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To: [Downtown West Project](#)
Subject: FW: District Systems Conditions of Approval
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From: Phan, Johnny
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Subject: District Systems Conditions of Approval

See attached. Hopefully, we are close to final.

Thanks. Johnny

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Downtown West - District Systems

Proposed Conditions of Approval for Vesting Tentative Map(s):

- Procedure for Subsequent City Review of District Systems. The Project's Planned Development Permit, including the Infrastructure Plan, the Downtown West Development Standards and Guidelines (DWDSG), the Conceptual Infrastructure Plan Sheets, and the Downtown West Improvement Standards (DWIS) contemplate that the Developer may pursue implementation of a privately-owned electric distribution system ("Microgrid"), privately-owned wastewater collection and treatment, recycled water distribution, and thermal systems, (with the Microgrid and each of the other systems each referred to individually as a "District System" and collectively as the "District Systems") to provide utility service to the Project. If the Developer seeks to implement any District System in lieu of municipal or regional public utility service otherwise available within any proposed phased final map area, the following procedures shall apply.

- District Systems Criteria. The operation and management of any District System shall reflect the following Criteria to ensure that Project residents (including owners, tenants, and businesses) and the City can rely on any District System to provide reliable, continuous utility service at equitable rates for the life of the Project, with the Criteria described below and referred to hereafter as the "District Systems Criteria."

- Service. The District System will provide consistent and continuous utility service equivalent to that which would be expected for comparable utility service otherwise available to San José residents ("Service Standard").

Criteria Check Point: The consistent and continuous service will be confirmed through the embedment of a Service Standard equivalent to comparable utility service available in San José. The Service Standard will be included in the District Systems Transactional Documents (as defined below).

- Rate Control. Rates for service charged to residential tenants or owners (i.e., condominium) and retail tenants whether reflected in sales prices, utility charges, rent or other consideration, shall be consistent with any rate schedule, limits or mechanisms established by any governing state or federal agency, or, in the absence of an applicable control, rates shall not exceed rates for comparable service from other utility providers available to San José residents ("Rate Control") or comparable building level thermal service.

- Criteria Check Point: Rate Control will be confirmed via a guarantee clause in District Systems Transactional Documents addressing supply arrangements. Rate Control, as with other applicable District Systems Criteria, will be made enforceable by residential tenants and owners through the District Systems Transactional Documents. Buildings shall be sub-metered for District System service.

- Customer Service Administration / Resolution of Performance and Operational Procedures.

Criteria Check Point: The District Systems Transactional Documents will include terms to ensure that the operator will implement clear procedures for communication with customers to resolve customer service, billing, performance, and other issues, including with dispute resolution mechanisms and performance standards as appropriate. This may include, for example, a structure included in the District Systems Transactional Documents that requires the operator to respond to any questions or complaints concerning service or billing within an established time period (e.g., fifteen days), and to identify procedures for prompt resolution (and reimbursement where relevant) of customer service or billing issues.

- Exclusivity and Tenure. The District Systems operator/owner will have the exclusive right and obligation to service the buildings that will ultimately be constructed within the subdivision boundary shown on the associated phased final map, and building owners and lessees will be required to exclusively contract with the District Systems operator/owner to procure available services. The private arrangement and enforcement between District Systems operator/owner and building owners and lessees would not limit the City's authority pursuant to its general police powers to address public health and safety, or to secure payment for any unpaid services provided by the City to the properties including a covenant to pay for City services.

Criteria Check Point: The District Systems Transactional Documents will include enforceable covenants that require the owners or lessees, including at both the building and unit or parcel level, as applicable, to contract with the District Systems operator/owner for electric service, sanitary sewer collection, recycled water, automatic waste collection system and thermal heating and cooling service if and when available from the District Systems operator/owner. The District Systems Transactional Documents will require the District Systems operator/owner to exclusively supply services within the Project boundary and to all owners or lessees within the Project boundary unless otherwise described in the Infrastructure Plan and identified prior to approval of the subject phased final map. Tract Improvement Plans, as evaluated pursuant to the Preliminary Review Process, will confirm that the District Systems are routed to each applicable building and sized to provide the necessary service.

