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To: [Downtown West Project](#)
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Subject: Preliminary Draft - DISC DA Body Language

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DISC DA Sections

The following DA sections and exhibits include substantive language regarding the Diridon Integrated Station Concept (DISC). Clean draft language as of 3/16/2021 is summarized in this document to streamline review and confirmation:

- Definitions of DISC and DISC Partner Agencies (Sections 1.31 & 1.32)
- Overall Cooperation & Anticipated MOU (Section 3.6)
- Transit Buffer Zone & Potential Community Benefits Adjustment (Section 4.2.2)
- Potential BART or Rail Impact on Development Timing (Section 11.5.3)
- Transit Buffer Zone, Temporary Construction Needs, and Parkland (4(f)) (Exhibit E)

*Note: Earlier versions of Exhibit D (Affordable Housing) contained potential "DISC Adjustment" language; the City's preference is to point to the other sections of the MOU rather than reiterate information in this separate section.

Definitions of DISC and DISC Partner Agencies (Sections 1.38 & 1.39)

1.38. "Diridon Integrated Station Concept Plan" or "DISC" shall mean the collective plan by the DISC Partner Agencies to expand and redevelop the San José Diridon Station, which Plan is under development and has not been fully funded, as of the Effective Date.

1.39. "DISC Partner Agencies" or "DISC Partner Agency" in connection with DISC, or other transit project(s), shall mean any one or more of the following agencies: California High-Speed Rail Authority (CHSRA), Caltrain, Metropolitan Transportation Commission (MTC), Santa Clara Valley Transportation Authority (VTA), and the City (and any successor agency(ies)).

Overall Cooperation & Anticipated MOU (Section 3.6)

3.6 Diridon Integrated Station Concept (DISC) Plan Implementation.

As articulated in the MOU, Developer and City have a shared goal of timely implementation of development projects in the Diridon Station Area to maximize integration with

planned transit projects. As such, Developer, City, and the DISC Partner Agencies have engaged in considerable collaborative efforts to account for the future needs of both DISC and the Project, including the affordable housing program, parks and open space, and Community Benefits and Project Features to be provided by the Project. Developer and City shall continue to work in good faith to support the DISC program of projects through ongoing coordination and collaboration between the Parties and with the DISC Partner Agencies. The shared goals of these efforts are to effectively deliver both the Project and DISC, and to minimize the impact of each project on the other and on the surrounding community, including impacts of DISC to affordable housing and parks/open space to be developed as part of the Project. To this end, Developer, City, and the other DISC Partner Agencies – led by Caltrain as the rail corridor owner – intend to exercise good faith efforts to document the parameters of their collaboration and coordination efforts (anticipated by way of a subsequent memorandum of understanding or similar agreement). This agreement is expected to provide clarity regarding anticipated DISC right-of-way for the expanded Diridon Station, to memorialize the conceptual elevated rail designs and preliminary DISC construction methodology, and to provide a framework for DISC Partner Agencies and Developer to agree to associated commercial terms for any permanent or temporary land needs, including the permanent and temporary use of City-Dedicated Open Spaces and land planned for the same by the DISC Partner Agencies, with consideration of state and federal regulations (e.g., the United States Department of Transportation’s Section 4(f) provision).

Transit Buffer Zone & Potential Community Benefits Adjustment (Section 4.2.2)

4.2 [Community Benefits Adjustments.](#)

4.2.1 Definition. "Community Benefits Adjustment" [PENDING NEGOTIATION] shall mean an adjustment or modification to the amount or other elements of a Community Benefit, as permitted and/or required by the Downtown West Planned Development Zoning District, General Development Plan, Downtown West Design Standards and Guidelines, or Downtown West Improvement Standards and Conceptual Infrastructure Plan Sheets, and subject to the applicable review and/or approval processes set forth therein, that is necessitated by (i) any subsequent proceedings initiated by any of the DISC Partner Agencies to acquire any portion of the Project Site in connection with DISC or other transit project(s), if such acquisition results in a reduction in the development program as established by the Project Approvals; and/or (ii) Developer's reconfiguration and/or redesign of the Project that is required as a result of the City's adoption of a construction crane policy that prohibits or impacts Developer's ability to viably build to the maximum heights reflected in the DWDSG, if such reconfiguration and/or redesign results in a reduction in the development program as established by the Project Approvals. [for section ii here, refer to current crane policy work]

