

**From:** [Phan, Johnny](#)  
**To:** [Downtown West Project](#)  
**Subject:** FW: Preliminary Draft - Exhibit H  
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**Attachments:** [Exhibit H - 3-23-21.docx](#) - [Google Docs-c.pdf](#)

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**From:** Phan, Johnny  
**Sent:** Tuesday, March 23, 2021 8:40 PM  
**To:** Miller, J. Gregg <[gmler@coblenzlaw.com](mailto:gmler@coblenzlaw.com)>  
**Subject:** Preliminary Draft - Exhibit H

Hi Gregg – Just 2 minor changes to Exhibit H below. Please make the changes and send me a clean final Exhibit H. We should hopefully be done with this one.

1. Section 9. Last Sentence: DETAILED qualifications of the EXPERIENCED Fund Manager will be outlined in the solicitation process and approved by City Council.
2. Section 11b. Insert the word “Next” (That strike through is there.)

Thanks. Johnny

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## **Exhibit H**

### **Community Stabilization and Opportunity Pathways Fund**

1. **Establishment of Fund.** The City intends to establish a fund to provide financial support to community stabilization (anti-displacement) efforts, education and employment opportunity pathways within the City (the "Fund"). The Fund will concentrate on communities in San José who have historically been affected by structural racism and where the risk of displacement is the highest.
2. **Purpose of the Fund.** The purpose of the Fund is to minimize displacement and other potential negative impacts on people and place, including from rising costs of living ("community stabilization") and to maximize opportunities for local youth and adults to participate and benefit from job opportunities through training, education, and support ("opportunity pathways"). The Fund shall be used to support grantees and program activities serving low-income people living in neighborhoods experiencing or at high risk of displacement and underserved neighborhoods in Greater Downtown, East San José, and other areas identified by a credible, regularly updated source (such as the Urban Displacement Project at U.C. Berkeley). The Fund should focus on advancing racial equity, addressing the root causes of displacement and economic mobility, and resulting in measurable outcomes.
3. **Fund Administration Overview.** The administration of the Fund shall involve: a third party ("Fund Manager"), a Community Advisory Committee ("Committee"), City Council, and the City Administration. The model features delegation of grant administration to the Fund Manager and grant approval to the Committee, with oversight, accountability, and transparency to the City Council and public. **This model is intended to put decision making into the hands of local residents and leaders.** As described in detail in the following sections, the key steps include the following:
  - a. The City Council will appoint a Community Advisory Committee.
  - b. The City Administration will oversee the selection process and recommend a Fund Manager to the City Council, in consultation with the Committee.
  - c. The Fund Manager will work with the Committee to prepare a Five Year Strategic Plan for the Fund, and Strategic Plan Updates every 5 years. The Five Year Strategic Plan and Strategic Plan Updates will be presented to the City Council for approval.
  - d. The Fund Manager will administer the grant process and make recommendations on grant-making, based on consistency with the Five Year Strategic Plan.
  - e. The Committee will consider the Fund Manager's recommendations and approve the grants consistent with the Five Year Strategic Plan.
  - f. The Fund Manager will work with the Committee to prepare Annual Performance Reports, for the City Council to receive at a public meeting.
  - g. The Fund Manager shall be responsible for ongoing community engagement and communication.

