access as may be needed to allow Developer to timely and diligently Complete the Park Improvements thereon. Thereafter, Developer shall have twelve (12) months or eighteen (18) months, as indicated in accoExhibit E3.1, to Complete the Park Improvements. In the event Developer elects to delay commencement of construction of Park Improvements pursuant to this Section, Developer shall be permitted to furnish the Performance Security required by Section 5(A)(1) upon notification by the DISC Agency(ies) that the DISC Agency(ies) no longer requires use of the property. If the Parties determine that Developer shall delay commencement of construction and Completion of the Park Improvements, Developer's obligation to construct the Park Improvements within the affected portion of the City-Dedicated Open Space shall survive the termination or expiration of the Development Agreement.; provided, however, that if City and Developer reasonably determine that use of all or a portion of a City-Dedicated Open Space by a DISC Agency(ies) would, in the~~

~~reasonable opinion of the Developer, delay Completion of construction of the Park Improvements thereon by more than onethree years beyond the date on which the Development Agreement has terminated or expired, notwithstanding Section 3(F) of this Agreement, at its option Developer shall be permittedmay elect to provide the City with the remaining Park Improvements Value for the affected City Dedicated Open Space, and the City shall accept the offer of dedication for the subject City Dedicated Open Space, or portion thereof, andwhich the City shall use the Park Improvements Value to construct the Park Improvements. If this occursDeveloper elects to provide the City with the remaining Park Improvements Value, the City shall release any security associated with suchthe incomplete Park Improvements upon receipt of the funds and dedication of the land for Open Space. Nothing in this Section shall relieve the City of its obligations to timely accept any Completed Park Improvements as set forth in Section 2(F) of Exhibit E5 hereto and elsewhere in this Agreement, regardless of any potential future action by a DISC Agency(ies).~~ ¶

[A72]: In this context, Land + Improvements should be at escalated value. Everything is locked together - park fee, land and improvements all move at CCI

[A73]: It works both ways. - Nothing here shall relieve Google from its obligations and then City has obligations to accept. -

[A74]: what does this mean?

[A75]: Section G pending further review.

~~¶¶¶¶¶~~

G. ~~G.~~ Developer acknowledges that of the 4,000 housing units covered in this Agreement, approximately 2,900 units are proposed south of Santa Clara Street and approximately 1,100 units are proposed north of Santa Clara Street. ~~The~~WhileWhile Developer is committed to providing Privately-Owned Publicly Accessible Open Space in addition to its commitments set forth in this Parkland Agreement, as described in Section 4.1.3(a) of the Development Agreement, the Privately-Owned Publicly Accessible Open Space is not counted toward satisfaction of Developer's Parkland Obligation. As a result, the Parkland Dedication Obligation for ~~the 2,900 residential~~ units developed south of Santa Clara Street above the 2,000th residential unit cannot be fully met through the proposed City-Dedicated Open Space located south of Santa Clara Street. ~~—~~ The following provisions address how the Parkland Dedication Obligation may be met while addressing this imbalance.

- a. ~~1. If~~AtAt the end of the Term of this Agreement, if fewer than two thousand (2,000) residential units are ~~built~~constructedconstructed south of Santa Clara Street, the Developer shall ~~improve and~~ dedicate City-Dedicated Open Space and construct Park Improvements thereon sufficient to meet the minimum Parkland Dedication Obligation for the ~~total~~ number of residential units constructed ~~across the entire Project~~ no later than thirty (30) years after the Effective Date of the Development Agreement, which Parkland Dedication Obligation for fewer than

2,000 residential units cannot be met by payment of ~~in-lieu fees~~ Parkland Fees, use of credits for Private ~~Recreational~~ Recreation Improvements, or provision of Privately-Owned Publicly Accessible Open Space; provided, however, if satisfaction of this requirement would obligate Developer to dedicate and/or Complete only a portion of a proposed City-Dedicated Open Space, City and Developer shall cooperate in Good Faith to (i) redesign proposed Park Improvements to Los Gatos Creek Connector 1 and/or Los Gatos Creek Connector 2 so that the ~~remaining Parkland Dedication Obligation that would otherwise require Completion of only a portion of another City-Dedicated Open Space can instead be utilized to install Park Improvements to Los Gatos Creek Connector 1 and/or Los Gatos Creek Connector 2 of a value~~ land value plus the Park Improvements Value does not exceed, and is equivalent to the remaining Parkland Dedication Obligation, in which case the applicable Park Improvements Value reflected in Table 1 of Exhibit E1 would not apply and certain requirements of the DWDSG may need to be waived as permitted by the DWDSG and/or the General Development Plan; (ii) increase the size of a City-Dedicated Open Space(s), or add a City-Dedicated Open Space adjacent to a residential building, in an amount equal to the remaining Parkland Dedication Obligation; (iii) dedicate and improve a portion of a Privately-Owned Publicly Accessible Open Space that is equivalent to the remaining Parkland Dedication Obligation, converting that portion to a City-Dedicated Open Space; and/or (iv) pay Parkland Fees to satisfy the remaining obligation. The obligations under this ~~paragraph G. 1.~~ Section 34(HG)(a) apply even if the buildings that would otherwise trigger the Parkland Dedication Obligation as set forth in Exhibits E3.1 and E3.2 have not been ~~built~~ constructed during the 30-year period after the Effective Date of the Development Agreement.

- b. ~~2. If more than At At~~ At the end of the Term of this Agreement, if two thousand (2,000) or more residential units are ~~built~~ constructed south of Santa Clara Street and Developer does not develop North of Santa Clara Street, then

[A76]: Add-back Open-Space?

[A77]: are they saying that they are going to do more improvements on the existing parks, or convert some of the popos at LGC connector to parks? The latter is ok (as long as it's enough), the former is not

[A78]: I don't like this. They should either dedicate additional land (preferred) or fee out. More improvements at LG connector aren't really possible.

[A79]: Stephanie — Can't fee-out; instead of delivering unuseable small area (or over-delivering on park requirement) —
 - City to confirm with Nicole / AP whether this is ok; City ok with a fee out in this situation? —
 - End of Term issue; fractional amount in fee preferable to the LG additional improvement option for a small make-up for what's owed? —
 City to circle back.

[A80]: City position is that if Google needs to make up a sliver of park, they can either provide a new park (by converting a POPO), or expand an existing park (including the park at Los Gatos Creek connector) by making it larger, or by shifting area from an adjacent POPO to increase the park size. City is not open to addressing the

Developer shall ~~improve and dedicate Park Improvements on~~ at least two and four tenths (2.4) acres of ~~land~~ City-Dedicated Open Space South of Santa Clara Street City-Dedicated Open Space and construct Park Improvements thereon to ~~meetsatisfysatisfy~~ the Parkland Dedication Obligations for ~~2,000~~ 2,000 residential units, and may improve and dedicate additional parkland, pay ~~in lieu fees~~ Parkland Fees, ~~or~~ apply accrued credits for Private Recreation Improvements ~~or~~ any combination thereof, in order to ~~meetsatisfysatisfy~~ the remaining Parkland Dedication ~~obligations~~ Obligation Obligation for the residential units constructed in excess of ~~2,000~~ 2,000. The obligations under this ~~paragraph G. 2.~~ Section ~~34(HG)~~ (b) cannot be met by the provision of Privately-Owned Publicly Accessible Open Space. The obligations under this ~~paragraph G. 2.~~ Section ~~34(HG)~~ (b) apply even if ~~the buildings that would otherwise trigger the Parkland Dedication Obligation have~~ 2.4 acres of City-Dedicated Open Space has not otherwise been triggered as set forth in Exhibits E3.1 and E3.2 because construction on the development parcels that correspond to the City-Dedicated Open Space has not ~~been built~~ occurred occurred during the 30-year period after the Effective Date of the Development Agreement.

[A81]: This should be South of Santa Clara deletion should be reversed.

- c. ~~3. If~~ At the end of the Term of this Agreement, if more than ~~2,000~~ 2,000 residential units are ~~built~~ constructed constructed south of Santa Clara Street and Developer develops any additional buildings North of Santa Clara Street, then Developer shall ~~first improve~~ have have dedicated the City-Dedicated Open Spaces and ~~dedicate~~ constructed Park Improvements ~~on at least two and four tenths (2.4) acres of land South of Santa Clara Street to meet Parkland Dedication Obligations for 2,000 residential units, then as a second priority, Developer shall improve and dedicate the Northend Park City-Dedicated Open Space and the Saint John Triangle City-Dedicated Open Space pursuant to the schedule in Exhibit E3 as the primary mechanism to fulfil any outstanding parkland obligation. Third, only if no buildings are developed on either of the sites A or C (such that the North End Park thereon thereon~~ in accordance with this

Agreement, including the delivery and Completion triggers set forth in Exhibits E3.1 and E3.2, subject to Section 2(A), ~~(which delivery triggers ensure that 2.4 acres of City-Dedicated Open Space and Saint John Triangle City Dedicated Open Space are not triggered by~~ is provided for the ~~enddevelopment of 30 years)~~ can Developer use Private Recreation Credits or pay an in lieu fee to fulfil the remaining development of 2,000 residential units.)Any outstanding Parkland Dedication Obligation. ¶

~~(For clarity and completeness, if fewer than 2000 residential units are built south of Santa Clara Street, and Developer develops any additional buildings North of Santa Clara Street, then the site A and site C triggers for North End Park City Dedicated Open Space and Saint John Triangle City Dedicated Open Space still apply.))~~ ¶

4 shall be satisfied in accordance with Section 34(ML).

- d. In no event shall the use of Private Recreation ~~Credit~~ImprovementsImprovements credit be used ~~before~~priorprior to Developer's Completion of 2.4 acres of City-Dedicated Open Space ~~are delivered south of Santa Clara~~andand construction of Park Improvements thereon, nor shall any combination of Parkland Fees and Private Recreation ~~Credit~~ImprovementsImprovements credit be applied to ~~meetsatisfysatisfy~~ more than fifty percent (50%) of the Project's Parkland Dedication Obligation ~~for more than 50% of total units delivered under this Agreement~~, consistent with Section 34(KF).

The obligations of this ~~paragraph~~Section 3Section 4(HG) shall survive the termination or expiration of ~~the~~ this Agreement and/or the Development Agreement.

- H. Upon Developer's dedication of three parcels of real property, currently identified as Properties H1, H5 and H6 (the "City-Dedicated Affordable Housing Sites") to the City (or its designee) for use in the production of affordable housing, the combined six hundred (600) affordable housing units that are assumed for these Sites, as reflected in Exhibit E8,

[A82]: This 2.4 is the bare minimum. Preference is still to drive toward 4.8 if units in excess of 2000 are built and development moves north of Santa Clara. This language seems to read that 2.4 is the only goal.

[A83]: Stephanie crossing 2,000 then Google provides per the schedule. Language intended to make that more clear. ¶ Google agrees 2.4 for 2,000, after that it is per the triggers in the Agreement. ¶ Issue/concern is overdelivery. ¶ City to review again.

[A84]: see note above

[A85]: Reverse deletion.

[A86]: See notes above. ¶ Stephanie Deliver per triggers, except for the front loaded for 2,000; ¶ - Duplicative/ and not really adding clarity bottom line is that the triggers control after 2,000

[A87]: This paragraph needs to be reworked to make it clear that if Google constructs more than 2,000 residential units south of Santa Clara street that all 2.4 acres of parks south of Santa Clara Street are improved and delivered. ¶ After that, can't automatically fee out or use private rec credit, and

shall be counted toward the 1,250 residential units that would trigger the Design Outside Date referenced in Section 45(B) and set forth in Section 45(C) for the Social Heart open space, and toward the 1,500 residential units and 3,250 residential units, respectively, that would trigger the dedication and Completion for the Social Heart open space and the St. John Triangle open space, which triggers are set forth in Exhibits E3.1 and E3.2. For clarity, upon dedication of each of the three City-Dedicated Affordable Housing Sites, it shall be assumed, for the limited purpose of triggering the Design Outside Date, dedication, and Completion of the Social Heart, and the dedication and Completion of St. John Triangle, that the residential units assumed for that Site have received Temporary Certificates of Occupancy. Therefore, upon dedication of all three of the City-Dedicated Affordable Housing Sites and issuance of Temporary Certificates of Occupancy for the balance of the residential units indicated in Exhibit E3.1 -- whether issuance of Temporary Certificates of Occupancy for such residential units occurs before or after dedication of the City-Dedicated Affordable Housing Sites, and no matter where such units are located within the Project Site -- the Design Outside Date, and the dedication and Completion requirements for the Social Heart, respectively, shall be triggered and the Social Heart shall be delivered within twenty-four (24) months of issuance of a Temporary Certificate of Occupancy for the 1,500th residential unit, unless earlier triggered by the issuance of a Temporary Certificate of Occupancy for development on Block D4; and the dedication and Completion of St. John Triangle shall be triggered and St. John Triangle shall be delivered within 12 months of issuance of a Temporary Certificate of Occupancy for the 3,250th residential unit, unless earlier triggered by issuance of a Temporary Certificate of Occupancy for a Building on Block C2.

[A88]: wasn't this 12 months?

[A89]: Concerned that subterranean garage can't be build w/in 12 months. ¶
- Practicality / feasibility change based on construction period. ¶
¶ City request -- make this period as short as possible/feasible -

- I. Notwithstanding the Completion timing requirements set forth in Section 34(IH), in Exhibits E3.1 and E3.2, or elsewhere in Development Agreement and other Exhibits thereto, ~~if~~ if the Completion requirement for the Social Heart is triggered by issuance of a Temporary Certificate of Occupancy for the 1,500th residential unit developed in the Project (rather than for issuance of a Temporary Certificate of Occupancy for a Building on Block D4), ~~notwithstanding the Completion timing requirements set forth in Section~~

~~3(I), in Exhibits E3.1 and E3.2, or elsewhere in Development Agreement and other Exhibits thereto,~~ the Completion date for the Social Heart (inclusive of the subterranean garage) shall be extended ~~by one day for each day that completion of the~~ to provide Developer twenty-four (24) months to Complete the Social Heart from the date on which the (VTA's BART Silicon Valley Phase II Extension Project (located adjacent to the south side of West Santa Clara Street, between Autumn Street and the San José Diridon Caltrain Station) ("BART Project")) is ~~completed~~delayed past December 31, 2030~~completed~~, if due to active or reasonably imminent construction staging or other construction-related activity on or in the vicinity of the Social Heart, the BART Project prevents, delays, or otherwise interferes with Developer's timely construction and Completion of the Social Heart and/or the subterranean garage.)

[A90]: Limit this to VTA's BART Diridon Station (or specify that it's located adjacent to the south side of West Santa Clara Street, between Autumn Street and the San José Diridon Caltrain Station).

[A92]: See new language, and comment, above.

[A91]: Revised Language from 3-13-21

- J. ~~H.~~ In addition to adhering to the schedule set forth in ~~Exhibit E3~~ Exhibits E3.1 and E3.2 and the other timing requirements of this Agreement, ~~including the foregoing paragraph G,~~ and the Development Agreement, through ~~completion~~Completion and delivery of a combination of (i) City-Dedicated Open Space and (ii) Privately-Owned Publicly Accessible ~~Open Space~~ that is subject to recorded restrictive covenant(s) ~~or easement(s)~~ as described in Section ~~4.1.3~~ 4.1.3 of the Development Agreement and reflected in ~~Exhibit E677~~ (the "Covenant Privately-Owned Publicly Accessible Open Space"), Developer shall ensure that a cumulative minimum of fifty-two (52) square feet of ~~completed~~Completed open space is provided for each residential unit that is constructed. Continued compliance shall be demonstrated and confirmed through the accounting process required as part of the Conformance Review for vertical development. Final acreage of the open spaces shall be verified in the manner set forth in Section ~~34~~ 34(B). City shall deny ~~any building permit~~Conformance Review for a subsequent residential building that would cause the cumulative minimum square feet of open space for each residential unit to fall below 52 square feet. Further, pursuant to Section 4.1.3(a)(iii) of the Development Agreement, in the event Developer fails to Complete any Covenant Privately-Owned Publicly Accessible Open Space in accordance with the completion schedule set forth in Section 4.1.3(a)(i) therein, Developer shall be required to

pay the Private Open Space Delay Penalty Fee. For clarity, ~~and as reflected in Section 3(JK),~~ it is understood that Privately-Owned Publicly Accessible Open Space, including Covenant Privately-Owned Publicly Accessible Open Space cannot be used to satisfy Developer's Parkland Dedication Obligation.

