

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: LTA Improvement Project Conditions
Date: Tuesday, May 18, 2021 11:24:15 AM
Attachments: [Google - DW - COA re LTA triggers.docx-c.pdf](#)

From: Miller, Gregg <gmler@coblentzlaw.com>
Sent: Friday, April 9, 2021 1:16 PM
To: Phan, Johnny <Johnny.Phan@sanjoseca.gov>
Cc: Straka, Stephanie <ssstraka@coblentzlaw.com>
Subject: LTA Improvement Project Conditions

[External Email]

Johnny: please see attached LTA Improvement Project COA language. Thanks,

Gregg Miller

Coblentz Patch Duffy & Bass LLP

One Montgomery Street, Suite 3000

San Francisco, CA 94104

Cell: 415-939-3142 | Direct Dial 415-772-5736 | Office 415-391-4800

gmler@coblentzlaw.com

www.coblentzlaw.com

This transmittal is intended solely for use by its addressee, and may contain confidential or legally privileged information. If you receive this transmittal in error, please email a reply to the sender and delete the transmittal and any attachments.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

LTA Triggers DA/CoA Language

As a result of the Local Transportation Analysis prepared by Fehr & Peers, dated July 2020, and included as Appendix J2 to the Draft Environmental Impact Report for the Project, City and Developer have (i) identified certain "LTA Improvements Projects" to which Developer will contribute, through a combination of construction and financial contributions, and (ii) agreed that Developer may undertake additional traffic or intersection analysis for the City and/or County that could identify additional potential improvements; the combined contribution value for (i) and (ii) shall not exceed thirty million dollars (\$30,000,000) (the "Total Contribution Value"), subject to escalation based on the Engineering News Record Construction Cost Index. As detailed in the LTA Construction and Financial Contributions table below, Developer will construct certain LTA Improvement Projects at an estimated total cost of up to seventeen million three hundred ten thousand dollars (\$17,310,000) (the "LTA Construction Contribution"), and Developer also will contribute an estimated total of twelve million six hundred ninety thousand dollars (\$12,690,000) toward the cost to construct other LTA Improvement Projects (the "LTA Financial Contribution").

In the event Developer's actual cost to construct an LTA Improvement Project is less than the estimated cost for that LTA Improvement Project reflected in the LTA Improvement Estimated Budget, either (a) Developer may allocate the balance of the estimated cost to its LTA Financial Contribution, or (b) Developer and City may mutually agree to allocate the balance (i) to another LTA Improvement Project identified in the LTA Improvement Estimated Budget, (ii) as a contribution toward transportation projects later identified in the Focused LTA, or (iii) as a contribution toward another transportation improvement(s) within the City. Such other transportation improvement(s) in the City, including any that may be identified under the Focused LTA, have not yet been identified and so are speculative, not reasonably foreseeable, and such improvements would be subject to separate review by that project's applicant pursuant to the California Environmental Quality Act, if required.

In the event Developer's actual cost to construct an LTA Improvement Project would exceed the estimated cost for that LTA Improvement Project reflected in the LTA Improvement Estimated Budget, Developer may draw from its LTA Financial Contribution, if available, to account for the higher cost, without penalty. If insufficient LTA Financial Contribution funds are available at the time the LTA Improvement Project is to be constructed by Developer, then either (a) the scope of the LTA Improvement Project shall be adjusted so that the actual cost does not exceed the estimated cost to construct the LTA Improvement Project as reflected in the LTA Improvement Estimated Budget, or, if that is not feasible, (b) Developer shall contribute (i) an amount equal to the estimated cost for the subject LTA Improvement Project toward the LTA Financial Contribution, or, if less than that amount remains in Developer's Total Contribution Value, (ii) Developer shall contribute the remainder of the Total Contribution Value toward the LTA Financial Contribution. If Developer proceeds in the manner described in (b) in this Paragraph, Developer shall not be obligated to construct the LTA Improvement Project. For clarity, in all instances, Developer's Total Contribution Value shall not exceed \$30,000,000, subject to escalation based on the Engineering News Record Construction Cost Index.

Each LTA Construction Contribution and LTA Financial Contribution shall be completed or paid, as applicable, in accordance with the Improvements Phasing set forth in the LTA Construction and Financial Contributions table below, which requires that each LTA Construction Contribution be completed in accordance with the corresponding Public Improvement Agreement (PIA). For LTA Improvement Projects that are constructed by Developer, such Improvements are complete upon acceptance by the City, provided, however, that the City adheres to the following timelines and obligations: City agrees to inspect and prepare a punchlist for the LTA Improvement Projects within ten (10) business days of notification by Developer that the Developer considers the construction of the Improvements to be substantially complete; City further agrees to perform its final inspection within ten (10) business days of notification by Developer that all punchlist work has been completed; City will process acceptance documentation (Notice of Completion and Acceptance) within ten (10) business days of the date of City's final inspection or the date upon which the Developer returns to City the appropriate signed acceptance documentation, whichever is later, provided that (a) City finds that all punchlist work has been satisfactorily completed, which determination shall not be unreasonably withheld, (b) Developer has performed and satisfied any and all terms, conditions, and obligations required by any applicable Improvement Agreement prior to acceptance of the Improvements, and (c) Developer has provided the Director of PW with three (3) sets of the Plans ("record plans") corresponding copies of any and all warranties, and the like (such warranties shall be in the name of the City).