4. Contributions by Google LLC. Google shall make payments to a restricted Fund in the amount of \$22.12 per gross square foot of office development, excluding any related or similar prepayment amounts identified in Exhibit C2 (subject to Consumer Price Index escalation not to exceed three percent (3%) per year), with payment to be made upon issuance of the Certificate of Occupancy for each commercial office Building. The amount of the payment shall be established at the time the building permit for construction of the office Building is issued.
5. Appropriation Process. Payments made by Google will be deposited into a City-restricted fund for the purpose set forth in this Exhibit H and transferred to the Fund Manager for Fund grant-making and functions supporting grant-making. The transfer of monies from the restricted fund to the Fund Manager will occur **promptly after payments are received** as part of the City's budget appropriation process and in accordance with the Council-approved Five Year Strategic Plan. Subject to appropriation, the City Council shall allocate monies for three functional categories: 1) contracted services of the Fund Manager for Fund administration; 2) City Administration and City Attorney costs to support the Fund; and 3) grant making and other grant-related activities of the Fund Manager and Committee aligned with the Council-approved Five Year Strategic Plan.
6. Funding Priorities and Allocations.
  - a. The City Council intends that the Fund shall be dedicated to the following two major program categories ("Program Areas"), with a focus on benefiting communities that have been historically underserved or marginalized:
    - i. Community Stabilization: Community Stabilization includes prevention of displacement and homelessness, preservation of affordable housing, homeless services, housing innovation research, tenant and landlord education, community land trusts, and stabilization of small local businesses.
    - ii. Opportunity Pathways: Opportunity Pathways includes adult and youth occupational skills training, college/post-secondary scholarships, career exploration for middle and high school youth, early childhood education, and small business and entrepreneurship programming.
  - b. Fund Allocations.
    - i. The maximum percentage of Fund allocation for City and Fund Manager administrative costs shall be outlined in each Council-approved Five Year Strategic Plan.
    - ii. **The initial allocation of Fund, excluding payments for Fund administrative costs, shall be distributed to the Program Areas in the following percentages: no less than 50% to Community Stabilization and no less than 30% to Opportunity Pathways. Over the life of this Development Agreement, the intent is for grant funds to be distributed to the Program Areas in the following approximate**

~~percentages: 50-60% to Community Stabilization and 40-50% to Opportunity Pathways. To ensure a balanced approach while allowing flexibility over time, at least 30% of the grant funds shall go to Community Stabilization and at least 30% shall go to Opportunity Pathways during any one 5-year Strategic Plan cycle.~~

- iii. The City intends for periodic review and adjustment of the percentage allocations between the two Program Areas; however, the Fund shall not be directed to programs outside the Program Areas or for other uses, and administrative costs shall not exceed amounts outlined in the Council-approved Five Year Strategic Plan. The review and adjustment of percentage allocations may occur through the approval of each Five Year Strategic Plan Update by the City Council, as recommended by the Fund Manager and Committee.
    - iv. The Fund Manager and Committee shall administer grants consistent with the Five Year Strategic Plan and the funding percentages set forth therein.
  7. Grant Recipient Criteria. Grantees shall provide direct services, programs, and projects for the benefit of impacted communities in San José in the two Program Categories, consistent with the intent of the Fund as established in this Development Agreement and with the Five Year Strategic Plan. The City intends that grantees be limited to nonprofit 501(c)(3) organizations, public education institutions, and City of San José programs, with grants focused on direct on-the-ground services, and that grants shall not be used for lobbying or political organizing. For the purpose of clarification, tenant education or protection shall not be considered to be political organizing. ~~Likewise, grantee organizations can be involved in political organizing but cannot use the grants or any portions thereof for political organizing.~~
  8. Roles and Responsibilities.
    - a. Third Party Fund Manager. The primary roles of the Fund Manager will be to: ensure strategic impact over time; facilitate community involvement in the grant-making and planning processes; and leverage opportunities for additional monies from external parties. The Fund Manager will adhere to best practices for accounting and financial responsibility. Roles will include:
      - i. Administer the Fund under a contract with City.
      - ii. Support the Committee and any subcommittees, including by providing or facilitating training and capacity building.
      - iii. Manage the solicitation, evaluation, and award recommendations of each round of competitive grants.
      - iv. Qualify and determine alignment of grant awards with the approved Five Year Strategic Plan.
      - v. Manage development of the Five Year Strategic Plan to guide activities of the Fund.
      - vi. Recommend metrics to the City and Committee to evaluate the Fund's