- K. ~~H.~~ Certain exceptions from the Parkland Dedication Ordinance (San José Municipal Code Chapter 19.38) are necessary in order to provide the City-Dedicated Open Spaces in the manner set forth in the Development Agreement and this Agreement. The exceptions from certain provisions of the Parkland Dedication Ordinance are listed in ~~Exhibit E799.~~ The City has agreed to grant the waivers or exceptions listed in ~~Exhibit E799.~~ With respect to items (i) and (ii) listed in Paragraph 2 of ~~Exhibit E799,~~ the City has further agreed that such exceptions shall not impact the amount of credit that Developer is eligible to receive for land and Park Improvements impacted by those exceptions, except that credit shall not be granted for above-grade existing and/or proposed building footprints, vehicular access ways and aprons, elevators and associated lobbies, and similar non-open, non-park or non-recreational features located within any City-Dedicated Open Space; and for item (iii) in Paragraph 2, the exception shall not impact the amount of the credit that Developer is eligible to receive for the Park Improvements, and the City agrees that it shall provide seventy-five percent (75%) credit for the land value of the Social Heart park. For clarity, credits shall be available for land underlying park-related and recreational structures, which structures may include but are not limited to kiosks/pavilions or similar structures permitted by the DWDSG, park maintenance facilities, or restrooms.

- L. ~~I. Upon Subject Subject~~ to Section ~~34(HG),~~ upon the termination or expiration of the Development Agreement, any outstanding Parkland Dedication Obligation that has accrued based on the number of residential units constructed as of such termination or expiration shall first be satisfied through any then-available credits from dedicated acreage and/or costs of Park Improvements for the City-Dedicated Open Space in accordance with ~~Exhibit E388~~ and this Agreement. Thereafter, subject to Sections ~~23(NQO), 34(F), and 34(GKI),~~ any remaining Parkland Dedication Obligation for the

number of residential units constructed shall be satisfied with ~~private-recreation~~~~Private~~~~Private~~ Recreation Improvements credits, if any, followed by payment of Parkland Fees. This Section ~~34(JML)~~ shall survive the termination or expiration of the Development Agreement.

M. ~~J.~~ Subject to the mutual understandings and acknowledgments set forth in Section ~~34(D)~~ and the other requirements and limitations set forth in this Agreement, in the event Developer intends to develop more than four thousand (4,000) residential units (meaning Developer develops more than 3,400 residential units, subtracting from the 4,000 total units the 600 residential units assumed to be developed on the City-Dedicated Affordable Sites from the 4,000 total units), Developer agrees to immediately notify the PRNS Director. Any additional Parkland Dedication Obligation that may be required shall first be satisfied by ~~private-recreation~~~~excess~~~~excess~~ credit from dedicated acreage and/or costs of Park Improvements for the City-Dedicated Open Space, if any. Any remaining obligation shall then be satisfied by Private Recreation Improvements credits authorized for the first 4,000 units, if any, followed by payment of Parkland Fees.

[A93]: So, the 4000 units assume 600 affordable units. Assume once land is dedicated to City?

N. ~~K.~~ Because of the benefit to the Development that will result from the Park Improvements and land dedication, Developer agrees to design, develop, and construct the Park Improvements on the City-Dedicated Open Space and to dedicate the City-Dedicated Open Space as specified in this Agreement and the exhibits and attachments hereto, and as provided in the Downtown West Design Standards and Guidelines, without any obligation on the part of City with respect to design, development, or construction except as otherwise provided in this Agreement. ¶

~~O. Long Term Corporate Accommodations. [Place holder pending further City/Google discussions.] ¶~~

[A94]: LTCA Placeholder...

~~Subject to the criteria incorporated below, the City proposes the following more streamlined framework to address park obligations only for the currently contemplated 800 LTCA Units: ¶~~

~~1) Google will pay \$4,850 fee, subject to escalation by the California Construction Cost Index, on each of the approved 800 LTCA units that is constructed, which units must meet the following criteria: ¶~~

- ~~a) Each LTCA unit shall be less than 200 square feet in size.¶~~
 - ~~b) Google provides the unit free of charge.¶~~
 - ~~c) Occupants of LTCA units shall be limited to Google's officers, employees, consultants, vendors, contractors, or sponsored guests who do not intend to use it as their domicile and who have not entered into a written rental or lease agreement or provided any payment in a fixed amount of money to occupy the unit, and who are actively participating in Google business or doing business with Google during occupancy of the LTCA unit.¶~~
 - ~~d) Occupancy of a LTCA Unit by any person shall not exceed sixty (60) consecutive days.¶~~
- ~~2) Units that do not meet the criteria set forth in the foregoing paragraph shall be treated as regular residential units for purposes of the unit counts corresponding to each park in Exhibits 3.1 and 3.2. ¶~~
- ~~3) City will spend the fees paid for the up to 800 LTCA units on parks consistent with the City's 2009 Greenprint for Parks, Recreation Facilities and Trails, as it may be amended from time to time.¶~~
- ~~4) In the event that additional capacity in excess of 800 LTCA units is added to the Project, each LTCA unit constructed in excess of 800 shall be treated as a regular residential unit for purposes of the unit counts corresponding to each park in Exhibits 3.1 and 3.2. ¶~~
- ~~5) In the event that the Project is modified to include other types of units that are substantially similar to LTCA units, each such unit constructed shall be treated as a regular residential unit for purposes of the unit counts corresponding to each park in Exhibits 3.1 and 3.2.¶~~
- ~~6) This fee out mechanism is a one-time arrangement for simplicity of treatment of a limited number of LTCA units. This arrangement shall in no way serve as a precedent or guide what might happen with other units or with other development capacity, or in any other agreement. ¶~~

~~4~~
~~4~~
~~4~~
~~-~~

SECTION 5. ~~SECTION 4.~~—REVIEW OF CITY-DEDICATED OPEN SPACE DESIGN; OPEN SPACE IMPROVEMENT CONFORMANCE REVIEW

- A. Prior to initiating design ~~development one of~~ any City-Dedicated Open Space, Developer shall meet with PRNS Staff, after which PRNS Staff will support community outreach and engagement for the park design and naming.— Developer agrees to hold ~~one Community Meeting two~~ two community meetings prior to ~~the preparation of thirty-five percent (35%) complete Park Improvement Plans for each City-Dedicated Open Space. A second meeting shall be held in the form of a public hearing at a meeting of the Parks and Recreation Commission after completion of submittal~~ submittal of an application for Open Space Improvement Conformance Review pursuant to the provisions of the Downtown West Planned Development Zoning and General Development Plan. — ~~The Developer~~ Developer shall consider the input and comments received from the public during the community meetings when finalizing its application for Open Space Conformance Review. Following submittal of Developer's Open Space Conformance Review application, which application shall contain the thirty-five percent (35%) Park Improvements Plans described in Section ~~45~~ (BC), below, the Parks and Recreation Commission shall review ~~and provide comment the~~ the application and 35% Park Improvements Plans at a public hearing, and shall thereafter make a recommendation to the ~~Directors Director~~ Director of ~~PW and PRNS PBCE~~ PBCE regarding approval or disapproval of the Open Space Conformance Review. If consistent with all applicable design standards, taking into account input from the public and the Parks and Recreation Commission, the ~~Directors Director~~ Director of ~~PW and PBCE~~ PBCE, in consultation with the Director of PRNS, shall ~~accept the design approve~~ approve the Open Space

[A95]: Staff is confirming this is ok.

[A96]: Please add a cross-reference to the provision that states when the review fees will be paid to the C- (20% at conformance review of trigger building / 80% at conformance review for park) (Currently Section 2(I)-2)

Conformance Review and 35% Park Improvements Plans contained therein. Technical review of the City-Dedicated Open Space design shall occur in accordance with the provisions of Exhibit E455.

- B. In accordance with the ~~Design~~ Design Outside Date Schedule set forth below, as part of its Open Space Improvement Conformance Review application for the Park Improvements, ~~in addition to paying Review Fees in accordance with Section 3(I),~~ Developer shall submit Park Improvements Plans (defined in Exhibit E455) at thirty-five percent (35%) ~~[TO BE CONFIRMED]~~ consistent with the Design Submittal Requirements set forth in the City's Turnkey Project Process and Submittal Requirements, dated November 5, 2019]. ~~After the third community meeting,~~ and the Conformance Review Implementation Guide for the Project. Following Conformance Review Approval as described in Section 45(A), ~~above,~~ Developer shall submit Park Improvements Plans at sixty-five percent (65%) and ninety-five percent (95%), ~~[TO BE CONFIRMED,~~ consistent with the Design Submittal Requirements set forth in the City's Turnkey Project Process and Submittal Requirements, dated November 5, 2019]. ~~The approved Conformance Plans, sixty-five percent, and ninety-five percent Park Improvements Plans will include any refinements made in response to community comments during the final two community meetings described in Section 4(A). The Open Space Improvement Conformance Review process, including review of plans associated therewith, will follow the procedures set forth in the General Development Plan for the Downtown West Planned Development Zoning District, and~~ the Conformance Review Implementation Guide for the Project, which 65% and 95% Plans ~~and technical specifications~~ shall be reviewed by the Director of PW. The 95% Park Improvements Plans for City-Dedicated Open Space shall be reviewed, approved, and signed by the Director of PW. ~~Approval,~~ and approval from the Director of PW and issuance of a Notice to Proceed shall authorize construction. -

[A97]: And technical specifications

[A98]: To be added in:

- C. The Design Outside Date Schedule referenced in Section 45(B) sets forth the dates by which the ~~complete construction plans~~ Conformance Conformance Review application and 35% Park Improvements Plans for each City-Dedicated Open Space shall be ~~provided to submitted~~ submitted in the ~~Director of PW manner~~ manner described in the General

Development Plan for the Downtown West Planned Development Zoning District.- The Design Outside Date Schedule shall be as follows:-

- a. Los Gatos Creek Trail (Blocks ~~D/E~~): ~~by~~within~~within~~ six (6) months of Conformance ~~Review~~ Determination approval for Block E1;
- b. Los Gatos Creek Trail (Block G): ~~by~~within~~within~~ six (6) months of Conformance ~~Review~~ Determination approval for block G1;
- c. Los Gatos Creek Park: ~~by~~within~~within~~ six (6) months of Conformance ~~Review~~ Determination approval for block G1;
- d. Los Gatos Creek Trail Connector 1: ~~by~~within~~within~~ six (6) months of Conformance ~~Review~~ Determination approval for 1st residential building of H3;
- e. Social Heart: ~~b~~ within six (6) months of the earlier of Temporary Certificate of Occupancy for the ~~seventy-two~~twelve hundred fiftieth (~~7501,2501,250~~)th unit or Conformance ~~Review~~ Determination approval for- Block D4;
- f. Northend Park: ~~by~~within~~within~~ six (6) months of Conformance ~~Review~~ Determination Approval for the first building on Block A1;
- g. Los Gatos Creek Connector 2: ~~by~~within~~within~~ six (6) months of Conformance ~~Review~~ Determination approval for the first (1st) residential building of Block H~~366~~;
- h. St. John Triangle: ~~by~~within~~within~~ six (6) months of Conformance ~~Review~~ Determination approval for the first (1st) building of Block C1 or C2.¶

[A99]: On 3/11 parties- conceptually- agreed- Google- should pay 20%- of the 17.5%- review fees with- conformance- review of- vertical building- associated with- the park. Park- design should- commence- within 6 months- of conformance- review approval- of building- remaining 80%- of park fee- should be paid- at park- conformance- review- submittal. City- goal is to close- the gap between- building- construction and- park- construction as- much as- possible. And- we do NOT- want developer- to indefinitely- delay park- construction if- economic- conditions- change, etc.-

~~A.~~

SECTION 6. ~~SECTION 5.~~ BONDS AND SECURITY.

Developer shall furnish to City the following security separately for each City-Dedicated Open Space, for the purposes, in the amounts, and under the conditions that follow:

- A. Type and Amounts.
 1. Performance Security. To assure the Developer's faithful performance to the City of this Agreement to ~~complete~~CompleteComplete the Park Improvements in an

[A100]: SEE- REVISED- LANGUAGE- FOR SECTION- 5-A- FROM- GOOGLE- 3-13-21:¶

amount ~~of equal to~~ one hundred percent (100%) of the direct costs reflected in Table 2 of Exhibit E1 for the Park Improvements ~~Value set forth in Exhibit E1 cost~~ for the City-Dedicated Open Space(s) included in the final map (hereinafter "Performance Security"), ~~[Google proposed edits from 3/13/21: as such cost is reflected in the construction contract for the subject City-Dedicated Open Space,~~ which shall be furnished by Developer to the City prior to ~~the issuance of a building permit for the superstructure for the Building that triggers the City-Dedicated Open Space obligation]~~ approval of the final map and shall be subject to adjustment pursuant to Section 6(B)(2); and

2. Payment Security. To secure Developer's payment to any contractor, subcontractor, person renting or supplying equipment, or furnishing labor and materials for completion of the Park Improvements included in the final map, in the additional amount of one hundred percent (100%) of the ~~Park Improvements~~ ~~[Google proposed edits from 3/13/21: direct cost as such cost is reflected in the construction contract for~~ Table 2 of Exhibit E1 for the subject Park Improvements ~~for the subject City-Dedicated~~ Dedicated Open Space (hereinafter "Payment Security"), which shall be furnished by Developer to the City prior to ~~approval of the issuance of a building permit for the superstructure for the Building that triggers the City-Dedicated Open Space obligation as set forth in Exhibit E3 Exhibits E3.1 and E3.2 final map;~~ approval of the final map; and

3. Warranty Security. To warranty the Developer's work to the City with respect to Park Improvements included in the final map, for a period of one (1) year following recordation of the Notice of Acceptance against any defective work or labor done or defective materials furnished in the additional amount of twenty-five percent (25%) of the direct costs reflected in Table 2 of Exhibit E1 for the Park Improvements ~~[Google proposed edits from 3/13/21: cost as such cost is reflected in the construction contract for~~ for the subject City-Dedicated Dedicated Open Space (hereinafter "Warranty Security"). The Warranty Security shall be furnished by Developer to the City prior to issuance of the Notice of Acceptance.

[A101]: I'm not sure that there is any cost on the final map, and in any case the table governs, not some value determined in the future.

[A102]: Agreed. Costs are proposed to be presented in Exhibit E1. This should be the primary reference for any improvement costs. Exhibit E8 - the adjustments table - should flow from E1. No costs on mapping

[A103]: seems to be addressed in revised language from Google 3-13-21

[A104]: Costretion Contract issue - addressed in the Google 3-13-21 timing issue. ¶ Stephanie to consider Final Map - Bonding issue - ¶ - Cost estimate - 195\$ time square footage of park shown on that final map ¶ - Discuss addition of 10% above, per City typical policy. ¶ - Bond would be provided at final map.

4. ~~Landscaping Security.~~ To secure Developer's installation and maintenance of landscaping as may be required by the landscaping specifications in the Park Improvement Plans, at such time as any drought restrictions on landscaping installation have been rescinded (hereinafter "Landscaping Security").~~—~~ The Parties acknowledge that any City~~—~~ restrictions on the installation of landscaping because of drought conditions may delay Developer's installation of the landscaping contemplated by this Agreement.~~—~~ If, due to drought restrictions, Developer is unable to install the landscaping in time to be inspected by the Director of PW for the purposes of accepting the ~~completed~~~~Completed~~~~Completed~~ Park Improvements, Developer shall post a bond or other form of security acceptable to the ~~Direct~~~~Director~~~~Director~~ of PW.
5. ~~(Park ~~Art~~~~Design Elements~~~~Art~~ and Optional Structures Security.~~ To allow for City to install or construct any remaining ~~park design elements, art and other non-functional, sculptural or ornamental features, or kiosks/pavilions or other optional structures, structures, or features~~~~Park Art and Optional Structures~~ following Completion of a City-Dedicated Open Space, Developer shall post a bond or other form of security acceptable to the Director of PW, and in an amount equal to the cost of the remaining Park Art and Optional ~~Structures~~~~park design elements, art, structures, or features~~~~Structures~~. The Park Art and Optional ~~Design Elements and Structures~~~~Features~~~~Structures~~ Security shall be furnished by Developer to the City prior to the final Notice of Acceptance for a Park Improvement within the subject City-Dedicated Open Space.)

[A105]: New-
Google-
Language-
-3-13-21¶
¶
Need-
consistency-
edits for art,
kiosks and
pavillions as the
scope...

