
REGULAR MEETING AGENDA

April 14, 2021

6:00-9:00 pm

Zoom webinar

Link: <https://sanjoseca.zoom.us/j/99616313504>
Webinar ID: 996 1631 3504
Phone numbers: 1-408-638-0968, 1-213-338-8477, 1-888-475-4499 (Toll Free), 1- 877-853-5257 (Toll Free), International numbers available:
<https://sanjoseca.zoom.us/u/abAJOSQ4xO>

Meeting Purpose

- Provide a brief update on the Diridon Station Area engagement process.
- Review and discuss the staff-recommended Draft Development Agreement for the Downtown West project.

Please visit here to view the meeting: <https://www.sanjoseca.gov/your-government/watch-a-meeting>. Refer to the [SAAG webpage](#) to view materials sent to the SAAG prior to this meeting. Visit www.diridonsj.org for additional background information on the projects affecting the Diridon Station Area.

Spanish and Vietnamese interpretation will be available. Please view these pages for background information and instructions on how to use Zoom for City meetings:

Spanish: <https://www.diridonsj.org/esp>
Vietnamese: <https://www.diridonsj.org/viet>

Agenda

- I. Welcome and Introductions**
- II. Meeting Minutes for SAAG Meeting on November 9, 2020**

Recommendation: Approve the [meeting minutes from the November 9, 2020 meeting](#).

III. General Process and Community Engagement Update

City staff will provide a brief overview of the Fall 2020 outreach and engagement round, key milestones that have occurred since the last SAAG meeting, and upcoming community engagement opportunities.

IV. Downtown West Development Agreement

City staff will provide an overview of the staff-recommended Draft Development Agreement for Google's proposed project (Downtown West Mixed-use Plan). This includes the following information:

- Background context on the project, engagement process, the Memorandum of Understanding (MOU) between the City and Google, and City Council direction.
- Summaries of what the Development Agreement says about: affordable housing; economic opportunity; parks and open space; transportation; environmental sustainability; and key business terms
- Overview of the Community Benefits Plan, including the overall value, timing, and relationship to other project benefits.
- Details on the Community Stabilization and Opportunity Pathways Fund, including its intended uses and the structure for its administration.

Following the presentation, each SAAG member will be given an opportunity to provide comments and questions in a round robin. We will request for SAAG members to limit these initial remarks to approximately two minutes. Additional discussion may follow once all members have had an opportunity to speak.

Staff will compile the feedback and share it with the Planning Commission and City Council for their consideration.

To prepare for the discussion, please review the documents available at:
<http://www.sanjoseca.gov/GoogleProject> and www.diridonsj.org/downtownwestda.

V. Public Comment

Members of the Public are invited to speak on any item that is within the subject matter jurisdiction of the Advisory Group. For this meeting, it is anticipated that meeting attendees will be given up to two minutes to speak on any discussion item and/or during open forum; the time limit is in the discretion of the Chair of the meeting (City staff and its consultants) and may be changed during the meeting, depending on the number of speaker requests and time remaining for the meeting. Speakers using a translator will be given twice the time allotted to ensure non-English speakers receive the same opportunity to directly address the Advisory Group.

VI. Adjournment

*** COVID 19 NOTICE ***

Consistent with the California Governor's Executive Order No. N-29-20, Resolution No. 79485 from the City of San José and the Santa Clara County Health Officer's March 16, 2020 Shelter in Place Order, the SAAG Meeting will not be physically open to the public and the SAAG Members will teleconference from remote locations.

Members of the public may view, participate, and listen to the meeting by following the instructions listed on the top of the first page of this agenda.

Electronic device instructions:

For participants who would like to join electronically from a PC, Mac, Ipad, iPhone or Android device, please click this URL: <https://sanjoseca.zoom.us/j/99616313504>. Please ensure your device has audio input and output capabilities. During the session, if you would like to comment, please use the 'raise hand' feature in Zoom conference call.

1. Use a current, up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers including Internet Explorer. Mute all other audio before speaking. Using multiple devices can cause an audio feedback.
2. Enter an email address and name. The name will be visible online and will be used to notify you that it is your turn to speak.
3. When the Chair calls for the item on which you wish to speak, click on "raise hand." Speakers will be notified shortly before they are called to speak.
4. When called, please limit your remarks to the time limit allotted.

Telephone device instructions:

For participants who would like to join by phone, please dial +1-408-638-0968 or 888-475-4499 (Toll Free) and when prompted, enter meeting ID: 996 1631 3504. Click *9 to raise a hand to speak.

Public Comments prior to meeting:

If you would like to submit your comments prior to or during the meeting, please e-mail them to lori.severino@sanjoseca.gov. Comments received will be included as a part of the meeting record but will not be read aloud during the meeting.

