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Subject: Resolution for Cinnabar
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[External Email]

Please see attached.

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RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CONDITIONALLY VACATING A PORTION OF OTTERSON STREET WITH THE RESERVATION OF PUBLIC EASEMENTS OVER THE VACATED AREA IN CONJUNCTION WITH THE DOWNTOWN WEST MIXED-USE PLAN

WHEREAS, Google (“Google” or “Project Sponsor”) has petitioned the City to vacate certain streets for the Downtown West Mixed-Use Plan (“Downtown West” or “Project”); and

WHEREAS, this Resolution conditionally approving the street vacations is a companion to the following approvals relating to Downtown West: certification of the Downtown West Final Environmental Impact Report, adoption of CEQA Findings, a Mitigation Monitoring and Reporting Program, and Statement of Overriding Considerations (Resolution No. ____); City approval of an override of the Santa Clara County Airport Land Use Commission’s inconsistency determination (Resolution No. ____); General Plan amendments (Resolution No. ____); DSAP amendments (Resolution No. ____); approval of the Development Agreement for the Downtown West Mixed-Use Plan (Ordinance No. ____); approval of a Planned Development Rezoning, including a General Development Plan (Ordinance No. ____); approval of a Planned Development Permit (Resolution No. ____); amendments to Title 20 of the City of San José Municipal Code (Ordinance No. ____); approval of a Vesting Tentative Map (Resolution No. ____); approval of amendments to the boundaries of Historic Landmarks (San José Water Company at 374 West Santa Clara Street and Southern Pacific Depot Historic District) (Resolutions No. ____ and ____); amendment to Historic Preservation Permit (HP16-002) (Resolution No. ____); approval of a Construction Impact Mitigation Plan (Resolution No. ____); and approval of Major Encroachment Permits (Resolution No. ____); and

WHEREAS, the Project’s proposed street network extends the existing street network and proposes improvements to east-west connectors, including West Santa Clara Street,

West San Fernando Street, Park Avenue, West San Carlos Street, West Julian Street, West St. John Street (new street), West Post Street (new street), and Auzerais Avenue, to provide pedestrian and bicycle priority streets to link neighborhoods east and west of the rail corridor to enhance connections to nature, surrounding neighborhoods, and the greater Bay Area region; and

WHEREAS, Council intends to vacate an approximately 1,001 square foot portion of Otterson Street with the reservation of public easements over the entire vacated area for public non-vehicular transportation, pedestrian access, emergency vehicle access and utility purposes (the "Subject Property"), constituting:

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of Otterson Street as shown on that certain Record of Survey filed for record on May 4, 2017, in Book 903 of Maps, page 44, Santa Clara County Records, described as follows:

COMMENCING at the northeasterly corner of Parcel Two as shown on said Record of Survey, being on the southerly line of Otterson Street;

Thence along said southerly line, South 87°53'28" West, 149.97 feet, to the TRUE POINT OF BEGINNING;

Thence continuing along said southerly line, South 87°53'28" West, 50.03 feet;

Thence North 02°30'02" West, 20.00 feet, to the centerline of Otterson Street;

Thence along said centerline, North 87°53'28" East, 50.03 feet;

Thence South 02°30'02" East, 20.00 feet, to the TRUE POINT OF BEGINNING.

Containing 1,001 square feet or 0.02 acres, more or less.

WHEREAS, the Project intends for the Subject Property to be utilized for non-vehicular transportation, emergency vehicle access and pedestrian access purposes to be open to the public; and

WHEREAS, pursuant to the Subdivision Map Act, the Project Sponsor proposes that the City abandon certain public streets other than the Subject Property for which the Project Sponsor or the City holds fee title interest, as set forth in the Vesting Tentative Map (Resolution No.____); and

WHEREAS, the City holds an easement over properties underlying the Subject Property pursuant to which the Subject Property has been historically used as a public street for vehicular, pedestrian, bicycle and other public uses; and

WHEREAS, Part 3 of Division 9 of the Streets and Highways Code of the State of California (the “Code”) authorizes the City Council to vacate a public street in whole or in part, including by terminating the public’s rights to undertake certain uses of a public street pursuant to a previously dedicated street easement, if the City Council determines that it is unnecessary for present or prospective public street use, subject to the satisfaction of conditions specified by the City Council; and

WHEREAS, the Code also authorizes the City Council to reserve and except from a public street vacation, public easements for non-vehicular transportation, pedestrian access, emergency vehicle access, utilities and other purposes if the City Council determines that such uses are in the public interest; and

WHEREAS, on May 10, 2021 notices of the proposed vacations were published and posted along the Subject Property, all in the manner prescribed by the Code; and

WHEREAS, attached to this Resolution as Exhibit “A” and incorporated herein is a map approved by the Director of the Department of Public Works on May 7, 2021, entitled “MAP SHOWING THE PORTION OF OTTERSON STREET TO BE CONDITIONALLY VACATED WITH THE RESERVATION OF PUBLIC EASEMENTS” showing the Subject Property and reserved public easements (“Map”); and

WHEREAS, prior to the public hearing, the Map was filed in the Office of the City Clerk and made available for examination by any persons desiring to do so; and

WHEREAS, attached to this Resolution as Exhibit “B” and incorporated herein is “Public Works’ Summary of the Proposed Vacation” that was submitted to the City Council setting forth the additional facts justifying the conditional vacation of the Subject Property and reservation of the public service easements specified in this Resolution (hereinafter “Summary”); and

WHEREAS, at the public hearing, the City Council heard all persons interested in the proposed vacation and considered all evidence submitted;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The foregoing recitals are incorporated into this Resolution by reference.