B. ~~B.~~ Conditions.

1. Developer shall provide the required security on forms approved by City and from sureties authorized by the California Insurance Commissioner to transact the business of insurance. Any bonds furnished by Developer to satisfy the security requirements in this Section ~~656~~ shall be in the forms attached hereto as Exhibit ~~E81010~~, as may be amended by City from time to time.

2. ~~2.~~ A condition of the Developer's security is that any changes in the Park Improvements cost as reflected in the construction contract that do not exceeding ~~exceed~~ ten percent (10%) of the original estimated hard cost of the Park Improvements as reflected in Table 2 of Exhibit E1 shall not relieve the security. In the event that ~~changes to the Improvement Plans cause an increase of~~ construction contract indicates that the Park Improvements cost is more than ten percent (10%) over the original estimated cost of the Park Improvements, Developer shall provide security as required by Section ~~56~~ 56(A) of this Agreement for One Hundred Percent (100%) of the total estimated cost of the Park Improvements as ~~changed.~~ ¶

[A106]: Why delete standard language? - Allows 10% flexibility but need new security if changes exceed 10%. Security is no good at that point.

[A107]: Same issue as discussed above with respect to bonds at final map... ¶ - Issue when there are design changes (which may be at developer election).

~~2.~~ ~~3~~ reflected in the construction contract. ¶

3. Developer's Performance Security pursuant to Section ~~656~~ 656(A)(1) shall compensate City for the actual cost of ~~completing~~ Completing Completing the required Park Improvements in the Event of Default, as defined in Section ~~657~~ 657 below, by Developer in the performance of this Agreement, regardless of whether City's cost of ~~completion~~ Completion Completion exceeds the Park Improvements Value of the Park Improvements.

4. ~~3-4.~~ A condition of Developer's security is that any request by Developer for an extension of time for the commencement or ~~completion~~ Completion Completion of the work under this Agreement may be granted by City without notice to Developer's surety and such extensions shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement.

5. ~~4-5.~~ As a condition of granting any extension for the commencement or ~~completion~~ Completion Completion of any work under this Agreement, Director of PW may require Developer to furnish new security guaranteeing performance of

this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by Director of PW.

6. ~~5-6.~~ If Developer seeks to replace any security with another security or securities, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by Developer to Director of PW; and (3) upon its written acceptance by Director of PW, be deemed to be a part of this Agreement. Upon Director of PW's acceptance of a replacement security, the former security may be released by City.

7. ~~—~~ ~~(New Section 5(B)(6):~~ Upon a Transfer that includes the Transfer of Developer's obligations with respect to a City-Dedicated Open Space that has not yet been Completed, (i) Transferee shall provide security in accordance with the requirements of this Agreement, or (ii) if Developer has previously provided security in accordance with this Agreement for the subject City-Dedicated Open Space, Transferee shall promptly provide new security, which security shall replace the security provided by Developer for the subject City-Dedicated Open Space. If Transferee provides security as required by (ii), above, upon Director of PW's acceptance of the new security from Transferee, the former security provided by Developer/Transferor shall be released by the City. ~~4~~

[A108]: New Language from Google Note - Still subject to City discussion regarding transfers.

~~46.~~

- C. ~~C.~~ Release of Securities. City shall release the securities required by this Agreement as follows:

1. Performance Security. City shall release each Performance Security for a Park Improvement upon recordation of the Notice of Acceptance for that Park Improvement, or any portion thereof, or as may otherwise be authorized in accordance with California Government Code Sections 66499.7(a)–(g).
2. Payment Security. City shall release the Payment Security for a Park Improvement included in a final map in accordance with California Government Code Section 66499.7(h).

3. Warranty Security. City shall release the Warranty Security for a Park Improvement upon expiration of the warranty period for that Park Improvement and settlement of any claims filed during the warranty period. City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees, for any claims filed during the warranty period.

4. Landscaping Security. To secure Developer's installation and maintenance of landscaping as may be required by the Project Specifications, at such time when the drought restrictions have been rescinded as further described in Section F(3) of Exhibit E4 (hereinafter "Landscaping Security")5.

5. Park Art and Optional Design Elements and Structures Features Optional Structures Security. City shall release the Park Art and Optional Design Elements and Structures Features Optional Structures Security upon its completed installation or construction of the remaining Park Art and Optional Structures park design elements, art, structures, or features Structures.

[A109]: New Google Language inserted. ¶
¶
Need consistency throughout with respect to "art, kiosks and pavillions" as to scope.

[A110]: Need consistency throughout with respect to "art, kiosks and pavillions" as to scope.

D. Injury to Park Improvements, Public Property, or Public Utility Facilities. Until recordation of the Notice of Acceptance of the Park Improvements as provided in Exhibit E455, Developer assumes responsibility for the care and maintenance of, and any damage to, the Park Improvements. Developer shall replace or repair all Park Improvements, public utility facilities, and surveying or subdivision monuments and benchmarks that are destroyed or damaged for any reason, regardless of whether resulting from the acts of the Developer, prior to the recordation of the Notice of Acceptance; provided, however, that if Developer identifies a responsible third party for such damage, Developer may pursue, at its sole cost and expense, recovery of its repair costs and expenses from such responsible third party at its sole cost and expense. Developer shall bear the entire cost of such replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval of the Director of PW.

[A111]: Stephanie to further consider.

[A112]: It's your land until City accepts, its your responsibility.

Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss, or damage, regardless of cause, occurring to the work or Park Improvements prior to recordation of the Notice of Acceptance of the work or improvements.

SECTION 7. ~~SECTION 6.~~ DEFAULT.

A. Developer shall be in default hereunder upon the occurrence of any one or more of the following events ("Event of Default"):

1. ~~1.~~ Developer's failure to timely ~~commence or complete~~CompleteComplete construction of one of more Park Improvements under this Agreement;
2. ~~2.~~ Developer's failure to timely cure any defect in any Park Improvement;
3. ~~3.~~ Developer's failure to perform ~~substantial~~ construction work for a period of twenty (20) ~~calendar~~businessbusiness days after commencement of work;
4. ~~4.~~ Developer's insolvency, appointment of receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Developer fails to discharge within ~~thirtysixtysixty~~ (~~306060~~) days;
5. ~~5.~~ Developer assigns this Agreement in violation of Section ~~9~~;
- ~~6. Developer fails to deliver the Privately Owned Open Space as required by Section XX of the Development Agreement~~ 10; or ~~or~~ *
6. ~~7.~~ Developer fails to perform or satisfy any other term, condition, or obligation under this Agreement.

B. If an Event of Default occurs and the Event of Default is not cured by Developer in accordance with Section ~~6~~7(E) below, City in its sole discretion shall be entitled to terminate Developer's control over the Park Improvements described herein and hold Developer and its surety liable for all damages suffered by City as a result of the Event of Default. City shall have the right, at its sole discretion, to draw upon or use the appropriate security to mitigate City's damages in the Event of Default by Developer. City may use the sums provided by the Performance Security in addition to any other

[A113]: still unresolved. they don't want undelivered popos to be a default, but it's too easy for them to not perform and sell the land to someone else at a profit. is there anything in the DWDSG that has enough teeth to prevent this?

[A114]: no there is not. We need language in the DA

[A115]: @Google—reverse deletion

[A116]: Google Doesn't want POPOs to be a default; ¶ Protections to City: ¶ 1) -Delay penalty up to the full value; -Google understood this to be negotiation for not treating it as default. ¶ 2) Requirement of 52sf (through dedication and POPO) numbers don't work unless POPOs are provided. ¶ Google believes these protections warrant not treating failure to provide POPO as a default. ¶ City—interested in insuring that the improvements actually occur and not just through a fee-out. ¶ Stephanie—52 SF not met; ability to stop reviews if not met is strong backstop. ¶ City to followup internally ¶

[A117]: City could get comfortable carving out POPO delivery from default only if the Delay Penalties would

remedies available at law or in equity to City for the ~~completion~~~~Completion~~~~Completion~~ of the Park Improvements in accordance with the Park Improvements ~~Specifications and~~ ~~Park Improvements~~ Plans.— The Parties acknowledge and agree that the estimated costs and security amounts may not reflect the actual cost of construction of any specific Park Improvement for which the security is provided, and therefore, City's damages in the Event of Default by Developer shall be measured by the actual cost of ~~completing~~~~Completing~~~~Completing~~ the required Park Improvements to the satisfaction of City.— City may use the sums provided by the securities for the ~~completion~~~~Completion~~~~Completion~~ of the Park Improvements for which the security is provided in accordance with the Project Specifications.

- C. City may take over the work and ~~complete~~~~Complete~~~~Complete~~ the Park Improvements for ~~with~~~~which~~~~which~~ the security is provided, by contract or by any other method City deems appropriate, at the sole cost and expense of Developer.— In such event, City, without any liability ~~whatsoever~~~~for~~~~for~~ any work or actions previously performed by Developer with respect to the subject Park Improvements, may ~~complete~~~~Complete~~~~Complete~~ the Park Improvements using any of Developer's materials, appliances, plans, or other property located at the Park Site and that are necessary to ~~complete~~~~Complete~~~~Complete~~ the Park Improvements. The rights and remedies set forth in this Section ~~67~~ shall affect and concern only the specific Park Improvement(s) that are the subject of the specific Event of Default. ~~D.~~—

- D. ~~E.~~—Unless the PRNS Director determines that the circumstances warrant immediate enforcement of the provisions of this Section ~~67~~ in order to preserve the public health, safety, and welfare, the PRNS Director shall give ~~twent~~~~twenty~~ (20-~~(2020)~~) working days' prior written notice of termination to Developer ("Notice Period"), which notice shall state in reasonable detail the nature of Developer's default and the manner in which Developer can cure the default. During the Notice Period, Developer shall have the right to cure any such default; provided, however, if a default is of a nature which cannot reasonably be cured within the Notice Period, Developer shall be deemed to have timely cured such default for purposes of this Section if Developer commences to cure the

default within the Notice Period, and prosecutes the same to completion within a reasonable time thereafter. ~~F.~~

- E. ~~G.~~ If an Event of Default occurs and the Event of Default is not cured by Developer in accordance with Section ~~67~~(~~E~~D) above, City in its sole discretion shall be entitled to terminate Developer's control over the specific Park Improvement(s) that is the subject of the Event of Default and hold Developer and its surety liable for all damages suffered by City as a result of the Event of Default. City shall have the right, at its sole discretion, to draw upon or use the appropriate security to mitigate City's damages in the Event of Default by Developer. ~~City may use the sums provided by the Performance Security for the completion~~~~Completion~~Completion of the Park Improvements in accordance with the Park Improvements ~~Specifications and~~~~Plans~~Plans.

[A118]:
Stephanie--
understood--

[A119]: It may
not fully
compensate--
Delete.

Following an Event of Default and Developer's failure to cure, City may take over the work and ~~complete~~~~Complete~~Complete the Park Improvements, by contract or by any other method City deems appropriate. In such event, City may ~~complete~~~~Complete~~Complete the Park Improvements using any of Developer's materials and/or plans that are necessary to ~~complete~~~~Complete~~Complete the Park Improvements.

- F. ~~H.~~ If an Event of Default occurs, Developer agrees to pay any and all costs and expenses incurred by City in securing performance of such terms, conditions, or obligations giving rise to the Event of Default, including but not limited to, fees and charges of architects, engineers, contractors, and other professionals but specifically excluding legal costs and expenses including attorneys' fees and court costs.

[A120]: Google
-Concerns re:
cross defaults;
transferee
issues; ¶
- Will be an
issue for
Google, unless
limited to the
triggering
building? ¶

¶
Revise to limit
to triggering
building;
subject to city
seeing language.

- G. ~~I.~~ City's rights and remedies specified in this Section ~~67~~ shall be deemed cumulative and in addition to any rights or remedies City may have at law or in equity, including but not limited to withholding the ~~issuance~~approval of ~~any additional building permits or certificate of occupancy for the Project~~Conformance Review for a subsequent residential building.

[A121]: Why
delete. This is
the deal. If you
are in default,
we withhold
permits.

SECTION 8. ~~SECTION 7.~~ **INDEMNITY/HOLD HARMLESS.**

City, or any officer, employee, or agent thereof shall not be liable for any loss or injury to persons or property occasioned by reason of the acts or omissions of Developer, its agents, employees, contractors, or subcontractors in the performance of this Agreement. Developer further acknowledges and agrees to protect, indemnify, defend and hold City, its officers, agents and employees harmless from and against any and all liability, loss, cost and obligations on account of or arising out of or resulting from any injury or loss caused directly or indirectly by any cause whatsoever in connection with or incidental to the activities performed by Developer under this Agreement, except to the extent such injury or harm is caused ~~or contributorily caused~~ by the sole active **negligence** or willful misconduct of City, its officers, agents, or employees. This Section ~~78~~ shall survive the recordation of the Notice of Acceptance, acceptance of— any Park Improvement as to that Park Improvement, or sooner termination of this Agreement for a period of one (1) year from the date of such acceptance or termination. Recordation of the Notice of Acceptance by City of any Park Improvement shall not constitute an assumption by City of any responsibility or liability for any loss or damages covered by this Section ~~78~~.

Developer shall reimburse City for all reasonable **costs** and expenses, including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs, incurred by City in enforcing this Section ~~78~~.

SECTION 9. ~~SECTION 8.~~ **NOTICES.**

Any notice required or permitted to be given under this Agreement shall be in writing and personally served or sent by U.S. mail, postage prepaid, addressed as follows:

To PRNS Director: City of San José
Department of Parks, Recreation and Neighborhood Services
Attn: PRNS Parks Planning Division Manager
200 East Santa Clara Street, Tower-9th Floor
San José, CA 95113

To Director of PW: City of San José
Department of Public Works

[A122]: No. Do not shift risk and liability to City on a standard park dedication. This the same risk for all developers dedicating to City. ¶

[A123]: @ Google reverse the changes here.

[A124]: Google internal say can't agree to it. City's position remains unchanged.

[A125]: If its unreasonable, the Court can decide.

[A126]: "reasonable" is ok.

Attn: City Facilities Architectural Services Deputy Director _____
200 East Santa Clara Street, Tower-6th Floor
San José, CA 95113

To Developer:

Google LLC
1600 Amphitheatre Parkway
Mountain View, Ca 94043
Attn: REWS Department / Downtown West SJ Project
Executive

with a copy to:

Google LLC
1600 Amphitheatre Parkway
Mountain View, Ca 94043
Attn: Legal Department / R/E Matters

Attn: Gregg Miller
Coblentz Patch Duffy & Bass LLP
One Montgomery Street, Suite 3000
San Francisco, CA 94104

Notice shall be deemed given upon receipt. The Parties shall notify each other of changes in either their respective addresses or their representatives subject to notification in accordance with the provisions of this Section.

SECTION 10. ~~SECTION 9.~~—TRANSFER AND RELEASE.

This Agreement may not be assigned or transferred in part or in whole by Developer except as allowed by the Development Agreement.— Any attempts to assign or transfer any terms, conditions, or obligations under this Agreement without compliance with the requirements set forth in the Development Agreement shall be voidable at City’s sole discretion.

SECTION 11. ~~SECTION 10.~~—BINDING UPON SUCCESSORS.

Subject to Section ~~9~~10, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors, assignees, transferees, and legal representatives.

SECTION 12. ~~SECTION 11.~~—GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with California law.

SECTION 13. ~~SECTION 12.~~—ENTIRE AGREEMENT.

The Development Agreement and this Agreement, including the exhibits, attachments and appendices, contain— the entire agreement of the Parties with respect to the satisfaction of the requirements of the Parkland Dedication Ordinance for the Project and supersedes all prior understandings or representations of the Parties, whether written or oral. Any subsequent modification of this Agreement must be made in writing and signed by all Parties hereto.

SECTION 14. ~~SECTION 13.~~—TIME OF ESSENCE.

Time is of the essence in the performance of this Agreement.

SECTION 15. ~~SECTION 14.~~—FORCE MAJEURE.

- A. ~~A.~~ “Force Majeure” has the meaning as set forth in the Development Agreement.
- B. ~~B.~~ Should a Force Majeure ~~event~~EventEvent prevent performance of this Agreement, in whole or in part, the Party affected by the Force Majeure ~~event~~EventEvent shall be excused or performance under this Agreement shall be suspended to the extent commensurate with the Force Majeure ~~event~~EventEvent; provided that the Party availing

itself of this Section ~~shall notify promptly~~ promptly notifies the other Party ~~within ten (10) days after~~ after learning of the ~~affected Party's knowledge of the commencement of the occurrence~~ occurrence of a Force Majeure Event that actually causes delay; and provided further that the time of suspension or excuse shall not extend beyond that reasonably necessitated by the Force Majeure Event.