- effectiveness as part of each Five Year Strategic Plan.
- vii. Conduct public engagement to inform the Five Year Strategic Plan and grant-making processes.
- viii. Develop Annual Performance Report for City Council and the public.
- ix. Provide technical assistance to grantees and potential grantees.
- x. Evaluate grantee qualification and performance.
- xi. Solicit and manage grant programs supported by contributions from other companies and philanthropic organizations.
- b. Community Advisory Committee. The City intends that the Fund's charter will include the establishment of a Community Advisory Committee to execute key functions of the Fund. Roles of the Committee would include:
  - i. Participate in the development of each Five Year Strategic Plan.
  - ii. Guide scoping of each round of competitive grant solicitations.
  - iii. Receive and consider recommendations from the Fund Manager and approve grants consistent with the Five Year Strategic Plan.
  - iv. ~~Provide guidance and support for public outreach and engagement, including awareness of grant opportunities and organizations who might qualify to apply for grants. Committee may also recommend to the Fund Manager organizations who might qualify to receive grant Requests for Proposals, consistent with the Five Year Strategic Plan.~~
  - v. Provide guidance and support for public engagement.
  - vi. Provide feedback on the Annual Performance Report prior to submission to City Council.
  - vii. Participate in fundraising activities.
  - viii. Hold regular public meetings. All meetings of the Committee shall be subject to and conducted in accordance with the open meeting requirements of the Brown Act and applicable City requirements.
  - ix. The Committee should have the authority to set its own chair and vice-chair, and form subcommittees. Decisions and recommendations should in all cases be consistent with the purpose of the Fund, funding priorities as defined in this Agreement, the Five Year Strategic Plan, and applicable laws.
- c. City Council Role. City Council will retain its legislative authority, including to approve the fundamental policy goals and funding priorities for the Fund, adopt the Five Year Strategic Plan that will guide the budget appropriation, and conduct oversight and audits as necessary. Roles would include:
  - i. Provide high-level direction on fundamental policy decisions for the Fund through approval of this Agreement, the initial Five Year Strategic Plan, and subsequent Five Year Strategic Plan Updates.
  - ii. Select and approve the contract with the Fund Manager.
  - iii. Appoint Community Advisory Committee members.
  - iv. Approve the budget appropriation for the Fund, consistent with the Five Year Strategic Plan.
  - v. Conduct a public review of and approve the Five Year Strategic Plan, as

well as subsequent Five Year Strategic Plan Updates, as part of a City Council meeting.

vi. Receive and review Annual Performance Reports as part of a City Council meeting.

vii. Initiate financial and performance audits for the Fund.

viii. Take all necessary actions required under applicable laws and the City Charter.

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

i. Support the City Council in establishing and maintaining the Committee membership.

ii. ~~Ensure Administer the~~ public meetings of the Committee ~~are administered in accordance with local and state law.~~

iii. Administer the selection process for the Fund Manager, negotiate the contract with the Fund Manager, oversee contract compliance, and manage the fiduciary relationship with the Fund Manager.

iv. Provide general oversight and serve as a Fund liaison between the various parties involved in the Fund administration.

v. Bring forth the budget appropriation to City Council.

vi. Bring forth the Annual Performance Report to City Council.

vii. Manage any independent financial audits or program evaluations of the Fund.

viii. Support the public engagement process led by the Fund Manager.

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

9. Selection and Compensation of Fund Manager. The City intends to use a solicitation process to select a qualified Fund Manager with experience managing grant programs that are both similar in amount of money under management and purpose as the Fund. City Council shall appoint a Community Advisory Committee in advance of the Fund Manager solicitation. The City Administration shall work with the Community Advisory Committee to develop the solicitation and recommend a Fund Manager to City Council. The City intends that the Fund Manager will receive compensation for its management duties from the Fund, which shall be outlined in each ~~Five Year~~ Strategic Plan. Qualifications of the Fund Manager ~~will be outlined in the solicitation process and approved by City Council. should may include, but not be limited to the following:~~