SECTION 2. The City Council hereby adopts the Summary and based on the Summary and all other evidence submitted makes the following findings:

- A. The conditional vacation of the Subject Property is necessary for the implementation of the Project as the Subject Property is proposed to be utilized as public property dedicated to non-vehicular transportation, emergency vehicle access, pedestrian access and utility purposes.
- B. As part of the Project, the vacation of the public street easement on the Subject Property and proposed future use as non-vehicular transportation and pedestrian access purposes was submitted to Planning Commission on April 28, 2021, and the Project was determined to be consistent with the San José General Plan.

- C. Development of the Project requires the construction of an extensive street, bicycle, pedestrian, and trail system that is designed to integrate with existing streets in the adjacent neighborhoods and that will provide extensive alternatives for vehicular use and the Subject Property will function as an extension of the non-vehicular transportation and pedestrian system open to public use.
- D. There are public facilities located within the Subject Property.

SECTION 3. The City Council makes the following conclusions based on the above findings:

- A. Upon satisfaction of the conditions set forth in Section 4 below, the Subject Property will no longer be necessary for present or prospective public street purposes and will be necessary for non-vehicular transportation, emergency vehicle access, pedestrian access and utility purposes as set forth in Section 5 of this Resolution.
- B. The proposed vacations are consistent with the General Plan for the reasons set forth in Exhibit B to Resolution No. ____, amending the General Plan as related to the Downtown West Mixed-Use Plan.
- C. In accordance with Streets and Highways Code Sections 892 and 8314, upon satisfaction of the applicable conditions, the Subject Property will be useful as a non-vehicular transportation facility and the public interest, convenience, and necessity require that the City reserve from the vacation of the Subject Property easements for non-vehicular transportation and pedestrian use as described in Section 5 of this Resolution.
- D. The public interest, convenience, and necessity require that the City reserve from the vacation of the Subject Property easements for public utility facilities as described in Section 5 of this Resolution.

SECTION 4. The vacation of the Subject Property is conditional and will not take effect until all of the following conditions have been met:

- A. **Conformance Review Approval.** The Director of PBCE has reviewed and approved a Conformance Review Application for open space (pursuant to the process and standards set forth in the General Development Plan and Conformance Review Implementation Guide) for the area that includes the Subject Property.
- B. **Demonstration of Ownership.** The Project Sponsor shall have demonstrated to the City's satisfaction that neither the Project Sponsor nor the City is the fee title owner of the Subject Property (such demonstration shall be by a sworn statement duly executed by the Project Sponsor, current title report and, at the City's election, a confirmatory site inspection).
- C. **Improvement Agreement.** The Project Sponsor shall have executed an Improvement Agreement and provided bonds as required therein, which agreement guarantees, among other things, that public improvements will be constructed to convert the Subject Property from a public street to a public non-vehicular, emergency vehicle access and pedestrian transportation facility.

SECTION 5.

- A. After the satisfaction of the conditions set forth in Section 4, the public street easement on the Subject Property shall be vacated, reserving and excepting from the vacation on, over, under and through the Subject Property: (1) a public easement for non-vehicular transportation and pedestrian access purposes, including all rights necessary to construct, maintain, operate, modify, enlarge, replace, remove and renew improvements necessary or convenient for such public purposes, which improvements may include but shall not be limited to, street

furniture, hardscaping and landscaping, restrooms and other facilities that serve the public using the easement; and (2) a public easement for utility purposes, including all rights necessary to construct, maintain, operate, modify, enlarge, replace, remove and renew any and all in-place public utility facilities, said public utility easements to be kept open and free from buildings and structures of any kind except irrigation systems and appurtenances thereto, lawful fences and all lawful unsupported roof overhangs; and (3) a public easement for emergency vehicle access purposes.

- B. After receiving written confirmation from both the Director of Public Works and the Office of the City Attorney that the conditions in Section 4 have been satisfied, the City Clerk is hereby directed to record a certified copy of this Resolution, including the exhibits hereto, with the Office of the Recorder for the County of Santa Clara.
- C. From and after the date this Resolution is recorded, the Subject Property will no longer constitute a public street and will constitute public easements for non-vehicular transportation, emergency vehicle access, pedestrian access and utility purposes as specified in this Resolution.

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ADOPTED this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO

Mayor

ATTEST:

TONI J. TABER, CMC

City Clerk