C. ~~C.~~ Notwithstanding the foregoing, the following shall not excuse or suspend performance under this Agreement:

1. ~~1.~~ Performance under this Agreement shall not be suspended or excused for a Force Majeure Event pertaining to the Work if such event is not defined as a Force Majeure Event under the applicable contract for the Work.
2. ~~2.~~ Negligence or failure of Developer to perform its obligations under a contract for the Work (other than for a Force Majeure Event as defined under the applicable contract) shall not constitute a Force Majeure Event.
3. ~~3.~~ The inability of Developer for any reason to have access to funds necessary to carry out its obligations under this Agreement or the termination of any contract for the prosecution of the Work for such reason or for Developer's default under such contract shall not constitute a Force Majeure Event.

SECTION 16. ~~SECTION 15.~~ **BOOKS AND RECORDS.**

A. Developer shall be solely responsible to implement internal controls and record keeping procedures in order to comply with this Agreement and all applicable laws. Developer shall maintain any and all ledgers, books of account, invoices, vouchers, bids, cancelled checks, and other records or documents evidencing or relating to the activities performed by Developer under this Agreement, including without limitation those relating to the construction of the Park Improvements, for a minimum period of three (3) years, or for any longer period required by law, from the date of termination of this Agreement or the date of the City's acceptance of the Park Improvements, whichever is longer. Notwithstanding this previous sentence, Developer shall retain such records beyond three (3) years so long as any litigation, audit, dispute, or claim is pending.

- B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Developer's address indicated for receipt of notices in this Agreement.
- C. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Developer's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized in writing by Developer, Developer's representatives, or Developer's successor-in-interest.
- D. Developer's obligations under this Section shall be in addition to Developer's obligations specified in Exhibit E5.

SECTION 17. ~~SECTION 16.~~ MISCELLANEOUS PROVISIONS.

- A. ~~A. Captions.~~ Captions and Sections of this Agreement are for convenience only and shall not be considered in resolving any questions of interpretation or construction.
- B. ~~B. Incorporation of Recitals.~~ The Recitals in this Agreement are hereby incorporated into the terms of this Agreement.
- C. ~~C. Jurisdiction.~~ In the event that suit shall be brought by any of the Parties, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.
- D. ~~D. Waiver.~~ Developer agrees that waiver by City of any breach or violation or any term, condition, or obligation of this Agreement shall not be deemed to be a waiver of any other term, condition, or obligation contained herein or a waiver of any subsequent breach or violation of the same term, condition, or obligation. ~~E.~~

- E. Plurality. As used in this Agreement and when required by the context, each number (singular and plural) shall include all numbers.
- F. ~~F.~~ Compliance with Laws. Developer, its employees, agents, representatives, contractors, and subcontractors shall comply with all local, state and federal laws in the performance of this Agreement.
- G. ~~G.~~ Nondiscrimination. Developer, its employees, agents, representatives, contractors, and subcontractors shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or any other recognized or protected class in connection with or related to the performance of this Agreement. Developer shall expressly require compliance with the provisions of this Section ~~17161~~(G) in all agreements with contractors and subcontractors for the performance of the improvements hereunder.
- H. ~~H.~~ Developer has read each and every part of this Agreement, including without limitation, its exhibits, and Developer freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such Party may have drafted this Agreement or any of its provisions.
- I. ~~I.~~ Whenever in this Agreement words of obligation or duty are used, such words shall have the force and effect of covenants. Any obligation imposed by either Party shall include the imposition on such Party of the obligation to pay all costs and expenses necessary to perform such obligation, except as otherwise provided herein.
- J. ~~J.~~ Severability. If any provisions or portions of this Agreement are held to be invalid by a court of competent jurisdiction, the remaining provisions or portions of this Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the Parties.
- K. ~~K.~~ This Agreement is entered into pursuant to and shall be governed by the Parkland Dedication Ordinance and the Development Agreement. If not otherwise defined in this

Agreement or in the Development Agreement, capitalized terms shall have the meanings set forth in Chapter 19.38 of the San José Municipal Code.

SECTION 18. ~~SECTION 17.~~ AGREEMENT'S EXHIBITS.

This Agreement includes the following Exhibits:

E1 Park Improvements Value ~~[TO FOLLOW IN SEPARATE TRANSMITTAL]~~ and Costs ¶

[A127]: Exhibit E2 deleted and addressed with reference to Resolution No. 73587 re: Private Recreation Improvements.

~~E3~~

E2 Public and Private Open Space Approximate Acreage

E3 Delivery of City-Dedicated Open Space

E3.1 City-Dedicated Open Space Dedication and Improvements Schedule ¶

E3.2 Park Dedication/Delivery Triggers Figure

E4 Dedication Form

E5 Design and Construction Requirements ~~[TO FOLLOW IN SEPARATE TRANSMITTAL]~~ ¶

~~E5~~

E6 Diagram of Construction Right of Entry Area

E7 Park Dedication Tracking and Verification Table

E8 Parkland Dedication Obligation ¶

~~E6 — Public and Private Open Space Approximate Acreage~~

~~E7~~ 99 List of Required Exceptions from Parkland Dedication Ordinance

~~E8~~ 10 10 Bond Forms

[A128]: I missed reference to this in body of doc. can we make sure they are correctly reference?



-WITNESS THE EXECUTION HEREOF the day and year hereinafter written by City.

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By: _____

Johnny V. Phan
Chief Deputy City Attorney

City Clerk

Date: _____

DEVELOPER

GOOGLE LLC, a Delaware limited liability
company

By: _____

Name: _____

Title: _____



* All Developer's signatures must be accompanied by an attached notary acknowledgement.

* Proof of authorization for Developer's signatures is required to be submitted concurrently with this Agreement.

~~EXHIBIT E4~~ Exhibit E1

~~DESIGN AND CONSTRUCTION REQUIREMENTS~~

Park Improvements ~~Value and Costs~~

Table 1 - Estimated Credits, Park Improvements Value, and Unit Equivalency¹

Parks and Open Space	Acreage Credit	Units Equivalent	Improvement Costs	Units Equivalent	Total Credits	Total Units Equivalent
LGC Connector ²	\$2,936,320	210	\$5,647,039 ¹	405	\$8,583,359	615
LGC Park on G	\$1,189,476	85	\$3,669,093	263	\$4,858,569	348
Social Heart	\$1,387,223	99	\$7,221,778	517	\$8,609,000	617
St. John Triangle	\$4,943,422	354	\$14,544,521	1,042	\$19,487,943	1,396
Northend Park	\$2,856,030	205	\$5,225,147	374	\$8,081,177	579
Subtotal Parks OS	\$13,312,471	954	\$36,307,578	2,601	\$49,620,048	3,555
Los Gatos Creek Trail (E)	\$821,178	59	\$1,781,907	128	\$2,603,085	187
Los Gatos Creek Trail (G)	\$890,886	64	\$2,713,981	194	\$3,604,867	258
Subtotal Trails OS	\$1,712,064	123	\$4,495,888	322	\$6,207,952	445
Total OS	\$15,024,535	1,076	\$40,803,466	2,924	\$55,828,000	4,000

~~¶
(As set forth in the DWDSG, the Publicly Dedicated Parks shall include the programmatic elements listed for each Park below, which elements are factored into the Park Improvement Values. An amendment to the DWDSG shall not require an amendment to this Exhibit, and such amendment as it affects the information contained herein shall be automatically incorporated. ¶)~~

~~Los Gatos Creek Connector ¶~~

~~The City-dedicated portion of Los Gatos Creek Connector shall include the following programmatic elements: walking path, nature play, and planting strategy as described in the~~

¹The cost of the Park Improvements (the "Park Improvements Value") reflected in Table 1 includes, but is not limited to, the City's Review Fees, direct costs, soft costs, and contingency reflected in Table 2 of this Exhibit E1.

²As set forth in Exhibit E3.1, Los Gatos Creek Connector is anticipated to be improved in two parts -- Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2, which each have different Completion triggers. Upon Completion of Park Improvements in accordance with Exhibit E3.1, each of these spaces shall result in a proportional share of the aggregated Improvement Value credits.

[A129]: General Note - The exhibits have been renumbered, but not re-ordered at this point so as to avoid a bunch of redlining associated with that. ON the next iteration, the exhibits should be put in the proper order.

[A130]: This exhibit needs follow on pages that provide some context on the improvements value. Not the full breakdown but enough detail for someone in the future can sort of understand what was included in these #'s

[A131]: Google team agreed to this week of 3/8

[A132]: NOTE these are included in the Google Responses document from 3-13-21; however staff requests additional information/clarification of that information.

[A133]: Improvements credit needs to be split in two for LG Connector 1 and 2. Then we can delete the note below.

~~DWDSG. One of the following two elements must also be included: entry plaza or neighborhood amenity.~~ ¶

~~¶~~

~~Los Gatos Creek Park~~ ¶

~~The City dedicated portion of Los Gatos Creek Park shall include the following programmatic elements: entry plaza, program deck, walking path, and planting strategies of riparian planting and understory planting as described in the DWDSG. Four of the following seven programmatic elements must also be included: outdoor program area, neighborhood amenity, nature play, art, serviced pavilion structure, kiosk, or creek overlook / viewing platform.~~ ¶

~~¶~~

~~Social Heart~~ ¶

~~The Social Heart shall include the following programmatic elements: Enhance views and experience to the Southern Pacific Depot, Downtown to Diridon Station Shared Use Path, Program deck, Outdoor program area, Planting strategy, Programmatic element requirements. Four of the following six programmatic elements must also be included: anchor plaza, flexible lawn; event, rotating vendor, or food truck access; kiosk; art; and water feature.~~ ¶

~~¶~~

~~St. John Triangle~~ ¶

~~St. John Triangle shall include the following programmatic elements: Anchor plaza, Flexible lawn, a Secondary flexible lawn shall also be permitted to allow for additional programming, Program deck, Canopy structures, Outdoor performance area, Planting strategy as required by DWDSG. Three of the following six programmatic elements must also be included: informal recreation, neighborhood amenity, art, unserviced pavilion structures, kiosk, and tree grove.~~ ¶

~~¶~~

~~Northend Park~~ ¶

~~The City dedicated portion of Northend Park shall include the following programmatic elements: flexible lawn, outdoor program area, informal recreation, tree grove, and planting strategy—re-oaking as required by DWDSG. Four of the following six programmatic elements must also be included: program deck, makerspace, art, serviced pavilion structures, kiosk, and ecological demonstration.~~ ¶

~~¶~~

~~Los Gatos Creek Trail (E/G)~~ ¶

~~The Trail will be designed in accordance with Table 4.1 of the 2018 City of San Jose Trail Network Toolkit, including those recommendations for width, slope and drainage.~~ ¶

~~¶~~

~~Addition to Exhibit E1, new footnote 1.~~ ¶

~~¶~~

~~1 Review Fees are as follows, subject to escalation based on the California Construction Cost Index: LGC Connector, \$598,928; LGC Park, \$389,146; Social Heart, \$765,946; St. John Triangle, \$1,542,601; Northend Park, \$554,182; Los Gatos Creek Trail (E), \$188,990; and Los Gatos Creek Trail (G), \$287,846.~~ ¶

~~¶~~

~~¶~~

[A135]: This language is not what City wanted. We want a table of assets that were factored into the cost estimates. As written this just parrots back the DWDSG

[A136]: These need to be revised based on conversation between Nicole and Sheela to provide actual line items. Google to provide language.



~~1. As set forth in Exhibit E3.1, Los Gatos Creek Connector is anticipated to be improved in two parts -- Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2, which each have different Completion triggers. Upon Completion of Park Improvements in accordance with Exhibit E3.1, each of these spaces shall result in a proportional share of the aggregated Improvement Value credits.~~

[A137]: this note seems confusing. why not spell out how much each segment is worth to avoid confusion later?



Table 2 - Detailed Cost Estimates

City-Dedicat ed Open Spaces	Baseline Direct	Soft Cost (18%)	Project Contingency (25%)	City Review Fee (17.5%)	Baseline Construction Budget	Cost/Acre	Cost/SE
Los Gatos Creek Connector	<u>\$3,422,448</u>	<u>\$616,041</u>	<u>\$1,009,622</u>	<u>\$598,928</u>	<u>\$5,647,039</u>	<u>\$6,205,475</u>	<u>\$142</u>
Supply & Installation of Hard Landscaping	<u>\$492,034</u>	<u>\$88,566</u>	<u>\$145,150</u>	<u>\$86,106</u>	<u>\$811,856</u>		
Supply & Installation of Semi- Permeable	<u>\$730,136</u>	<u>\$131,425</u>	<u>\$215,390</u>	<u>\$127,774</u>	<u>\$1,204,725</u>		
Supply & Installation of Softscape including Trees & Plant	<u>\$1,104,154</u>	<u>\$198,748</u>	<u>\$325,726</u>	<u>\$193,227</u>	<u>\$1,821,855</u>		
Supply & Installation of FF&E	<u>\$1,096,123</u>	<u>\$197,302</u>	<u>\$323,356</u>	<u>\$191,822</u>	<u>\$1,808,603</u>		
Los Gatos	<u>\$2,223,693</u>	<u>\$400,265</u>	<u>\$655,989</u>	<u>\$389,146</u>	<u>\$3,669,093</u>	<u>\$9,916,591</u>	<u>\$228</u>

~~12255.020.4811-7216-7647.1~~ 12255.020.4820-~~0475-2349.2~~7228-9250.1

12255.019.4818-9379-2968.1 T ~~7656/727225~~



Creek Park on G							
Supply & Installation of Hard Landscaping	<u>\$265,481</u>	<u>\$47,787</u>	<u>\$78,317</u>	<u>\$46,459</u>	<u>\$438,044</u>		
Supply & Installation of Semi Permeable	<u>\$123,376</u>	<u>\$22,208</u>	<u>\$36,396</u>	<u>\$21,591</u>	<u>\$203,571</u>		
Supply & Installation of Softscape including Trees & Plant	<u>\$810,600</u>	<u>\$145,908</u>	<u>\$239,127</u>	<u>\$141,855</u>	<u>\$1,337,489</u>		
Supply & Installation of FF&E	<u>\$1,024,236</u>	<u>\$184,362</u>	<u>\$302,150</u>	<u>\$179,241</u>	<u>\$1,689,989</u>		
Social Heart	<u>\$4,376,832</u>	<u>\$787,830</u>	<u>\$1,291,165</u>	<u>\$765,946</u>	<u>\$7,221,773</u>	<u>\$12,669,879</u>	<u>\$291</u>
Supply & Installation of Hard Landscaping	<u>\$1,261,386</u>	<u>\$227,050</u>	<u>\$372,109</u>	<u>\$220,743</u>	<u>\$2,081,288</u>		
Supply & Installation of Semi Permeable	<u>\$59,570</u>	<u>\$10,723</u>	<u>\$17,573</u>	<u>\$10,425</u>	<u>\$98,291</u>		
Supply & Installation of Softscape including Trees & Plant	<u>\$704,559</u>	<u>\$126,821</u>	<u>\$207,845</u>	<u>\$123,298</u>	<u>\$1,162,523</u>		
Supply & Installation of FF&E	<u>\$2,351,316</u>	<u>\$423,237</u>	<u>\$693,638</u>	<u>\$411,480</u>	<u>\$3,879,671</u>		
St John Triangle	<u>\$8,814,863</u>	<u>\$1,586,675</u>	<u>\$2,600,384</u>	<u>\$1,542,601</u>	<u>\$14,544,523</u>	<u>\$9,506,196</u>	<u>\$218</u>
Supply & Installation of Hard Landscaping	<u>\$1,844,446</u>	<u>\$332,000</u>	<u>\$544,112</u>	<u>\$322,778</u>	<u>\$3,043,336</u>		
Supply & Installation of Semi Permeable	<u>\$437,400</u>	<u>\$78,732</u>	<u>\$129,033</u>	<u>\$76,545</u>	<u>\$721,710</u>		
Supply & Installation of Softscape	<u>\$2,550,958</u>	<u>\$459,172</u>	<u>\$752,533</u>	<u>\$446,418</u>	<u>\$4,209,081</u>		