The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.

You may speak to the SAAG about any discussion item that is on the agenda, and you may also speak during Public Comments on items that are not on the agenda and are within the subject matter jurisdiction of the SAAG. Please be advised that, by law, the SAAG is unable to discuss or take action on issues presented during Public Comments. Pursuant to Government Code Section 54954.2, no matter shall be acted upon by the SAAG unless listed on the agenda, which has been posted not less than 72 hours prior to meeting.

Agendas, Staff Reports, and some associated documents for the SAAG items may be viewed on the Internet at www.diridonsj.org/saag.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Manager, 200 East Santa Clara Street, 17th Floor, San José, California 95113, at the same time that the public records are distributed or made available to the legislative body. Any draft resolutions or other items posted on the Internet site or distributed in advance of the commission meeting may not be the final documents approved by the commission. Contact the Office of the City Manager for the final document. On occasion the SAAG may consider agenda items out of order.

The SAAG meets occasionally at 6:00 or 6:30 p.m., with special meetings as necessary. If you have any questions, please direct them to the SAAG staff. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

To request an accommodation or alternative format under the Americans with Disabilities Act for City-sponsored meetings, events or printed materials, please call (408) 294-9337 (TTY) as soon as possible, but at least three business days before the meeting.

Please direct correspondence and questions to:

City of San José
Attn: Lori Severino
200 East Santa Clara Street
San José, California 95113
Email: lori.severino@sanjoseca.gov
Tel: 408-535-3537

COMMUNITY BENEFITS FUND

Stakeholder Report Back

February 12, 2021, 2:00 pm - 3:30 pm

AGENDA

1. Introduction - *Kim Walesh, City of San José* [2:00 pm - 2:10 pm]
2. Stakeholder Feedback - *Estolano Advisors* [2:10 pm - 2:30 pm]
 - a. Interviews to Date and Case Studies
 - b. Fund Priorities
 - c. Fund Structure
 - d. Fund Governance
 - e. Community Engagement
 - f. Fund Leverage
3. Potential Fund Structure - *Estolano Advisors* [2:30 pm - 2:50 pm]
4. Discussion - *Estolano Advisors* [2:50 pm - 3:20 pm]
5. Next Steps - *Kim Walesh, City of San José* [3:20 - 3:30 pm]

INTRODUCTION

EA was asked to support the City of San José and Google in exploring the pros and cons of various funds, with an eye to **approaches for investment, governance, accountability processes, and fund operations.**

Key activities in late December and January included: **Interviews with local stakeholders;** and **Research and interviews on funds** throughout the country.

STAKEHOLDER FEEDBACK

CASE STUDIES

Fund	Keyword(s)	Fund Partners (administrator in bold)
City of Cambridge Community Benefits Fund	Community Engagement	City Manager / Advisory Committee
San Francisco SoMa Fund	Community Stabilization	Mayor's Office of Housing and Community Development (MOHCD) / the Board of Supervisors/ Advisory Committee
Seattle-King Workforce Funders Collaborative	Workforce Development/ Public-private Partnership	Seattle-King County Government/ Workforce Development Council (Nonprofit Organization)
Portland Clean Energy Community Benefits Fund (PCEF)	Workforce Development/ Social Justice/ Climate Resilience / Community Engagement	Grant Committee/ Mayor/ Planning and Sustainability Department
Evergreen Impact Housing Fund (EIHf)	Affordable housing/ long-term, low-interest loans/ Public-private partnership	Washington State Housing Finance Commission/ Seattle Foundation
<i>Other examples</i>		
Funders Together to End Homelessness San Diego	Homeless Prevention/Services	Catalyst of San Diego & Imperial Counties
David and Lucile Packard Foundation, J.B. and M.K. Pritzker Family Foundation Early Childhood Development Collaborative	Early childhood education/Pediatric initiatives	A collective of philanthropic funders with support from the Bridgespan Group (Nonprofit)
San José Digital Inclusion Fund	Digital Access + Literacy	City of San José

FUND PRIORITIES

FUND PRIORITIES: COMMUNITY STABILIZATION

Focus Area	Examples
Affordable housing preservation	Acquisition (and rehabilitation as applicable) of existing buildings occupied or unoccupied that are market rate, naturally occurring affordable housing, or have expiring affordability covenants and applying new, long term affordability restrictions to stabilize existing housing stock.
Homelessness and displacement prevention	Anti-displacement and rapid re-housing strategies such as short term rental subsidies, employment counseling, eviction defense, social services, tenant advocacy etc. -- intervention is tailored to need of the individual with unstable housing, to prevent them from falling into homelessness.
Homeless services	Homeless services outreach, temporary shelters, navigation centers, mental health services, addiction support services, etc.
Housing innovation research	Support for R&D and pilot programs for housing innovations like land trust models, co-op models, co-living models, rent to own models, community ownership models. Innovations can also include modular housing and other construction technologies, new financial tools, and other areas that would reduce time/cost of affordable housing production, preservation and protection.
Small business stabilization	Displacement prevention/mitigation for small, local businesses