4.2.2 Community Benefits Adjustments Due to Acquisition by DISC Agencies or other Transit Agencies. In furtherance of the collaborative efforts described in Section 3.6, as well as the collective goals of the Developer, City, and the DISC Partner Agencies to effectively deliver both the Project and DISC, the following provisions set forth the understandings and obligations of the Parties in the event of an eminent domain proceeding initiated by a DISC Partner Agency(ies), and the circumstances in which Developer shall be provided a Community Benefits Adjustment:

(a) The Parties agree and have established an estimated area of the Project Site located in proximity to a proposed transit alignment, referred to as the “Transit Project Buffer Zone” and depicted in Exhibit C3. In the event a DISC Partner Agency acquires any portion of the Project Site located within the Transit Project Buffer Zone through eminent domain the Parties understand that the 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 it may be amended from time to time. The Parties also understand and acknowledge that a taking within the Transit Project Buffer Zone would negatively affect the value of the Project and, in particular, diminish the value of all land within the Project Site, and that such value loss may be recoverable as compensation from the condemning agency. Within the Transit Project Buffer Zone, the Parties will work together in good faith to retain Developer’s office yield; however, in the event office yield within the Transit Project Buffer Zone is reduced due to an acquisition through eminent domain, Developer assumes the risk that the amount of displaced office yield would need to fit on the remaining Project Site if that displaced office yield is to be developed, which would necessitate development at greater densities, resulting in increased development costs. To that end, and despite the risk that Developer may be undercompensated in the eminent domain process if office yield is reduced within the Transit Project Buffer Zone, there shall not be a Community Benefits Adjustment as a result of a DISC Partner Agency acquiring any portion of the Project Site located within the Transit Project Buffer Zone.

(b) It is further understood by the Parties that acquisition of any amount or portion of the Project Site beyond the Transit Project Buffer Zone would result in a reduction in the Project’s development program that could be substantial and, due to the fixed infrastructure costs of the Project, such acquisition could directly affect the overall feasibility of the Project. Like

a taking within the Transit Project Buffer Zone, a taking of any portion of the Project Site beyond that zone (e.g., Parcels A1, B1, C2, F5, and G1) would also diminish the value of the remaining portion of Project Site (the “Remainder”), and this diminution in value would be at least one hundred twenty-one and 92/100 dollars (\$121.92) per office gross square foot (“Base Diminution Value”). If Developer is awarded severance damages equal to or greater than the Base Diminution Value, measured on a per square foot basis of office loss or as otherwise defined, there will be no adjustment to Community Benefits as described in Paragraph (c) below, despite the fact that the cost impact to Developer of a taking beyond the Transit Project Buffer Zone will substantially exceed the Base Diminution Value. The Parties acknowledge, to the City’s benefit, that the Base Diminution Value does not include all of Developer’s cost impacts, and to the extent that additional severance damage proceeds are received beyond one hundred percent (100%) of the Base Diminution Value on a per square foot basis, those proceeds shall be used to offset Developer’s additional cost impacts. For clarity, for the determination of whether a Community Benefits Adjustment is to be made, the relevant reference point is whether the severance damage award is equal to or greater than \$121.92 per gross square foot of office space lost as a result of the taking, regardless of whether the condemned property is from one or more parcels in the Project Site.

With respect to parking, if the land acquired through eminent domain results in reduced office yield and area available for parking, the parking provided by the Project would be similarly reduced based on the Required Parking Ratio, and the requirement that a minimum of 2,850 publicly available parking spaces be maintained within the Project Site would be reduced by the number of spaces that otherwise would have been accommodated within the affected portions of the Project Site and associated lost parking area.

(c) In the event a DISC Partner Agency(ies) condemns or acquires any portion of the Project Site beyond the Transit Project Buffer Zone, and there is no award of severance damages, or such award is less than the Base Diminution Value described in Paragraph (b) above, (i) a Community Benefits Adjustment commensurate with the difference between the severance damages award and the Base Diminution Value shall be required, and (ii) the City agrees that such Community Benefits Adjustment shall be according to the following formula (with all values subject to escalation based on the Engineering News Record Construction Cost Index):

$$\text{Lost Land Area outside the Transit Buffer Zone} \times \text{Office Parcel Yield PSF (see Table X)} \\ = \text{Total Lost Office Program}$$

$$(\text{Total Lost Office Program} \times \text{PSF Base Diminution Value}) - \text{Severance Damages} = \text{Net Value Loss}$$

$$\text{Remaining Community Benefits} - \text{Net Value Loss} = \text{Adjusted Community Benefits Value}$$

$$\text{Adjusted Community Benefits Value} / (\text{Remaining Office Program} - \text{Total Lost Office Program}) = \text{Adjusted Community Benefits Value PSF}$$