~~12255.020 4811-7216-7647.1~~ 12255.020 4820-~~0475-2349.2~~ 7228-9250.1

12255.019 4818-9379-2968.1 ~~T-7656/727225~~

including Trees & Plant							
Supply & Installation of FF&E	<u>\$3,982,059</u>	<u>\$716,771</u>	<u>\$1,174,707</u>	<u>\$696,860</u>	<u>\$6,570,397</u>		
Northend Park	<u>\$3,166,751</u>	<u>\$570,015</u>	<u>\$934,191</u>	<u>\$554,181</u>	<u>\$5,225,139</u>	<u>\$5,871,003</u>	<u>\$135</u>
Supply & Installation of Hard Landscaping	<u>\$249,520</u>	<u>\$44,914</u>	<u>\$73,609</u>	<u>\$43,666</u>	<u>\$411,709</u>		
Supply & Installation of Semi Permeable	<u>\$763,579</u>	<u>\$137,444</u>	<u>\$225,256</u>	<u>\$133,626</u>	<u>\$1,259,906</u>		
Supply & Installation of Softscape including Trees & Plant	<u>\$1,231,738</u>	<u>\$221,713</u>	<u>\$363,363</u>	<u>\$215,554</u>	<u>\$2,032,368</u>		
Supply & Installation of FF&E	<u>\$921,913</u>	<u>\$165,944</u>	<u>\$271,964</u>	<u>\$161,335</u>	<u>\$1,521,156</u>		
Los Gatos Creek Trail on E	<u>\$1,079,944</u>	<u>\$194,390</u>	<u>\$318,584</u>	<u>\$188,990</u>	<u>\$1,781,908</u>	<u>\$7,127,632</u>	<u>\$164</u>
Supply & Installation of Hard Landscaping	<u>\$678,167</u>	<u>\$122,070</u>	<u>\$200,059</u>	<u>\$118,679</u>	<u>\$1,118,975</u>		
Supply & Installation of Softscape including Trees & Plant	<u>\$127,238</u>	<u>\$22,903</u>	<u>\$37,535</u>	<u>\$22,267</u>	<u>\$209,942</u>		
Supply & Installation of FF&E	<u>\$274,540</u>	<u>\$49,417</u>	<u>\$80,989</u>	<u>\$48,045</u>	<u>\$452,991</u>		
Los Gatos Creek Trail on G	<u>\$1,644,837</u>	<u>\$296,071</u>	<u>\$485,227</u>	<u>\$287,846</u>	<u>\$2,713,980</u>	<u>\$9,692,787</u>	<u>\$223</u>
Supply & Installation of Hard Landscaping	<u>\$1,033,114</u>	<u>\$185,961</u>	<u>\$304,769</u>	<u>\$180,795</u>	<u>\$1,704,638</u>		
Supply & Installation of Softscape including Trees	<u>\$193,793</u>	<u>\$34,883</u>	<u>\$57,169</u>	<u>\$33,914</u>	<u>\$319,758</u>		

~~12255.020 4811-7216-7647.1~~ 12255.020 4820-~~0475-2349.2~~ 7228-9250.1

12255.019 4818-9379-2968.1 ~~T-7656/727225~~

& Plant							
Supply & Installation of FF&E	<u>\$417,930</u>	<u>\$75,227</u>	<u>\$123,289</u>	<u>\$73,138</u>	<u>\$689,585</u>		
<u>GRAND TOTAL</u>	<u>\$24,729,367</u>	<u>\$4,451,286</u>	<u>\$7,295,163</u>	<u>\$4,327,639</u>	<u>\$40,803,456</u>	<u>\$8,500,728</u>	<u>\$195</u>

Exhibit E2



Public and Private[¶] City-Dedicated Open Space and ¶ Covenant Privately-Owned Publicly Accessible Open Space Approximate Acreages

Open Space	City-Dedicated Acreage ¹ (AC)	Privately-Owned Open Space Acreage Subject to Restrictive Covenant ^{1,2} (AC)
Los Gatos Creek Connector	0.91	0.33
Los Gatos Creek Park	0.37	1.58
The Meander	-	0.87
Social Heart	0.57	-
Creekside Walk at South Autumn Street	-	1.24
Los Gatos Creek East	-	1.09
Gateway Plaza	-	1.01
St. John Triangle	1.53	-
North Montgomery Pocket Park	-	-
Northend Park	0.89	0.88
Los Gatos Creek Trail (E)	0.25	-
Los Gatos Creek Trail (G)	0.28	-
Total	4.80	7.0

¹ Acreages are approximate and will be confirmed pursuant to the verification process described in Section 34(B) and Exhibit E7.

² Acreage for Privately-Owned Publicly Accessible include the following typologies as defined by the DWDSG: Privately-owned Public Park, Los Gatos Creek Riparian Setback, and Los Gatos Creek Riparian Corridor

Exhibit E3

Delivery of City-Dedicated Open Space

Exhibit E3.1

City-Dedicated Open Space Dedication and Improvement Schedule*

Open Space	Outside Date	EIR Phasing	Dedication and Delivery Trigger (Building Parcels)
Los Gatos Creek Trail (E)	12 months after TCO	1	First TCO for any building in E1
Los Gatos Creek Trail (G)	12 months after TCO	1	First TCO for any building in G1
Los Gatos Creek Park	18 months after TCO	1	First TCO for any building in G1
Los Gatos Creek Trail Connector 1	12 months after TCO	1	Dedication of land with 2nd market-rate residential building within the project; Improvements with first TCO for any building in the later of H3 or H5
Social Heart	24 months after TCO	1	Earlier of TCO for 1,500th Units ¹ , or First TCO for any building in D4
Northend Park	18 months after TCO	2	First TCO for any building in A1
Los Gatos Creek Connector 2	12 months after TCO	2	Dedication of land with 2nd market-rate residential building within the project; Improvements with first TCO for any building in H6
St. John Triangle	12 months after TCO	3	Earlier of first TCO for any building in C2, or 3,250 Units ¹

¹

¹ Trigger by residential unit count is subject to the requirements of Section 4(H).

*Except for Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2, offers of dedication shall be made as set forth in Section 23(CA) of the Parkland Agreement. The dedication schedule for Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2 is as set forth herein and described in Section 23(D) of the Parkland Agreement.

[A138]: - Change in dedication requirement from 1st market-rate residential building to 2nd is not acceptable without some explanation and discussion.

[A139]: 1,500th unit change (from 1,000th) is ok provided there is a footnote added noting that "Any residential sites to be dedicated for affordable housing under the IHO count toward the 1,500 trigger from the time that Google has satisfied the 'conditions precedent to transfer' (which is when Google gets the IHO credit for those site, including the value of the parks improvement)."

[A140]: Change in dedication requirement from 1st market-rate residential building to 2nd is not acceptable without some explanation and discussion.

[A141]: Add a new footnote noting that "Any residential sites to be dedicated for affordable housing under the IHO count toward the 3,250 trigger from the time that Google has satisfied the 'conditions precedent to transfer' (which is when Google gets the IHO credit for those sites, including the value of the parks improvement)."

Exhibit E3.2

Park Dedication/Delivery Triggers Figure

[separate pdf]

Exhibit E4

Dedication Form

RECORDED WITHOUT FEE UNDER
SECTION 6103 GOVERNMENT CODE
OF THE STATE OF CALIFORNIA

**RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO,
AND MAIL TAX/ASSESSMENT
STATEMENTS TO:**

City of San José – Public Works
200 East Santa Clara Street, 3rd Floor
San José, CA 95113-1905

Deed No: _____
3 Dash No: _____

APN(s): _____

Space above this line for Recorder's use

The Undersigned Grantee(s) Declare(s): DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0; Recorded for the benefit of the City of San Jose and is exempt from fee per Government Code Sections 27383 and 6103.

- ☐ computed on the consideration or full value of property conveyed, OR
☐ computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
☐ unincorporated area; ☒ **City of San José**, and
☐ _____
Signature of Declarant

[A142]: Johnny

[A143]:
Stephanie—
confirm whether
any changes
were made¶
¶
- Additional
changes may be
needed to
address
termination if
obligation
ultimately not
triggered.¶
-

IRREVOCABLE OFFER OF DEDICATION

GOOGLE LLC, a Delaware limited liability company (“GRANTOR”) does hereby IRREVOCABLY OFFER TO DEDICATE to the CITY OF SAN JOSE, a municipal corporation of the State of California (“CITY”) the real property described in the attached Exhibit “A” for park and open space purposes (the “Park Property”).

Such dedication of the Park Property shall be deemed to have been accepted by CITY upon recordation of a grant deed (“Grant Deed”) in the Santa Clara County, Office of the County-Recorder and the issuance to CITY at GRANTOR’S expense of an owner’s title policy (“Title Policy”) in the amount of the [value of the Property] by [a title company selected by CITY] [_____] [NAME THE TITLE COMPANY WHO WILL HAVE ISSUED THE PTR FROM WHICH THE TITLE EXCEPTIONS ON THE EXHIBIT WILL HAVE BEEN OBTAINED], with the title company’s standard printed title exceptions and the title exceptions described on Exhibit “B” attached hereto, but without any title exceptions that would be omitted based on the title company’s owner’s certificate/affidavit (“Certificate”).

The Certificate and Grant Deed shall be promptly and diligently completed, executed and delivered to the title company by GRANTOR, duly acknowledged, ~~[when requested by CITY]~~ in accordance with Section 3(A) of the Parkland Agreement included as Exhibit E to the Development Agreement between GRANTOR and CITY dated , 202~~2~~, ~~between CITY and GRANTOR~~, recorded on , 202~~2~~ as Document Number Number in the Official Records of Santa Clara County (the "DA"). If necessary for the issuance of the Title Policy, City will provide the title company with a Certificate of Acceptance for the Grant Deed, and GRANTOR shall provide the title company with organizational documents and evidence of duly authorized execution of the Grant Deed and Certificate and any other documents typically required by the title company in order to issue an owner's title policy.

The Grant Deed shall be recorded in such Official Records, and the Title Policy shall be issued, in accordance with written recording instructions by CITY to the title company, which shall condition the recording upon the commitment of the title company to issue the Title Policy at GRANTOR's expense, and which may also condition the recording upon the satisfaction of all or any of the conditions described on EXHIBIT "C".

GRANTOR, with respect to such offer of dedication, retains the right to control the Park Property until this offer of dedication is accepted and the Grant Deed is recorded as described herein. Accordingly, until such Grant Deed is recorded, CITY shall not be responsible for and shall incur no liability with respect to the Park Property, and GRANTOR shall defend, indemnify and hold CITY harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising from or relating to conditions of the Park Property or events occurring on or about the Park Property prior to such recordation (and GRANTOR's obligations hereunder shall survive the recording and acceptance of the Grant Deed).

In accordance with Section 3(A) of the Parkland Agreement included as Exhibit E to the DA, if prior to the expiration or termination of the DA GRANTOR has not undertaken the specific actions set forth in the Parkland Agreement as conditions precedent to CITY'S acceptance of this Offer of Dedication, upon the termination or expiration of the DA this Offer of Dedication shall also terminate and be void regardless of CITY'S later recordation of a notice terminating or vacating this Offer of Dedication.

The provisions hereof shall inure to the benefit of and be binding upon the heirs, successors, assigns and personal representatives of the respective parties hereto, and shall bind the Park Property, and all successors to any portion of or interest in the Park Property.

_____, 20____

GOOGLE LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

Address: 1600 Amphitheatre Parkway
Mountain View, CA 94043

Attn: _____

*Proof of authorization for GRANTOR's signature(s) is required to be submitted concurrently with this Agreement.

*All of GRANTOR's signatures must be accompanied by an attached notary acknowledgement.

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)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
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.

Signature _____ (Seal)

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)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
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.

Signature _____ (Seal)

~~EXHIBIT~~ “A”

LEGAL DESCRIPTION

EXHIBIT “B”

PERMITTED TITLE EXCEPTIONS

[INSERT LIST OF TITLE EXCEPTIONS FROM A PTR FROM THE TITLE COMPANY THAT HAVE BEEN REVIEWED AND APPROVED BY CITY; TITLE COMPANY WILL NEED LEGAL DESCRIPTION OF PROPERTY IN ORDER TO PREPARE THE PTR].....

[A144]: City-
Still needs
information on
this from
Google.

EXHIBIT "C"

ADDITIONAL CONDITIONS TO RECORDING

[INCLUDE HERE CONFIRMATION BY CITY AFTER FURTHER INSPECTION OF THE PROPERTY THAT THE CONDITION OF PROPERTY: (I) COMPLIES WITH RELEVANT SECTION OF THE DA, AND/OR (II) THAT GRANTOR HAS NOT VIOLATED THE DA SECTION REQUIRING THAT GRANTOR NOT ALTER OR PERMIT ALTERATION OF THE PROPERTY, OR RELEASE HAZMAT OR PERMIT THE RELEASE OF HAZMAT ON THE PROPERTY]

1. _____

Any of the foregoing conditions __, __, or __ may be waived by the City Manager, provided that the applicable waiver is in writing.

EXHIBIT E5

Design and Construction Requirements

DESIGN AND CONSTRUCTION REQUIREMENTS

[TO BE PROVIDED SEPARATELY]

Exhibit E6

Diagram of Construction Right of Entry Area

[separate pdf]

Exhibit E7

Parkland~~Parkland~~ Dedication Tracking and Verification Table

Note: City-Dedicated Open Space (CDOS) sizes as of the Effective Date of this Agreement are listed table below. When a CDOS receives approval of Conformance Review, the size will be filled in in column 4D. The Actual CDOS Size (column 4D) is calculated by measuring the final land area, subject to the exclusions set forth in the Agreements. Column B lists expected acreages stated in Exhibit E2. Column C lists unit equivalents stated in Table 1 of Exhibit E1. For the purposes of Column E, an Average Equivalent/Acre (AC) has been calculated equal to 833 1/4 units and will be applied to the adjustment to determine the Final Park Credit value per CDOS. This was derived by dividing 4,000 units by 4.8 acres. Subject to the other requirements, limitations, and/ or exclusions of this Agreement, if the Actual CDOS Size (column 4D) is less than the Land Expected (column 2B if in acres, ~~or 3 if in square feet~~), one or more other CDOS areas shall be increased in size such that a minimum of 4.8 acres of CDOS are provided for the Project for the development of 4,000 residential units, subject to the requirements, allowances, and limitations set forth in the Parkland Agreement, including Section 2(~~A~~). In the event that Developer is required to pay Parkland Fees pursuant to Section 2(~~A~~), such fees shall be calculated based on the amount of acquired land lost acreage, multiplied by one hundred ninety-five dollars (\$195).

1. A. CDOS Name	2B. Land Expected CDOS Size (Ac AC)	3C. Land SE Estimated Total Residential Unit Equivalent Per Expected (SE)Park	4D. Actual CDOS Size (AC)	5. Adjustment (Column D - Column B)	6. Final Park Credit (Column E Average Unit Equivalent + Column D)
Los Gatos Creek Connector	0.91	615	39,680	-	
Los Gatos Creek Park	0.37	348	16,074	-	
Trail on G in Los Gatos Creek Park	0.28	258	12,039	-	
Social Heart	0.57	617	24,995	-	
Trail on E in Los Gatos Creek East	0.25	187	11,097	-	

[A145]:
Updated Table
to be inserted.

[A146]: New
Table has not
been inserted
yet.

[A147]: We
need
clarification on
dedicated areas.

The VTM says
LGC Connector
is expected to
dedicate 0.93,
1.01, or 0.96 ac
to the City with
DISC impacts.

If additional
land is
dedicated then
0.26, 0.33, or
0.29 ac can be
reduced in other
city-dedicated
parks.

This would lead
to a net decrease
in dedicated
parkland. Can
we get more
clarify on these
numbers?

[A148]: Seems
like we lost a
few columns
here that are
needed.