~~a. Commitment to the mission, vision, and outcomes of the Fund;~~

~~b. Experience and proven success in managing funds of a similar type/scale;~~

~~c. Transparency – must be able to clearly report on progress and outcomes;~~

~~d. Credibility – must have credible relationships across multiple audiences;~~

- e. ~~Competence – ability to disburse funds efficiently, consistently identifying roadblocks and identifying solutions;~~
  - f. ~~Adaptability – must be able to evaluate grantee and program performance, and respond accordingly.~~
10. Committee Composition. The Committee shall be comprised of thirteen (13) voting members. These members shall either live in San José, ~~work in or operate a business in San Jose,~~ have a meaningful connection to San José, or have a history of ~~conducting working~~ in San José in the relevant subject areas of the Fund, ~~or otherwise have a meaningful connection to San José,~~ with the possible exception of one (1) academic/research role which may be statewide or national.
- a. It is the intent to have a balanced mix of local residents bringing their lived experience perspective to ensure that local needs are understood and met, local community leaders with experience working with target populations to provide specific insights and solutions, and other experts in the program areas to help guide use of the Fund towards meaningful outcomes and systemic change.
  - b. The Committee shall reflect the racial, ethnic, economic, generational and other diversity of the City of San José.
  - c. Committee members shall have a ~~demonstrated~~ commitment to furthering the City’s goals for anti-displacement, economic mobility, education & workforce development, and racial equity, supporting workers and family-supporting jobs, and uplifting historically disadvantaged groups, including women, people of color, people with disabilities, low-income residents, and the chronically unemployed.
  - d. At least five (5) members shall have Local Lived Experience in the core Fund areas. “Local Lived Experience” includes individuals with personal knowledge of the root causes of displacement gained through direct, first-hand involvement.
    - i. Committee members nominated in this category shall live or operate a small business in a census tract categorized as ‘high-risk’ or ‘undergoing displacement’ by a credible, regularly updated source (such as the Urban Displacement Project at U.C. Berkeley), including at least two (2) from East San José (~~defined as south of Berryessa Rd, north of Aborn Rd., and east of Monterey Rd.~~) and at least one (1) from the Greater Downtown Area that is part of the ‘high risk’ category in the Berkley or other relevant study.
    - ii. These Committee members should represent a range of experiences the Fund is intended to address, such as housing insecurity, neighborhood instability, homelessness, low-income, unemployment, and barriers to opportunity and economic mobility.
  - e. The other eight (8) members of the Committee shall have significant professional experience and subject matter expertise (e.g., through service delivery, policy-making, academic, or institutional capacity), in one or more of the following fields:
    - i. Affordable housing preservation and/or shared equity and community ownership;



- ii. Housing preservation, ownership and finance models;
  - iii. Tenant advocacy and support;
  - iv. Homelessness or homeless support services;
  - v. Education (early childhood, K-12, post-secondary);
  - vi. Employment and workforce development, job training, apprenticeship programs, labor;
  - vii. Minority-owned, disadvantaged, small, or micro business retention and growth;
  - viii. Neighborhood development, leadership development;
  - ix. Philanthropy, fundraising, grant-making, organizational management;
  - x. Legal, and/or finance experience;
  - xi. Academic and/or research expertise in relevant fields such as equity, community development, sociology, demography and/or economic mobility.
- f. While Committee members may have experience in multiple fields, members with deep expertise in a single field will be encouraged in order to create a balanced Committee in which no one area of expertise dominates. In making appointments, the City Council will strive to create a Committee with members that collectively possess expertise **and local lived experience** across all topic areas listed in this Section. ~~Notably, these members can and will be encouraged to overlap with the members representing Local Lived Experience.~~
- g. Ex officio (non-voting) members shall include three (3) representatives of the City Administration and one (1) representative from Google **for the duration of development implementation**. The role of the City representatives is to consider alignment and collaboration with City strategies, goals, and programs. The Committee may add additional ex officio seats for additional major funders or others as deemed helpful by the Committee, and subject to approval by City Council.
- h. Committee members will be subject to applicable state and local disclosure and conflict of interest laws.