Office Parcel Yield per square foot of land area (Office Parcel Yield PSF) is equivalent to Floor Area Ratio for individual office buildings, and will be calculated for individual parcels in the table below based on the values in Table X [“FOR PURPOSES OF THIS SECTION” – STEPHANIE]. Remaining Community Benefits will be calculated by the City and are equal to \$200 Million, less the value of Moderate Inclusionary Units (\$X.X Million), Prepayment for Job Readiness and Stabilization (\$X.X Million), Autumn Street Parcel Donation (\$X.X Million) and developer Community Benefits Payments for office development that has received the initial Certificate Occupancy (TCO) (calculated at the time of the Community Benefit Adjustment). The

Remaining Office Program reflects an office capacity of 7.3 million square feet, less office that has received TCO.

Table X: Office Parcel Yield PSF

| Office Parcels | Office Parcel Yield PSF |
|-----------------------------|--------------------------------|
| South of Santa Clara | |
| G1 | 7.48 |
| F1 | 10.00 |
| F3 | 1.68 |
| D7 | 10.47 |
| E1 | 7.88 |
| D4 | 11.35 |
| North of Santa Clara | |
| C2 | 8.13 |
| B1 | 4.06 |
| A1 | 4.18 |

CODIFY IN EXHIBIT WITH THE GRAPHICS.

(d) Further, if a DISC Partner Agency(ies) condemns or acquires a portion of the F5 development Parcel located beyond the Transit Project Buffer Zone, the Parties agree that the entire Parcel would be deemed non-developable unless the remaining parcel size is at least r 0.75 acres with a minimum east to west dimension of 70’ and average east to west dimension of 110’); if deemed non-developable a Community Benefits Adjustment shall be provided based on loss of the full developable area on the Parcel.

(a) With respect to the portion of the Project Site known as “Lot ABC,” the Parties agree that any taking of that portion of the Project Site, or any part of it, will have the same economic impact on the remaining Project Site as a taking beyond the Transit Project Buffer Zone, even if such taking occurs while Lot ABC is owned by the City (i.e., before Developer exercises its option). Accordingly, if some or all of Lot ABC is taken while the lot is owned by the City, the

Community Benefits Adjustment described in Paragraph (c) above will be applied as though the property were owned by Developer.

Similarly, with respect to development Parcels A1, B1, and C2, if a DISC Partner Agency(ies) condemns or acquires a portion of any such development Parcel located beyond the Transit Project Buffer Zone in excess of the following percentages, the Parties agree that the entire Parcel(s) would be deemed non-developable, in which case a Community Benefits Adjustment shall be provided based on the loss of the full developable area of the Parcel(s): fifteen percent (15%) or more of the portion of Parcel A1 located beyond the Transit Project Buffer Zone; ten percent (10%) or more of the portion of Parcel B1 located beyond the Transit Project Buffer Zone; and/or five percent (5%) or more of the portion of Parcel C2 located beyond the Transit Project Buffer Zone. This section 4.2.2 shall be superseded by the future agreement between the Developer, City, and the other DISC Partner Agencies referenced in Section 3.6 upon the effective date of such agreement.

Potential BART or Rail Impact on Development Timing (Section 11.5.3)

11.5.3 BART or Rail Improvement Activity. For development of the Project on the portion of the Project Site located north of Post Street, a Party's performance of its obligations under this Agreement only as to the affected portion of the Project Site shall be excused during, and extended for a period of time equal to, any period of delay caused by reason of construction staging or other activities related to an extension of the Bay Area Rapid Transit system ("BART") by the Santa Clara Valley Transportation Authority ("VTA"), or other rail or infrastructure improvements that are not part of the Project ("Rail Improvement Activity") where such Rail Improvement Activity requires use of, or otherwise impacts development upon the Project Site located north of Post Street. Upon the request of any Party, an extension of time will be granted for the period of delay caused by Rail Improvement Activity, and no Party shall be deemed

to be in default under this Agreement where delays in performance or failure to perform are caused by Rail Improvement Activity. Promptly after learning of the occurrence of Rail Improvement Activity that actually causes or is reasonably anticipated (by the affected Party) to cause delay, the affected Party shall notify the other Party in writing of the occurrence of such Rail Improvement Activity, the manner in which such occurrence is likely to cause delay, and the anticipated length of delay in performance resulting from the Rail Improvement Activity. Upon the other Party's receipt of such notice, any deadline for performance of the obligations delayed as to the specific portion of the Project Site impacted, shall be extended but only as to the affected portion(s) of the Project Site by a period of time equal to the number of days during which performance is delayed due to the specified Rail Improvement Activity.