[A149]: There is
a new exhibit
E7 developed by
Larissa and
Thomas and
agreed to with
Amanda +
Google team on
3/11

St. John Triangle	1.53	66,803 <u>1,396</u>		-	
Northend Park	0.89	<u>579</u>	38,595	-	
Total	4.80	209,283 <u>4,000</u>		-	

99

Exhibit E8

Parkland Dedication Obligation

Table 1 Calculation of Total Parkland Dedication Obligation			
Assumptions	Mid-Rise	High-Rise	Total
In-Lieu Fee \$/Unit - Market Rate	\$22,600	\$14,600	
In-Lieu Fee \$/Unit - Moderate Income Rate (50% Credits)	\$11,300	\$7,300	
In-Lieu Fee \$/Unit - Affordable BMR Rate (50% Credits)	\$11,300	\$7,300	
MR to HR Ratio - Market Rate Units	3%	97%	
MR to HR Ratio - Moderate Income Units	4%	97%	
MR to HR Ratio - Land Dedicated BMR Units	100%	0%	
# of Market Rate Unit	105	3,095	3,200
# of Moderate Income Unit	7	193	200
# of Land Dedicated BMR Unit	600	-	600
Total Units	712	3,288	4,000
Population/Unit	2.34	1.51	
Total Population (# of Units x Population Ratio)	1,666	4,965	6,631
Parkland Required (0.003 ac/person)	5.00 ac	14.89 ac	19.89 ac
In-Lieu Fee - Market Rate Units	\$2.4M	\$45.2M	\$47.6M
In-Lieu Fee - Inclusionary Units	\$1.1M	\$1.4M	\$1.5M
In-Lieu Fee - Land Dedicated BMR Unit	\$6.8M	-	\$6.8M
Total In-Lieu Fee	\$9.2M	\$46.6M	\$55.8M

Table 2 Blended Per Unit In-Lieu Fee Obligation*

[A150]: I'd be inclined to take this out, even with the footnote that everything converts to UNITS. Also as a reminder, none of this document or this table has the complicated new language about corporate housing.¶ Also, edit the reference to "table 2" in the footnote. needs to be changed to an exhibit reference.

[A151]: We do need to document how we reached the fee calculation so I think it needs to stay in

[A152]: We need this and it should be updated to reflect total obligation including \$00 units of LTCA at \$4850 per unit. Obligation to be met via cash payment. Still need google ok on this

In-Lieu Fee	\$13,957
-------------	----------

*The Parkland Dedication Obligation, based on the number of type of units to be provided – such as mid-rise, high-rise, market-rate, and affordable – shall be blended across the Project, regardless of unit type, and administered uniformly based on the number of residential units produced, as reflected in Table 2 [to this Exhibit](#).

Exhibit E9

List of Required Exceptions from Parkland Dedication Ordinance ~~¶~~ and Private Recreation Credit Guidelines

San Jose Municipal Code Section 19.38.300(A) - The Park Improvements to be installed on the City-Dedicated Open Space shall be ~~completed~~CompletedCompleted in accordance with the City-Dedicated Open Space Dedication and Improvements Schedule included as Exhibit E3 to this Agreement. Although the City has determined that dedication of the open spaces and ~~completion~~CompletionCompletion of the Park Improvements in accordance with the Schedule set forth in Exhibit E3 is in the public interest and ultimately will be beneficial to the City, ~~completion~~CompletionCompletion and delivery is not tied directly to production of residential units in the same manner described in Section 19.38.300(A). Therefore, an exception from Section 19.38.300(A) is required to allow ~~completion~~CompletionCompletion and delivery of open space in the manner depicted in ~~Exhibit E3~~Exhibits E3.1 and E3.2.

San Jose Municipal Code Section 19.38.330 (B) - The Project requires a waiver from the requirement that real property conveyed to the City be dedicated free and clear of encumbrances. Development of the Project requires (i) utilities easements through portions of some of the City-Dedicated Open Spaces to serve the Project buildings; (ii) emergency vehicle access easements to serve Project buildings and/or DISC Agency facilities; and (iii) easements for utilities, vehicle and pedestrian ingress and egress, and elevator access, among other potential easements and encumbrances, to allow for development of the Social Heart City-Dedicated Open Space, provided however, that surface areas dedicated to such uses set forth in this provision (iii) shall not count toward the Parkland Dedication Obligation. ~~-Any such encumbrances shall be limited only to areas within thirty (30) feet of a property boundary-~~

~~EXHIBIT~~ ~~Exhibit~~ ~~Exhibit E-51010~~
Parkland Dedication Obligation

Assumptions	Mid-Rise	High-Rise	Total
In-Lieu Fee \$/Unit—Market Rate	\$22,600	\$14,600	
In-Lieu Fee \$/Unit—Moderate Income Rate (50% Credits)	\$22,600	\$14,600	
In-Lieu Fee \$/Unit—Affordable BMR Rate (50% Credits)	\$11,300	\$7,300	
MR to HR Ratio—Market Rate Units	3%	97%	
MR to HR Ratio—Moderate Income Units	4%	97%	
MR to HR Ratio—Land Dedicated BMR Units	100%	0%	
# of Market Rate Unit	105	3,095	3,200
# of Moderate Income Unit	7	193	200
# of Land Dedicated BMR Unit	600	-	600
Total Units	712	3,288	4,000
Population/Unit	2.34	1.51	
Total Population (# of Units x Population Ratio)	1,666	4,965	6,631
Parkland Required (0.003 ac/person)	5.00 ac	14.89 ac	19.89 ac
In-Lieu Fee—Market Rate Units	\$2.4M	\$45.2M	\$47.6M
In-Lieu Fee—Inclusionary Units	\$.2M	\$2.8M	\$3.0M
In-Lieu Fee—Land Dedicated BMR Unit	\$6.8M	-	\$6.8M
Total In-Lieu Fee	\$9.3M	\$48.0M	\$57.3M

Bond Forms

~~EXHIBIT E1~~

~~PARK IMPROVEMENTS VALUE~~

~~¶~~
~~¶~~
~~¶~~

~~EXHIBIT E3~~

~~CITY DEDICATED OPEN SPACE
DEDICATION AND IMPROVEMENT SCHEDULE~~

Open Space	Outside Date	EIR- Phasing	Dedication and Delivery Trigger (Building Parcels)
Los Gatos Creek- Trail (D/E)	12 months- after TCO	1	First TCO for any building in E1
Los Gatos Creek- Trail (G)	12 months- after TCO	1	First TCO for any building in G1
Los Gatos Creek- Park	12 months- after TCO	1	First TCO for any building in G1
Los Gatos Creek- Trail Connector 1	12 months- after TCO	1	Dedication of land with 1st market rate residential- building within the project; Improvements with first TCO for any building in- the later of H3 or H5
Social Heart	12 months- after TCO	1	Earlier of 1,000 Units, or First TCO for any- building in D4
Northend Park	12 months- after TCO	2	First TCO for any building in A1
Los Gatos Creek- Connector 2	12 months- after TCO	2	Dedication of land with 1st market rate residential- building within the project; Improvements with first TCO for any building in- H3
St. John Triangle	12 months- after TCO	3	Earlier of first TCO for any building in C2 or 3,250- Units

|



|

[A154]: Google-will-need-to-verify-acreages-based-on-recent-changes-and-the-final-DWDSG.

EXHIBIT E6

PUBLIC AND PRIVATE OPEN SPACE APPROXIMATE ACREAGES

Open Space	City-Dedicated Acreage ¹	Privately-Owned Open-Space Acreage Subject to Restrictive Covenant ^{1,2}
Los Gatos Creek Connector	0.76	0.00
Los Gatos Creek Park	0.54	0.51
The Meander	0.00	1.04
Social Heart	0.57	0.00
Creekside Walk at South Autumn Street	0.00	0.70
Los Gatos Creek East	0.25	1.09
Gateway Plaza	0.00	0.65
St. John Triangle	1.53	0.00
North Montgomery Pocket Park	0.00	0.35
Northend Park	0.89	1.10
Los Gatos Creek Trail	0.28	0.00

Need to add one row:

Riparian Corridor and Setback : City portion = 0.00; POPO = 2.49

¹ Acreages are approximate and will be confirmed pursuant to the verification process described in Section 3(B) and Exhibit XX.

² Acreage for Privately-Owned Open Space include the following typologies as defined by the DWDSG: Privately-owned Public Park, Los Gatos Creek Riparian Setback, and Los Gatos Creek Riparian Corridor

FAITHFUL PERFORMANCE BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and— *[insert name of Developer or Contractor, type of entity, and state of incorporation if applicable]* as principal ("Principal") have entered into an agreement entitled *[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]*, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees;- and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a bond to City for faithful performance of the Contract;

NOW, THEREFORE, we the Principal and *[insert full name of Surety]*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of *[insert bond amount]*, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal, Principal's heirs, executors, administrators, successors, or assigns shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principal in the Contract and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless City, its officers, employees, and agents, as therein provided, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the sum specified above, there shall be included all costs, expenses, and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

(Principal name)

(Seal)

(Surety name)

(Seal)

BY: _____
(Signature)

BY: _____
(Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:



Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

PAYMENT (LABOR AND MATERIALS) BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and— insert name of Developer or Contractor, type of entity, and state of incorporation if applicable, as principal ("Principal") have entered into an agreement entitled insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees;- and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a good and sufficient payment bond to the City to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code.

NOW, THEREFORE, we the Principal and insert full name of Surety, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City, and unto all contractors, subcontractors, suppliers, laborers, materialmen and other persons employed in the performance of the Contract and referred to in the aforesaid Civil Code, as obligees, in the sum of insert bond amount, on the condition that if Principal shall fail to pay for any materials or equipment furnished or used or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department— from the wages of employees of the Principal and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses, and fees, including attorney's fees, reasonably incurred by any obligee in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in the judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void;- otherwise, it shall be and remain in full force and effect, and shall bind Principal, Surety, their heirs, executors, administrators, successors, and assigns, jointly and severally.

IT IS HEREBY EXPRESSLY STIPULATED AND AGREED that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, and State agencies entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension

of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

Principal name)

(Seal)

(Surety name)

(Seal)

BY: _____

(Signature)

BY: _____

(Signature)

Print name and title)

Principal address and telephone:

Print name and title)

Surety address and telephone:

☞☞ Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

WARRANTY BOND

WHEREAS, the City of San Jose, a municipal corporation of the State of California ("City") and *[insert name of Developer/Contractor, type of entity, and state of incorporation if applicable]* as principal ("Principal") have entered into an agreement entitled *[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]*, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond to City to make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work so contracted for, which shall have appeared or been discovered, within the period of one (1) year from and after the completion and final acceptance of the work done under the Contract.

NOW, THEREFORE, we the Principal and *[insert full name of Surety]*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of- *[insert bond amount – 25% of Faithful Performance Bond]*, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal shall well and truly make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work performed under the Contract, which shall have appeared or been discovered within said one-year period from and after completion of all work under the Contract and final acceptance by City of said work, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or

the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

(Principal name) (Seal)

(Surety name) (Seal)

BY: _____
(Signature)

BY: _____
(Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:



Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact



¶

Exhibit XX¶

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[See separate file with the exhibit, which will be inserted here.]¶

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Document comparison by Workshare 10.0 on Saturday, March 6, 2021 4:28:11 PM

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Description	2509801_2
Document 2 ID	file://C:\Users\kallin\Desktop\2509800_1.DOCX
Description	2509800_1
Rendering set	Standard



Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
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Deleted cell	-
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Insertions	795
Deletions	549
Moved from	17
Moved to	17
Style changes	0
Format changes	0
Total changes	1378



Document comparison by Workshare 10.0 on Tuesday, March 23, 2021 6:03:37 PM

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Document 2 ID	netdocuments://4820-7228-9250/1
Description	Google - DW - Exhibit E Parkland Agreement 3.23.21
Rendering set	CPDB Set

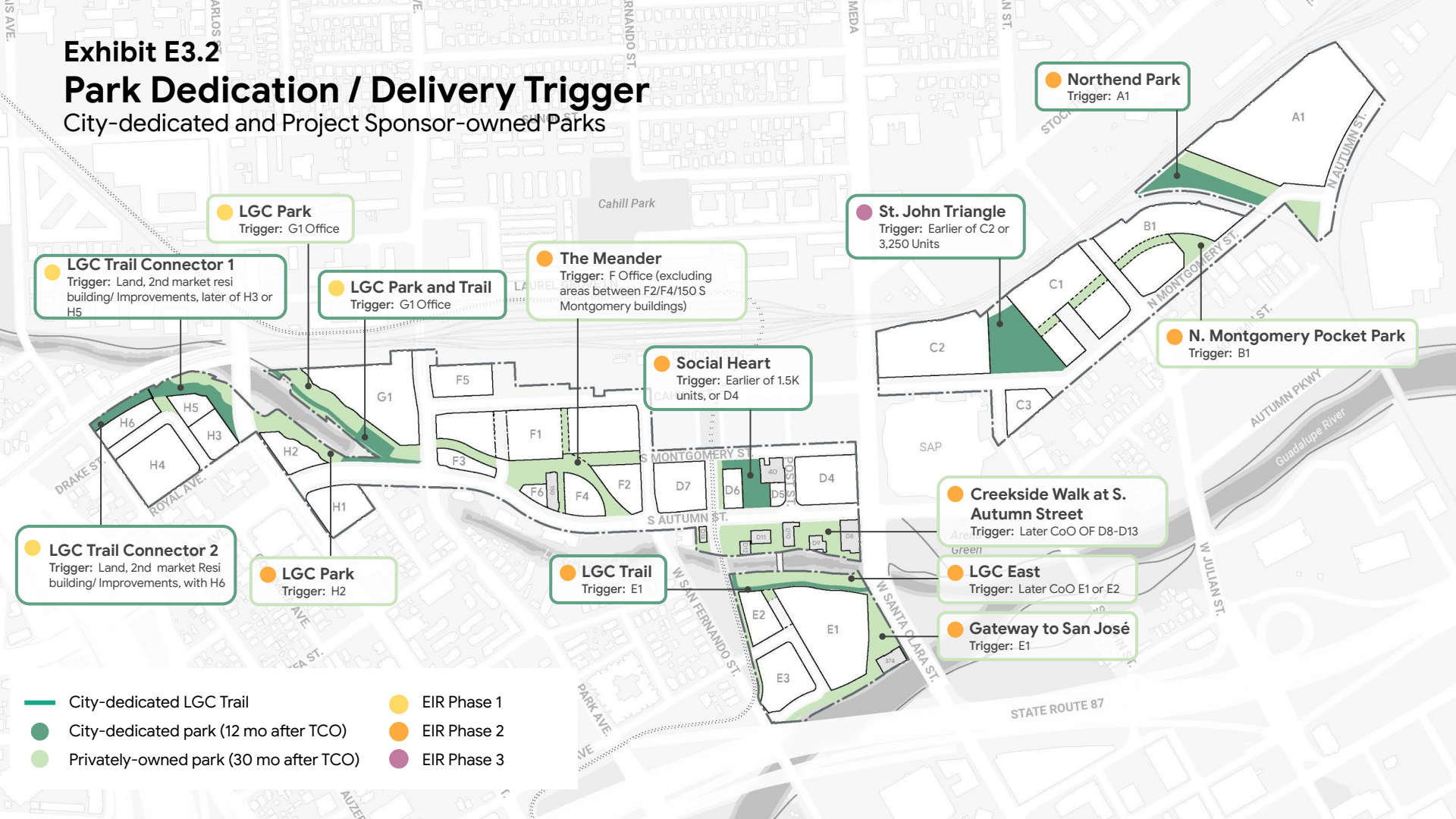
Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	782
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Moved from	41
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Total changes	2163