- Continuity of Utility Supply. The District System will be continuously operated notwithstanding the failure of any for-profit operator of the District System, including if the District System operates at a loss.

Criteria Check Point: The District Systems Transactional Documents will include an obligation for all the commercial office building owners to assume the obligations of the District systems operator/owner and to provide continuous service on equivalent terms as specified in these conditions of approval (including with respect to Rate Control and the Service Standard) to residential owners and tenants and retail tenants in the event of a failure of the District Systems operator or as applied to a given District System. A standard for “failure” giving rise to an obligation for the office owners to assume the obligations of the District Systems operator/owner will be described in the Draft District Systems Contractual Terms.

- Safety. The District System will be operated safely and in accordance with applicable law and industry standards including, but not limited to, compliance with and maintenance of valid permits.

Criteria Check Point: Inclusion of a safety statement and accompanying safety plan to address applicable City, state, and federal standards and guidelines relative to safe operation of the District Systems. The statement and plan will be included within the Transaction Documents.

- Qualified Operator. Each District System will be operated by a professional operator with at least five (5) years technical experience and qualifications in safely operating the same utility in urban communities and in accordance with applicable law and industry standards (“Qualified Operator”). This Criteria shall apply to Developer and to any successor operator or Developer assigns.

Criteria Check Point: Inclusion of clause confirming minimum experience and the confirmation that all applicable certifications and qualifications will be required prior to contracting the operator within the District Systems Transactional Documents.

- Capital Replacement. The District Systems owner/operator will be obligated to ensure that the systems are replaced pursuant to appropriate capital replacement schedules to maintain the equipment for continuous operation.

Criteria Check Point: Inclusion of a clause within the District Systems Transactional Documents confirming the obligation of the District Systems operator to fund and replace the capital plant in a timely manner to ensure continuous operation of the systems.

- Capital Improvements. The right of the office owners to call on capital improvements to improve efficiency and performance of the District Systems from the District Systems owner/operator, subject to review on constraints and negotiations on funding and charges.

Criteria Check Point: Inclusion of a clause within the District Systems Transactional Documents confirming the right of the office owners to call on improvements to improve the efficiency and performance of the system.

- Obligations of Commercial Office Owners. As otherwise described in these conditions, all of the owners of commercial office buildings will bear ultimate responsibility for assuring certain performance obligations of the District Systems relative to owners and tenants within the Project, including the Service Standard, Rate Control, continuity of supply, and the timely completion of capital replacement and improvements. These obligations will apply notwithstanding any Assignment of the District Systems.

Criteria Check Point: The District Systems Transactional Documents will obligate all commercial office building owners (which may include one or more commercial owners' associations) to ensure that the District Systems owner/operator operates the subject District System(s) consistent with the Service Standard and Rate Control requirements, and that the owner/operator provides continuous service. The District Systems Transactional Documents will require the commercial office building owners to implement capital replacement and improvement obligations. Further, the District Systems Transactional Documents will include dispute resolution procedures and remedies for owners and tenants receiving service from District Systems to ensure that such residents and tenants have a means of addressing any noncompliance by the commercial office building owners. The District Systems Transactional Documents will document the extent to which commercial office owners will control major encroachment permits for District Systems. To the extent Developer proposes to assign major encroachment permits to a commercial office owner or a commercial owners' association, Developer will document to the Director of Public Works' reasonable satisfaction that the proposed assignee is capable of implementing the terms of the major encroachment permit and has the organizational capability and access to sufficient capital to perform the obligations of the permittee.

- Limitations on Assignment. Developer's right to assign the District Systems infrastructure and associated rights and obligations (each an "Assignment") will be consistent with the following, and which will be reflected in enforceable covenants that extend in perpetuity.
 - Assignment and Assumption Agreement: Any Assignment will require execution of an "Assignment and Assumption Agreement" which evidences that that the assignee has assumed all rights and obligations of the assignor pertaining to the subject District Systems as required by these conditions of approval and the operative District Systems Transactional Documents. No Assignment shall be effective until the assignor or assignee provides an executed copy of the Assignment and Assumption Agreement to the Public Works Director.