City and Developer acknowledge that Developer's construction of an LTA Improvement Project may require acquisition of a right-of-way, easements, and/or receipt of encroachments permits from non-City agencies such as VTA, Caltrans, and/or the County of Santa Clara. If Developer's completion of an LTA Improvement Project is delayed due to such required acquisition(s), easement(s), and/or receipt of non-City permits, or other similar factors outside of Developer's control, Developer and City agree to work in good faith to modify the Improvements Phasing set forth in the LTA Construction and Financial Contributions table. Such Improvements Phasing modifications could allow for the Project to advance into the next Phase ahead of the delayed Improvement(s). However, all LTA Improvements Projects included in the PD Permits for the Project shall be implemented.

LTA Construction and Financial Contributions			
Improvement/Description	LTA Construction Contribution	LTA Financial Contribution	Improvements Phasing
Focused Local Transportation Analysis improvements such as intersection improvements, new signals, at-grade rail crossing modifications and complete street improvements.	\$10,000,000		As necessary based on Focused Local Transportation Analysis (FLTA) findings
Studies: <ul style="list-style-type: none"> Connector from the Airport to Stevens Creek Boulevard to Diridon Station Area Santa Clara dedicated public service lane within existing right-of-way from 17th Street to Interstate 880 Transit and light rail improvements within the project area, particularly at San Fernando Street and Delmas Avenue. 		\$1,100,000	Temporary Certificate of Occupancy for the earlier of either 1m gsf Office or 1,400 residential units
Feasibility study and concept design of the Bird Avenue/Interstate-280 bicycle and pedestrian multimodal connection from Diridon Station area to Garner community		\$500,000	Temporary Certificate of Occupancy for the earlier of either 1m gsf Office or 1,400 residential units
Protected bikeway improvement on Bird Avenue between I-280 and West San Carlos Avenue		\$1,860,000	Temporary Certificate of Occupancy for the earlier of either 1m gsf Office or 1,400 residential units
Bird Avenue/Interstate-280 bicycle and pedestrian multimodal connection from Diridon Station area to the Gardener community.		\$4,840,000	Temporary Certificate of Occupancy for 4m gsf Office
Taylor Street and State Route 87 improvements programmed by the City of San Jose and Caltrans.		\$220,000	Temporary Certificate of Occupancy with the last Office building that with completion represents full build out (anticipated to be 7.3m gsf Office)
Goodyear Street and First Street and First Street and Alma Street intersection improvements per the Story- Keyes Complete Streets Corridor and Better Bike Plan 2025.		\$490,000	Temporary Certificate of Occupancy with the last Office building that with completion represents full build out (anticipated to be 7.3m gsf Office)
Multimodal and neighborhood transportation management improvements and transit studies at the discretion of the City		\$3,680,000	50% will be paid at Temporary Certificate of Occupancy for 4m gsf Office, the remaining 50% at Temporary Certificate of Occupancy for the last Office building that with completion represents full build out (anticipated to be 7.3m gsf Office) unless otherwise mutually agreed upon by Developer and City
Footbridge over the Los Gatos Creek north of West San Fernando Street	\$3,000,000		Construction completion in accordance with PIA timing for the improvements serving E1
At-grade signalized-trail crossing at West Santa Clara Street and Diridon Station Area.	\$400,000		Construction completion in accordance with PIA timing for the improvements serving E1
Protected bikeway connection along Auzerais Avenue from Los Gatos Creek Trail to Bird Avenue. Does not include project frontage improvements or rail crossing modifications.	\$800,000		Construction completion in accordance with PIA timing for the improvements serving 4m gsf Office or if later, frontage improvements along H3/H4
Sidewalk extension under Highway 87 at Auzerais Avenue and Delmas Avenue. Improvements include a bulb-out at the north east quadrant.	\$1,110,000		Construction completion in accordance with PIA timing for the improvements coinciding with the last Office building that with completion represents full build out (anticipated to be 7.3m gsf Office)
Bicycle connection and removal of the pork-chop island at the southwest corner at Coleman Avenue and Taylors Street.	\$2,000,000		Construction completion in accordance with PIA timing for the improvements coinciding with the last Office building that with completion represents full build out (anticipated to be 7.3m gsf Office)

Subtotal	\$17,310,000	\$12,690,000	
Total	\$30,000,000		