Exhibit E3.2

Park Dedication / Delivery Trigger

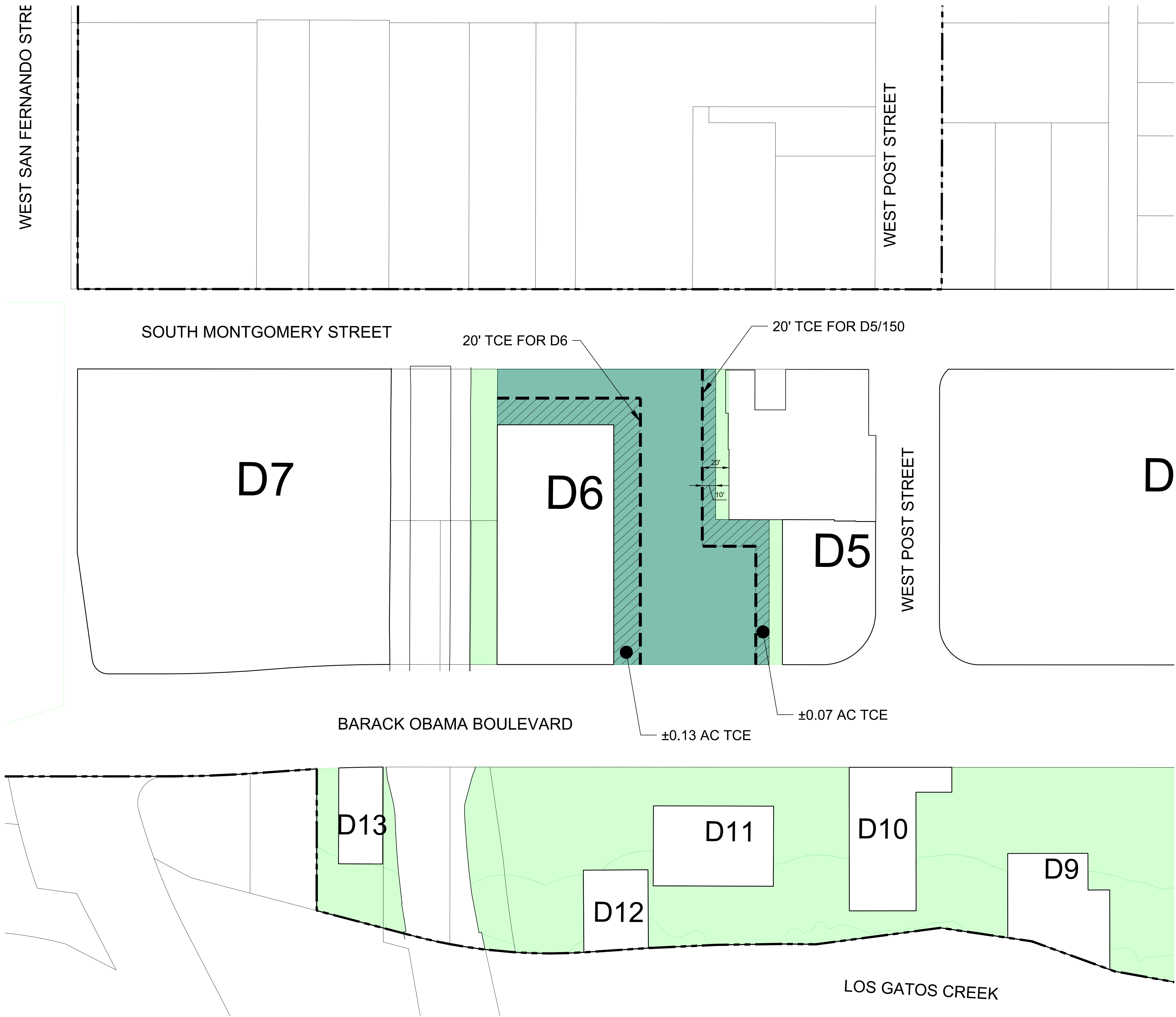
City-dedicated and Project Sponsor-owned Parks





	50' TEMPORARY CONSTRUCTION EASEMENT (TCE)	
	PRIVATELY OWNED OPEN SPACE WITHIN TCE	±0.46 AC
	CITY DEDICATED TRAIL WITHIN TCE	±0.24 AC

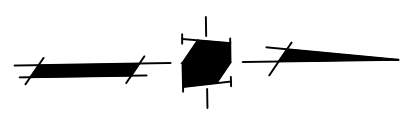


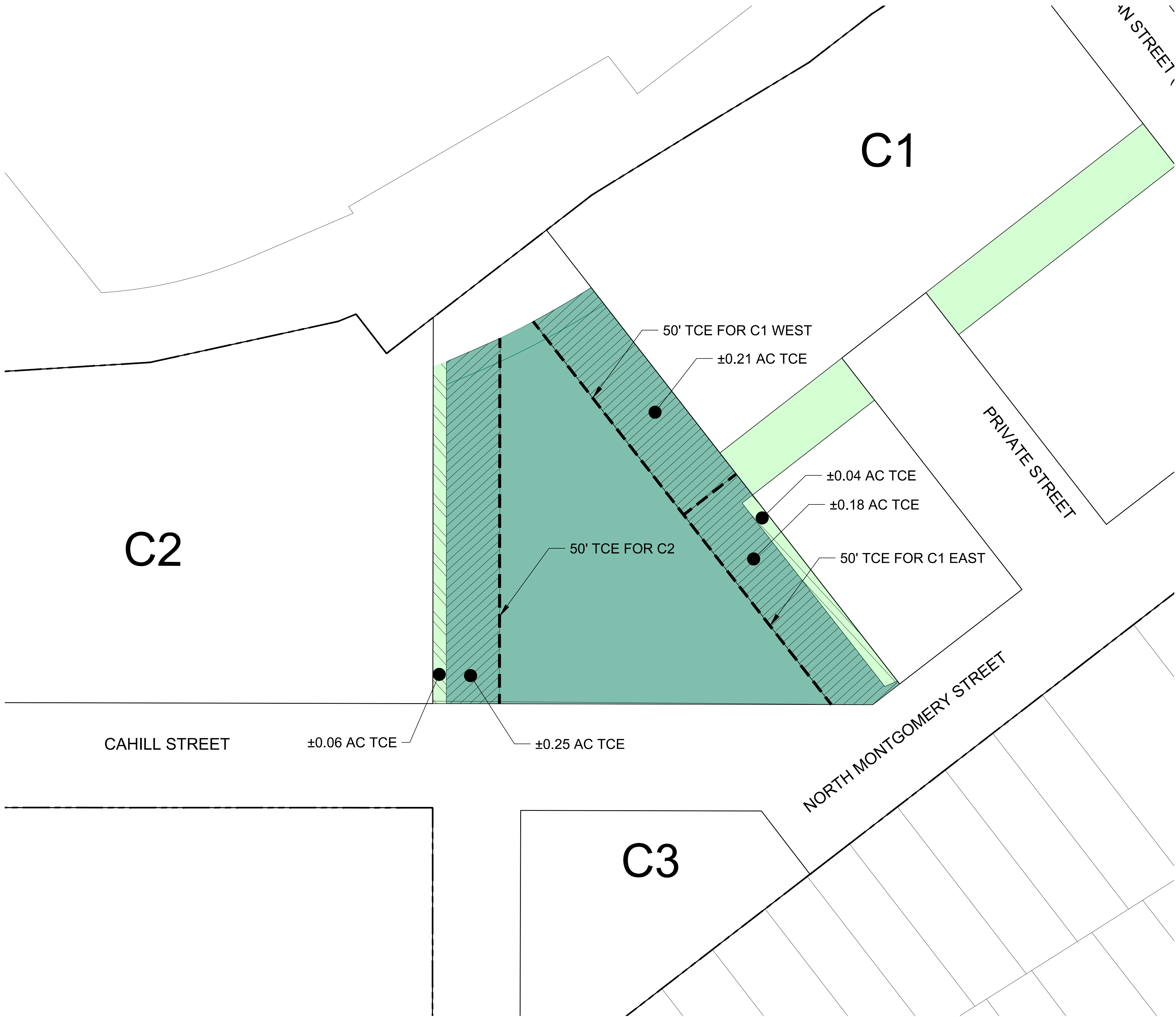


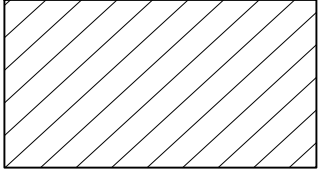
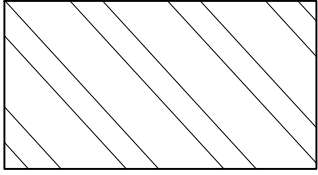
20' TEMPORARY CONSTRUCTION
EASEMENT (TCE)

CITY DEDICATED OPEN
SPACE WITHIN TCE

±0.20 AC





-----	50' TEMPORARY CONSTRUCTION EASEMENT (TCE)	
	CITY DEDICATED OPEN SPACE WITHIN TCE	±0.64 AC
	PRIVATELY OWNED OPEN SPACE WITHIN TCE	±0.10 AC



1570 Oakland Road
San Jose, CA 95131

(408) 487-2200
HMHca.com



OPEN SPACE TCE - ST. JOHN TRIANGLE

Scale: 1" = 40'

Drawn: DM| Reviewed: DM
HMH#5719.00 | 02/11/21

Exhibit G

Workforce, Learning, and Education Commitment

Section 1. Google Participation with Community-Based Organizations. Following issuance of a Certificate of Occupancy for the first commercial office Building in the Project, and as long as Google LLC or any Google Affiliate occupies commercial office space in the Project during the term, Google shall use, or cause the Google Affiliate to use, Good Faith Efforts:

a. to promote opportunities for Google employees to volunteer their time with, and to serve as mentors on behalf of community-based organizations that serve San José students from underrepresented backgrounds; and

b. to provide career exploration and skills development opportunities, such as onsite field trips, career days, and computer science workshops, to students from underserved communities and who have an interest in technology and technology-based careers.

Section 2. Local and Minority Business Enterprises; Local Hire.

2.1 Local and Minority Business Enterprises - Project Construction. For the construction of the commercial office Buildings within the Project, Developer will use Good Faith Efforts to achieve, or to cause the general contractor(s) to achieve, an overall LBE, DBE, MBE, WBE, and/or LGBTBE, DOBE, and/or SD/VBO participation goal of 10% of the total cost of all contracts for a commercial office building to be awarded to contractors, subcontractors, suppliers, and/or consultants that qualify as a LBE, DBE, MBE, WBE, and/or LGBTBE, DOBE, and/or SD/VOB. To advance this goal, Developer will use Good Faith Efforts:

a. to include in its construction contracts for each commercial office building a requirement that the general contractor shall use Good Faith Efforts to contract with

subcontractors, suppliers, and other businesses that qualify as a LBE, DBE, MBE, WBE, LGBTBE, DOBE, and/or SD/VOB;

b. to notify construction and DBE publications of contracting opportunities;
and

c. to host an annual development construction fair to bring together prime/general contractors in an effort to increase diversity and inclusion on major construction projects.

2.2 Local and Minority Business Enterprises - Project Operation. In context to the opening of each commercial office Building, prior to the issuance of a Final Certificate of Occupancy for a commercial office Building in the Project, Developer shall use, or cause its affiliate company and/or its vendors to use, Good Faith Efforts:

a. to hire contractors, subcontractors, suppliers, and/or consultants that qualify as a LBEs, DBEs, MBEs, WBEs, LGBTBEs, DOBEs, and/or SD/VOBs for ongoing service contracts (e.g. maintenance, janitorial, landscaping, security etc.) related to Developer's commercial office Buildings; and

b. to host two (2) times per year on a semi-annual basis, an informational session targeted to LBEs, DBE, MBEs, WBEs, LGBTBEs, DOBEs, and/or SD/VOBs interested in providing goods and services to Developer's commercial office Buildings.

2.3 Local Hire - Project Construction. Developer will include in its construction contracts for all onsite construction activity a requirement that the contractor or subcontractor shall use Good Faith Efforts to achieve a goal that Local Residents comprise thirty percent (30%) of all new hires for employment opportunities under the applicable construction contract for construction trade positions and entry-level positions related to providing support to the construction industry.

This obligation to use Good Faith Efforts shall not limit the ability of a contractor or subcontractor to assess qualifications of prospective workers, to require a contractor or subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

2.4 Local Hire - Project Operation. In context to the opening of each commercial office Building, prior to the issuance of a Final Certificate of Occupancy for a commercial office Building in the Project, Developer shall use, or cause the Developer Affiliate to use, Good Faith Efforts:

a. to establish a “Local Community Liaison” who will be responsible for connecting primary building operations contractors (e.g. maintenance, janitorial, landscaping, security, and other non-college IT roles) with the City’s lead Workforce Development Board (e.g. work2future) and other local community-based workforce development organizations, to ensure qualified Local Residents seeking employment are aware of open positions at the Project Site and are considered for the open roles;

b. to encourage building operations contractors that provide services to Developer/affiliate-occupied Buildings to use their Good Faith Efforts to notify the City’s lead Workforce Development Board (e.g. work2future) and other local community based workforce development organizations when the contractor is hiring for positions that service such buildings, and to make Good Faith Efforts to interview and consider referred candidates from the local workforce agencies with appropriate backgrounds, qualifications, and experience for the open roles;

c. to periodically participate in the City’s lead Workforce Development Board (e.g. work2future) and other local community based workforce development organizations client outreach and recruiting events;

d. to host two (2) times per year on a semi-annual basis, a career development workshop or job fair targeted at local Economically Disadvantaged Communities and Underrepresented Workers;

e. to have a Developer representative serve as a board member on the City's lead Workforce Development Board (e.g. work2future); and

f. to collaborate on an annual basis with the Community Stabilization and Opportunity Pathways Fund, and with the City's lead Workforce Development Board (e.g. work2future) and other local community based workforce development organizations to analyze and identify job types, projections for in-demand roles, job readiness and potential career pathways for underrepresented workers leading to economic self sufficiency.

Section 3 Definitions.

The following definitions apply to this Exhibit G (and any term not defined in this Section 3 shall have the meaning provided in the Development Agreement):

3.1 "Disability Owned Business Enterprise (DOBE)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons with a disability.

3.2 "Disadvantaged Business Enterprise (DBE)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons who is a socially and economically disadvantaged individual.

3.3 "Economically Disadvantaged Communities" shall mean communities in which the median household income is less than eighty percent (80%) of the county median income, as compared to the nine-county Bay Area region and the respective U.S. Department of Housing and Urban Development income threshold.

3.4 "Good Faith Efforts" shall mean the commercially reasonable efforts that a public company can undertake in light of its fiduciary obligations to its shareholders. Good Faith Efforts shall not obligate Developer to undertake any work, expenditure, or program relative solely to the cost to implement any particular measure described herein. Additionally, Good Faith Efforts shall in no event be interpreted to mean that Developer is obligated to include any particular term pursuant to this Workforce, Learning, and Education Commitment in any agreement.

3.5 "LGBT Business Enterprise (LGBTBE)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons who identifies as a member of the Lesbian, Gay, Bisexual, and Transgender community.

3.6 "Local Business Enterprise (LBE)" shall have the same meaning as set forth in Chapter 4.12 of the City's Municipal Code.

3.7 "Local Resident" shall mean an individual who is domiciled, as defined by Section 349(b) of the California Election Code, as it may be amended, within Santa Clara County for at least seven (7) calendar days before commencing work on a Private Construction Project.

3.8 "Minority Business Enterprise (MBE)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons who is a member of one or more ethnic minority group.

3.9 "Service-Disabled/Veteran Owned Business (SD/VOB)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons who is a Service-Disabled Veteran or Service-Disabled Veterans, as defined in section 3(q) of the Small Business Act (15 U.S.C. 632(q)).

3.10 "Underrepresented Worker" shall mean an individual who meets any one of the following conditions:

- (a) The individual is at risk of losing his/her home, the individual is homeless, or the individual is housed within the past twelve (12) months before which he/she was homeless;
- (b) The individual is receiving public assistance;
- (c) The individual is participating in a reentry program or was formerly incarcerated;
- (d) The individual has been continuously unemployed for at least three months over the previous year;
- (e) The individual has a family or household income that falls below the current United States Department of Housing and Urban Development threshold for low income households in Santa Clara County;
- (f) The individual has been emancipated from the foster care system;
- (g) The individual is a veteran of the United States military;
- (h) The individual is participating in a program for "at-risk" youth; or
- (i) The individual is a survivor of labor trafficking.

3.11 "Woman Business Enterprise (WBE)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by one or more women.

—**Exhibit G**

Workforce, Learning, and Education Commitment

Section 1. Google Participation with Community-Based Organizations. Following issuance of a Certificate of Occupancy for the first commercial office Building in the Project, ~~Developer, including any and all assignees and transferees, and as long as Google LLC or any Google Affiliate occupies commercial office space in the Project during the term, Google~~ shall use, or cause the Google Affiliate to use, Good Faith Efforts:

- a. to promote opportunities for ~~Developer~~Google employees to volunteer their time with, and to serve as mentors on behalf of community-based organizations that serve San José students from underrepresented backgrounds; and
- b. to provide career exploration and skills development opportunities, such as onsite field trips, career days, and computer science workshops, to students from underserved communities and who have an interest in technology and technology-based careers.

Section 2. Local and Minority Business Enterprises; Local Hire.

2.1 Local and Minority Business Enterprises - Project Construction. For the construction of the commercial office Buildings within the Project, Developer will use Good Faith Efforts to achieve, or to cause the general contractor(s) to achieve, an overall LBE, DBE, MBE, WBE, and/or LGBTBE, DOBE, and/or SD/VBO participation goal of 10% of the total cost of all contracts for a commercial office building to be awarded to contractors, subcontractors, suppliers, and/or consultants that qualify as a LBE, DBE, MBE, WBE, and/or LGBTBE, DOBE, and/or SD/VOB. To advance this goal, Developer will use Good Faith Efforts:

a. to include in its construction contracts for each commercial office building a requirement that the general contractor shall use Good Faith Efforts to contract with subcontractors, suppliers, and other businesses that qualify as a LBE, DBE, MBE, WBE, LGBTBE, DOBE, and/or SD/VOB;

b. to notify construction and DBE publications of contracting opportunities; and

c. to host an annual development construction fair to bring together prime/general contractors in an effort to increase diversity and inclusion on major construction projects.