- Evidence of Qualified Operator: Concurrent with the submittal of the executed Assignment Assumption Agreement, the assignor or assignee shall provide documentation to the Public Works Director confirming that the assigned District System will continue to be operated by a Qualified Operator subsequent to the Assignment. No Assignment shall be effective until the assignor or assignee provides the documentation required pursuant to this condition.
- Permitted Assignments: Google may assign to (i) Alphabet, Lendlease or any Google/Alphabet/Lendlease affiliates/related entities) or (ii) any third-party assignees that is an owner/investor in the infrastructure sector, with appropriate operational and asset management capabilities, directly or via an operating partner. Any such assignments would not require City's consent but would require prior sixty (60) days written notice to City except assignment of permits or other regulatory obligations under federal, state or local laws must be in compliance with these laws.
- Private Systems - No City Obligations / Notice to Owners. By seeking permits for the construction of the District Systems and buildings that rely on District Systems, Developer is voluntarily electing to proceed with these systems to meet the objectives of the Project. Developer acknowledges that the District Systems are private, and that the City has no role in funding, constructing, operating, maintaining, or replacing the District Systems except as may be expressly agreed to by the City (i.e., with respect to a possible role in owning or operating the Microgrid as otherwise described in these conditions of approval and the Development Agreement). Developer shall be solely responsible for funding, constructing, operating, maintaining, replacing, and assuring continuity of service via the District Systems and for resolving disputes among the owner/operator and any entities receiving service from the owner/operator.

Criteria Checkpoint: Developer's agreement with these terms shall be manifested by Developer accepting the Vesting Tentative Map subject to this condition. Developer shall also be required to document to the Public Works Director's reasonable satisfaction, and as part of the Implementation Plan (as described below), that notice will be provided to future owners that includes the following: (1) a description of any service that is provided to the subject building by a District System; (2) a statement that the District System is privately owned and operated, and that the City of San José has no responsibility for providing the service or to address disputes relating to the service; and (3) the identity of the District Systems owner/operator, the Qualified Operator and all necessary information regarding terms for service and dispute resolution.

- Implementation Plan Confirmation. Developer shall submit an "Implementation Plan" to the Public Works Director, including the components described below, concurrently with the Developer's submittal of a Vertical Improvement Conformance Review Application for a

development phase. The Public Works Director will review the Implementation Plan for purposes of confirming that the Implementation Plan satisfies the Check Point Criteria and that it includes all components described below. The Public Works Director will notify the Developer in writing within thirty (30) days as to whether the Implementation Plan incorporates the Check Point Criteria and includes the components listed in this condition. Developer will not submit its first Preliminary Improvement Plans (35% plans) to the Public Works Director until the Public Works Director provides confirmation that the Implementation Plan satisfies the requirements of this condition.

- Identification of Proposed District Systems. The Implementation Plan will identify any District System that the Developer proposes to implement as part of the development phase. For phases subsequent to the initial phase, the Implementation Plan will describe in concept form how the District System will interconnect with the same system as approved and/or constructed within prior phases.
- Summary of Regulatory Requirements, Status and Schedule. District Systems will be subject to all applicable federal, state and regional requirements applicable to the District Systems at the time of implementation. The Implementation Plan will include a summary of any required regulatory authorizations necessary to construct or operate any District System, along with the status of any regulatory authorizations. To the extent that any authorizations have not been obtained at the time of the Implementation Plan submittal, the summary will provide a schedule and any necessary supporting information to describe the timing of anticipated regulatory authorizations relative to Developer's schedule for completing improvement plans, filing a phased final map, and obtaining building permits.
- Index of "District Systems Transactional Documents". An index describing the draft documents that will govern the operation of the District System and its relationship to the commercial and residential properties comprising the development phase. This may include, for example, residential covenants, conditions and restrictions ("CC&Rs"), commercial CC&Rs, ground leases, licenses, supply contracts, and various deeds relating to real or personal property (collectively, the "District Systems Transactional Documents"). It is anticipated that parties to the District Systems Transactional Documents will include, but may not be limited to, Google, residential and commercial building owners, ground lessees, and the District Systems operator. The index will identify the specific documents that will implement the respective Check Point Criteria
- "Draft District Systems Contractual Terms". A summary that includes a series of draft contractual terms to be reflected in the District Systems Transactional Documents ("Draft District Systems Contractual Terms").