#### 11. Committee Selection Process.

- a. It is the intent that within six (6) months of Final Approval of the Development Agreement the City Administration will bring forth an ordinance to the City Council to codify the creation of the Committee within Chapter 2.08 (“Boards, Bureaus, and Commissions”) of the City’s Municipal Code.
- b. ~~Next~~, the City shall conduct an open, transparent process for appointing the Committee members, initially and as terms expire. The process is envisioned to include the following steps, in consultation with the City Clerk and the City **Administration’s Office of Racial Equity (ORE)**:
  - i. Soliciting applications/nominations using a standard form;
  - ii. Screening the nominations for eligibility;
  - iii. Recommending a slate of Committee members to City Council for review



and approval at a public meeting.

- c. As part of the appointment process, the City Attorney's Office will perform a conflict analysis for each candidate, consistent with City practice for appointments to City boards and commissions.
- d. Immigration status shall not be a factor in the Committee member selection process.
- e. Each Committee member shall file a Form 700 Statement of Economic Interests upon appointment and as required under the Political Reform Act and Fair Political Practices Commission ("FPPC") regulations.
- f. Committee members shall be appointed by the City Council for staggered terms.
- g. It is the intent to complete the appointment process within six (6) months of adopting the ordinance creating the Committee.
- h. The City intends to solicit an advisor to support the Committee selection and Fund Manager solicitation processes.

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

- a. The purpose of the Five Year Strategic Plan is to set the direction for the grant programs and funding allocation, including: the Fund's strategic vision, objectives, and funding priorities over the next five years, and the metrics to measure progress or success on its objectives and funding priorities. Once complete, the Five Year Strategic Plan shall be submitted to the City Council for review and approval.
- b. The Five Year Strategic Plan shall include, but is not limited to:
  - i. Community needs assessment: such as community context, priority needs, analysis of gaps in system effectiveness;
  - ii. Desired outcomes, funding objectives, and performance metrics to evaluate Fund effectiveness;
  - iii. Recommended allocation of funding between Community Stabilization and Opportunity Pathways program areas;
  - iv. Categories of competitive grant programs;
  - v. Expectations for community engagement;
  - vi. Anticipated administrative costs by the City and payments to the Fund Manager for all contracted services; budget caps on these expenses.
- c. Once approved by the City Council, the Fund Manager is tasked with implementing the Five Year Strategic Plan.
- d. The Five Year Strategic Plan must be updated every five years, but may be updated more frequently based on changing conditions.
- e. Between these updates, the City Council may propose and adopt changes to the then-applicable Five Year Strategic Plan; provided, however, that any changes must be approved by two-thirds vote of the City Council.

13. Annual Performance Report. Every year, the Fund Manager will generate an Annual Report describing the Fund's accomplishments and progress on performance metrics. The purpose of the Annual Performance Report shall be to analyze and report out on the

effectiveness of the Fund's grant making activities, including achievement of outcomes, objectives, and metrics identified in each Five Year Strategic Plan.

- a. The Report will be developed in consultation with the Committee, who may review the Report and provide feedback to the Fund Manager.
  - b. The Annual Report will then be transmitted to the City Council for review and acceptance.
14. Public Engagement. The Fund Manager, with the support of the City Administration and Committee, will be expected to conduct public outreach and community engagement to inform each Five Year Strategic Plan and the grant making process.
  - a. Specific steps that may involve public engagement include: preparing the needs assessments for the Strategic Plan; reaching out to potential grant applicants; and preparing the Annual Performance Report.
  - b. The Fund Manager should develop and implement the community engagement strategy and methods to be used in collaboration with the Committee. The expectation is to use best practices for inclusive engagement, considering factors such as language and accessibility.
15. Audit Rights by the City Council. The City may complete an independent financial and performance audit of the Fund on a biannual basis to ensure conformance with this Agreement, the Five Year Strategic Plan, the contract with the Fund Manager, and applicable laws. Further, the City may take any and all necessary steps and actions to address any issues raised in annual reports, audits, allegations of misuse of funds, or violation of application policies, rules or laws.