2.2 Local and Minority Business Enterprises - Project Operation. In context to the opening of each commercial office Building, prior to the issuance of a Final Certificate of Occupancy for a commercial office Building in the Project, Developer shall use, or cause its affiliate company and/or its vendors to use, Good Faith Efforts:

a. to hire contractors, subcontractors, suppliers, and/or consultants that qualify as a LBEs, DBEs, MBEs, WBEs, LGBTBEs, DOBEs, and/or SD/VOBs for ongoing service contracts (e.g. maintenance, janitorial, landscaping, security etc.) related to Developer's commercial office Buildings; and

b. to host two (2) times per year on a semi-annual basis, an informational session targeted to LBEs, DBE, MBEs, WBEs, LGBTBEs, DOBEs, and/or SD/VOBs interested in providing goods and services to Developer's commercial office Buildings.

2.3 Local Hire - Project Construction. Developer will include in its construction contracts for all onsite construction activity a requirement that the contractor or subcontractor shall use Good Faith Efforts to achieve a goal that Local Residents comprise thirty percent (30%)

of all new hires for employment opportunities under the applicable construction contract for construction trade positions and entry-level positions related to providing support to the construction industry. This obligation to use Good Faith Efforts shall not limit the ability of a contractor or subcontractor to assess qualifications of prospective workers, to require a contractor or subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

2.4 Local Hire - Project Operation. In context to the opening of each commercial office Building, prior to the issuance of a Final Certificate of Occupancy for a commercial office Building in the Project, Developer shall use, or cause the Developer Affiliate to use, Good Faith Efforts:

a. to establish a “Local Community Liaison” who will be responsible for connecting primary building operations contractors (e.g. maintenance, janitorial, landscaping, security, and other non-college IT roles) with the City’s lead Workforce Development Board (e.g. work2future) and other local community-based workforce development organizations, to ensure qualified Local Residents seeking employment are aware of open positions at the Project Site and are considered for the open roles;

b. to encourage building operations contractors that provide services to Developer/affiliate-occupied Buildings to use their Good Faith Efforts to notify the City’s lead Workforce Development Board (e.g. work2future) and other local community based workforce development organizations when the contractor is hiring for positions that service such buildings, and to make Good Faith Efforts to interview and consider referred candidates from the local workforce agencies with appropriate backgrounds, qualifications, and experience for the open roles;

- c. to periodically participate in the City's lead Workforce Development Board (e.g. work2future) and other local community based workforce development organizations client outreach and recruiting events;
- d. to host two (2) times per year on a semi-annual basis, a career development workshop or job fair targeted at local Economically Disadvantaged Communities and Underrepresented Workers;
- e. to have a Developer representative serve as a board member on the City's lead Workforce Development Board (e.g. work2future); and
- f. to collaborate on an annual basis with the Community Stabilization and Opportunity Pathways Fund, and with the City's lead Workforce Development Board (e.g. work2future) and other local community based workforce development organizations to analyze and identify job types, projections for in-demand roles, job readiness and potential career pathways for underrepresented workers leading to economic self sufficiency.

Section 3 Definitions.

The following definitions apply to this Exhibit G (and any term not defined in this Section 3 shall have the meaning provided in the Development Agreement):

3.1 "Disability Owned Business Enterprise (DOBE)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons with a disability.

3.2 "Disadvantaged Business Enterprise (DBE)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons who is a socially and economically disadvantaged individual.

3.3 “Economically Disadvantaged Communities” shall mean communities in which the median household income is less than eighty percent (80%) of the county median income, as compared to the nine-county Bay Area region and the respective U.S. Department of Housing and Urban Development income threshold.

3.4 "Good Faith Efforts" shall mean the commercially reasonable efforts that a public company can ~~reasonably justify~~undertake in light of its fiduciary obligations to its shareholders. Good Faith Efforts shall not obligate Developer to undertake any work, expenditure, or program ~~that Developer concludes, in its reasonable discretion, is not consistent with a reasonable balance between the objectives of this Workforce, Learning, and Education Commitment and~~relative solely to the cost ~~of~~to implement any particular measure described herein. Additionally, Good Faith Efforts shall in no event be interpreted to mean that Developer is obligated to ~~enter into~~include any ~~agreement~~particular term pursuant to this Workforce, Learning, and Education Commitment ~~on~~in any ~~particular terms~~agreement.

3.5 “LGBT Business Enterprise (LGBTBE)” shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons who identifies as a member of the Lesbian, Gay, Bisexual, and Transgender community.

3.6 "Local Business Enterprise (LBE)" shall have the same meaning as set forth in Chapter 4.12 of the City's Municipal Code.

3.7 "Local Resident" shall mean an individual who is domiciled, as defined by Section 349(b) of the California Election Code, as it may be amended, within Santa Clara County for at least seven (7) calendar days before commencing work on a Private Construction Project.

[A1]: San-Jose??

3.8 "Minority Business Enterprise (MBE)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons who is a member of one or more ethnic minority group.

3.9 "Service-Disabled/Veteran Owned Business (SD/VOB)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons who is a Service-Disabled Veteran or Service-Disabled Veterans, as defined in section 3(q) of the Small Business Act (15 U.S.C. 632(q)).

[A2]: The term "Underrepresented Worker" is not specific to construction projects (see Section 2.4(d) above)

3.10 "Underrepresented Worker" shall mean an individual who meets any one of the following conditions:

(a) The individual is ~~at~~ risk of losing his/her home, the individual is homeless, or the individual is housed within the past twelve (12) months before which he/she was homeless;

(b) The individual is receiving public assistance;

(c) The individual is participating in a reentry program or was formerly incarcerated;

(d) The individual has been continuously unemployed for at least three months over the previous year;

(e) The individual has a family or household income that falls below the current United States Department of Housing and Urban Development threshold for low income households in Santa Clara County;

(f) The individual has been emancipated from the foster care system;

(g) The individual is a veteran of the United States military;

- (h) The individual is participating in a program for "at-risk" youth; or
- (i) The individual is a survivor of labor trafficking.

3.11 "Woman Business Enterprise (WBE)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by one or more women.

Document comparison by Workshare 10.0 on Tuesday, March 23, 2021 4:31:42 PM

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Document 1 ID	netdocuments://4824-2828-0546/1
Description	City Comment DA - Exhibit G Google DA 3-8-21-c (002)
Document 2 ID	netdocuments://4822-0965-2450/1
Description	Google - DW - Exhibit G Workforce Learning and Education Commitment
Rendering set	CPDB Set

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Format changed	0
Total changes	38

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Exhibit J

Framework for City Provided Electric Service to the Downtown West Project

This Exhibit provides a framework for Developer and the City to follow to first confirm the viability of an electrical Microgrid as a key component of the Project, and then, subject to their respective actions and approvals, enter into a Business Relationship addressing development, ownership and operation of the Microgrid as specified in Section 3.5 below. Any capitalized terms not defined below shall have the meaning assigned to such terms in the Development Agreement (“Agreement”).

1. Electric Microgrid Overview

- 1.1. Developer is developing district systems as a key tool to achieve the Project's environmental objectives and to increase the Project's resilience in the face of power and other system outages. One of the principal district systems is the electrical microgrid ("Microgrid"). The grid-tied Microgrid will be developed to supply electricity to the Project area. The Microgrid will be fed by a primary transmission level electricity supply – 115kV from PG&E – before transforming to 12kV or 21kV distribution supply via a dedicated Project substation. In the event of a failure of PG&E's primary supply, the system will be switched to island mode, meaning that it will operate in isolation from the PG&E network, and then utilize the Developer's embedded renewable energy systems, backup generation and storage to manage electrical supply to the Project. Implementation of a feasible Microgrid is a key component of the Project's District Systems strategy, and timely delivery and energization of the Microgrid is a key factor in the development of the Project's office component.

This Exhibit shall apply only if Developer elects to proceed with the scenario for development of the Microgrid that requires a Business Relationship with City, and not to other Microgrid development scenarios as described in Condition No. __ of Resolution No. _____.

- 1.2. The City and Developer are evaluating the option of City-provided electric service to all buildings and future customers within the Project area, subject to Council approval and applicable law.
 - a. Developer has funded a preliminary study and cost of service analysis by the City, to confirm the viability of the City-owned system. The results of this preliminary study indicate that City-provided electric service to the Project is viable.
 - b. Developer and the City have submitted applications for interconnection to PG&E.
 - c. Both parties acknowledge that City-provided electric service has potential mutual benefits, and have agreed to further develop the financial and legal basis

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for proceeding with the City ownership and operation of the Microgrid following the issuance of Project entitlements, including negotiation of a Business Relationship.

2. Relationship to Project Approvals

- 2.1. The Microgrid is a component of the Project that was evaluated in the Project's Final Environmental Impact Report, and which is part of the Project's Infrastructure as reflected both in the Infrastructure Plan and in the Downtown West Planned Development Permit and its implementing components, including the Downtown West Improvement Standards, Conceptual Infrastructure Plan Sheets and the Downtown West Design Standards and Guidelines.
- 2.2. The City and Developer are evaluating the option of City-provided electric service, which may be effectuated through future City actions, approvals, and/or agreements with Developer or any of its successors or assigns under the Development Agreement, and which shall not require amendment to the Agreement, the Downtown West Planned Development Permit, or any other Approval.

3. Condition(s) Precedent

The City and Developer, prior to entering into a Business Relationship for City provided electric service to the Project area, shall satisfy the following conditions precedent:

- 3.1. City shall complete a preliminary cost of service analysis to determine economic feasibility of City provided electric service.
- 3.2. City and Developer shall make a determination whether to proceed with the City's Wholesale Transmission Interconnection Application to PG&E as reasonably practical and feasible, including any discussions, actions, approvals and/or agreements with PG&E regarding PG&E's System Impact Study, Facilities Study, interconnection facilities required to connect the Microgrid to the PG&E transmission grid, and/or Interconnection Agreement.
- 3.3. As soon as reasonably practicable and feasible, the City shall make a determination whether it will provide electric service to the Project, and shall take all steps necessary under applicable federal, state and local law to organize as an entity qualified to provide electrical energy service to meet the electrical loads of end-users within the Project, and to meet its other obligations under a prospective Business Relationship with Developer; City shall confirm completion of such steps in writing to Developer.
- 3.4. City and Developer shall negotiate and determine whether to execute the terms of a "Business Relationship", including but not limited to the following:
 - 3.4.1. Coordination and collaboration regarding Microgrid design and applicable design and performance standards for approval by the City.

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- 3.4.2. Development and installation of the Microgrid by Developer.
- 3.4.3. Ownership, operation and maintenance of the Microgrid, including but not limited to City acquisition of the Microgrid; necessary leases, easements, and licenses from the Developer for the City to operate and maintain the Microgrid on Developer-owned land; Developer ownership, and operation and maintenance of non-distribution system facilities such as behind the meter components.
- 3.4.4. Alterations and/or reconfigurations of the Microgrid, including but not limited to good faith efforts by the City to allow such alterations and/or reconfigurations determined to be mutually beneficial to end-use customers, the City and Developer.
- 3.4.5. Energy Services, including but not limited to the supply of energy to the Microgrid and establishment of fair and equitable cost-based rates.
- 3.4.6. Customer relations with the City, including but not limited to response to customer inquiries, adjudication of customer complaints, and billing.



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Exhibit J

Framework for City Provided Electric Service to the Downtown West Project

This Exhibit provides a framework for Developer and the City to follow to first confirm the viability of an electrical Microgrid as a key component of the Project, and then, subject to their respective actions and approvals, enter into a Business Relationship addressing development, ownership and operation of the Microgrid as specified in Section 3.5 below. Any capitalized terms not defined below shall have the meaning assigned to such terms in the Development Agreement (“Agreement”).

1. Electric Microgrid Overview

- 1.1. Developer is developing district systems as a key tool to achieve the Project's environmental objectives and to increase the Project's resilience in the face of power and other system outages. One of the principal district systems is the electrical microgrid ("Microgrid"). The grid-tied Microgrid will be developed to supply electricity to the Project area. The Microgrid will be fed by a primary transmission level electricity supply – 115kV from PG&E – before transforming to 12kV or 21kV distribution supply via a dedicated Project substation. In the event of a failure of PG&E's primary supply, the system will be switched to island mode, meaning that it will operate in isolation from the PG&E network, and then utilize the Developer's embedded renewable energy systems, backup generation and storage to manage electrical supply to the Project. Implementation of a feasible Microgrid is a key component of the Project's District Systems strategy, and timely delivery and energization of the Microgrid is a key factor in the development of the Project's office component.

This Exhibit shall apply only if Developer elects to proceed with the scenario for development of the Microgrid that requires a Business Relationship with City, and not to other Microgrid development scenarios as described in Condition No. ___ of Resolution No. _____.

- 1.2. The City and Developer are evaluating the option of City-provided electric service to all buildings and future customers within the Project area, subject to Council approval and applicable law.
 - a. Developer has funded a preliminary study and cost of service analysis by the City, to confirm the viability of the City-owned system. The results of this preliminary study indicate that City-provided electric service to the Project is viable.
 - b. Developer and the City have submitted applications for interconnection to PG&E.



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- c. Both parties acknowledge that City-provided electric service has potential mutual benefits, and have agreed to further develop the financial and legal basis for proceeding with the City ownership and operation of the Microgrid following the issuance of Project entitlements, including negotiation of a Business Relationship.

2. Relationship to Project Approvals

- 2.1. The Microgrid is a component of the Project that was evaluated in the Project's Final Environmental Impact Report, and which is part of the Project's Infrastructure as reflected both in the Infrastructure Plan and in the Downtown West Planned Development Permit and its implementing components, including the Downtown West Improvement Standards, Conceptual Infrastructure Plan Sheets and the Downtown West Design Standards and Guidelines.
- 2.2. The City and Developer are evaluating the option of City-provided electric service, which may be effectuated through future City actions, approvals, and/or agreements with Developer or any of its successors or assigns under the Development Agreement, and which shall not require amendment to the Agreement, the Downtown West Planned Development Permit, or any other Approval.

3. Condition(s) Precedent

The City and Developer, prior to entering into a Business Relationship for City provided electric service to the Project area, shall satisfy the following conditions precedent:

- 3.1. City shall complete a preliminary cost of service analysis to determine economic feasibility of City provided electric service.
- 3.2. City and Developer shall make a determination whether to proceed with the City's Wholesale Transmission Interconnection Application to PG&E as reasonably practical and feasible, including any discussions, actions, approvals and/or agreements with PG&E regarding PG&E's System Impact Study, Facilities Study, interconnection facilities required to connect the Microgrid to the PG&E transmission grid, and/or Interconnection Agreement.
- 3.3. As soon as reasonably practicable and feasible, the City shall make a determination whether it will provide electric service to the Project, and shall take all steps necessary under applicable federal, state and local law to organize as an entity qualified to provide electrical energy service to meet the electrical loads of end-users within the Project, and to meet its other obligations under a prospective Business Relationship with Developer; City shall confirm completion of such steps in writing to Developer.



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- 3.4. City and Developer shall negotiate and determine whether to execute the terms of a “Business Relationship”, including but not limited to the following:
 - 3.4.1. Coordination and collaboration regarding Microgrid design and applicable design and performance standards for approval by the City.
 - 3.4.2. Development and installation of the Microgrid by Developer.
 - 3.4.3. Ownership, operation and maintenance of the Microgrid, including but not limited to City acquisition of the Microgrid; necessary leases, easements, and licenses from the Developer for the City to operate and maintain the Microgrid on Developer-owned land; Developer ownership, and operation and maintenance of non-distribution system facilities such as behind the meter components.
 - 3.4.4. Alterations and/or reconfigurations of the Microgrid, including but not limited to good faith efforts by the City to allow such alterations and/or reconfigurations determined to be mutually beneficial to end-use customers, the City and Developer.
 - 3.4.5. Energy Services, including but not limited to the supply of energy to the Microgrid and establishment of fair and equitable cost-based rates.
 - 3.4.6. Customer relations with the City, including but not limited to response to customer inquiries, adjudication of customer complaints, and billing.

Document comparison by Workshare 10.0 on Tuesday, March 23, 2021 3:18:06 PM

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