The Draft District Systems Contractual Terms will be evaluated for purposes of documenting satisfaction of the Check Point Criteria.

- Confirmation of District Systems Criteria through Horizontal Preliminary Review. Developer will provide the following to the Public Works Director prior to, or concurrent with, the submittal of 95% plans pursuant to the Horizontal Preliminary Review Process.
- Proposed Final District Systems Transactional Documents. Developer will submit proposed forms of the District Systems Transactional Documents to the Public Works Director for the purpose of confirming that the proposed forms do not result in inconsistency with the District Systems Criteria. The forms may include redactions where necessary to avoid disclosure of nonpublic proprietary information.
- Confirmation of Regulatory Authorizations. Developer will submit copies of any regional, state or federal authorizations, approvals or acknowledgements identified in the Implementation Plan, or to the extent not obtained by the time of the 95% plan submittal, documentation to establish that said authorizations, approvals or acknowledgments will be obtained before Developer provides service to any end users to the Public Works Director's reasonable satisfaction.
- Public or Subdivision Improvement Agreement. The Public or Subdivision Improvement Agreement for any phased final map will include an obligation for Developer to provide a copy of the final form of any District Systems Transactional Document that is required to be recorded to the Public Works Director for final confirmation that the relevant terms are included prior to recordation of the subject District Systems Transactional Document. The forms may include specific redactions where necessary to avoid disclosure of nonpublic proprietary information.
- Obligations Specific to Microgrid. Subject to all other conditions of approval in this Resolution, Developer may pursue the following three alternatives for the Microgrid, as further describe below. If Developer elects to proceed with the Microgrid, Developer will identify which of the following alternatives it seeks to implement as part of its Implementation Plan.
 - Municipally-Owned Microgrid: A local publicly-owned electric utility would operate the Microgrid pursuant to the operative provisions of State and local law ("Municipal Ownership"). If Developer wishes to pursue Municipal Ownership, the City will engage with Developer in good faith to evaluate the viability of this approach; provided however, that nothing in this Resolution shall be interpreted to commit the City to own or operate the Microgrid (or any component thereof) without future City and Developer review and approval. City acknowledges that as part of Municipal Ownership for the Microgrid, Developer would not be required to seek

encroachment authorization for Microgrid infrastructure to occupy public rights-of-way or to seek franchise authorization.

- Pacific Gas & Electric Company (“PG&E”) Integration: PG&E may own or operate components of the Microgrid, including particularly the distribution component, consistent with PG&E’s status as a regulated public utility.
- Privately-Owned Microgrid: Developer may pursue a privately-owned Microgrid, meaning that Developer would not transfer the Microgrid infrastructure to either PG&E or the City. Under this option, Developer will own and operate the Microgrid. Prior to approval of a phased final map, Developer shall demonstrate to the Public Works Director’s reasonable satisfaction that Developer’s proposal for ownership and operation of the Microgrid is consistent with all applicable State and federal requirements. If, as a result of Developer’s engagement with California Public Utilities Commission (“CPUC”), CPUC determines that Developer may own and operate the Microgrid without any CPUC regulation or oversight provisions, then Developer will be required to seek City Council approval prior to proceeding with construction of the privately-owned Microgrid to address applicable regulations concerning the safe operation of the Microgrid and the distribution of electricity to owners and tenants.
- Automatic Waste Collection System. Use of the proposed Automatic Waste Collection System (“AWCS”), as described in the Project’s Infrastructure Plan and evaluated in the Final Environmental Impact Report, is not authorized as of the Effective Date of this Resolution. Should Developer wish to use the AWCS to provide solid waste collection and disposal services within the proposed subdivision, Developer shall be required to separately obtain any required State approvals as well as authorizations required for the operation of that system pursuant to the Municipal Code.