FUND PRIORITIES: OPPORTUNITY PATHWAYS

Focus Area	Examples
Early childhood education	Support affordable, accessible, quality early childhood education and child care for low-income households.
Career exploration (middle + HS)	Support educational opportunities for middle and high school students from local schools, focusing on San Jose youth from low-income families and high-risk neighborhoods. Support job shadowing and internships to develop foundational skills and remove barriers to postsecondary education and employment.
College / Post secondary scholarships	Provide funds for college and post secondary scholarships for students from low-income families
Adult upskilling	Support job training and career pathways, including emphasis on (i) construction trades and (ii) IT-enabled jobs not requiring a college degree, (iii) other good paying jobs.
Small business and entrepreneurship	Support careers for local residents in small business and entrepreneurship, such as incubation/accelerator programs and support for creative businesses and artists

Do the stated **fund priorities** meet community needs?

FUND PRIORITIES

- I. **Most interviewees agreed the fund priorities reflect the need in San José**
 - A. Express priorities in stronger language.
 - 1. Not just a job, but a family supporting job
 - 2. Not financial literacy, but asset building
 - B. Focus on a subset of priorities to make a deeper impact
 - C. Add displacement prevention to fund priority list.
 - D. Fund priorities must be viewed through a racial equity lens.

FUND PRIORITIES

II. Other comments on fund priorities:

- A. Need for funding for housing insecure students
- B. Focus on small businesses, not innovation.
- C. Include digital equity as a fund priority
- D. Engage school districts to ensure alignment
- E. Consider displacement that may occur outside of the impact area as a result of this development
- F. Fund projects/programs outside of immediate impact area - East San Jose

FUND STRUCTURE

One fund? Or **two**?

FUND STRUCTURE

I. One fund

- A. Local stakeholders overwhelmingly agreed on the need for one fund.
- B. Community stabilization and economic mobility are highly interconnected and should be funded, tracked, and evaluated concurrently.
- C. Easier to track the disbursement of money if they are under one fund.

FUND STRUCTURE

II. One fund with two program areas

- A. Stakeholders with experience managing funds generally agreed on the need for discreet program areas
 - 1. For example, funds for **affordable housing preservation** and **upskilling** may have different grantees, donor bases, grant periods and reporting requirements
- B. Separating the fund into program areas can help attract donors that may be interested in one category but not the others

What is the role of the **City of San Jose** over the life of the fund? Of **community**? Of **Google**?

ROLE OF . . . THE CITY

- II. **Stakeholders agreed the City - as initial fund recipient - is crucial in establishing the integrity of the fund** (*paraphrased quotes below*)
 - A. Most local stakeholders felt someone else should manage the fund.
 - B. The City may have a role in the ongoing oversight of the fund, but day-to-day operations should be handled by another party.

ROLE OF . . . COMMUNITY

II. Stakeholders broadly agreed community engagement was crucial

- A. Community members must be meaningfully involved in order for this fund to be viewed as credible.
- B. Fund priorities must be informed by lived experience in the affected areas.
- C. Support community members - through stipends or capacity building - to ensure they can fully engage.

IAP2's SPECTRUM OF PUBLIC PARTICIPATION

	INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives and/or solutions.	To obtain public feedback on analysis, alternatives and/or decision.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision-making in the hands of the public.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

Source: International Association for Public Participation (IAP2)

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Source: International Association for Public Participation (IAP2)

ROLE OF . . . GOOGLE

II. **Feedback on the role of Google varied...** (*paraphrased quotes below*)

- A. Google should contribute to this fund only - and leave management, governance to others.
- B. The Google platform (its people, products, etc.) should be leveraged to help the region solve its most pressing problems.
- C. Google can be true partner in the community that commits to addressing expressed community needs, rather than an extension of their own agenda.
- D. Limit the perception of this being the “Google Fund.”
- E. This fund can serve as the “gold standard” for tech company / City collaboration
- F. Should have the capacity to advise, but not the capacity to decide.

Should the City serve as the **fund manager**?
A third party? Why or why not?

Most stakeholders felt that the City **should not** manage this fund

FUND MANAGER

I. City of San Jose : **PROS**

- A. City possesses the administrative capacity and experience to disburse funds and manage grants
- B. City has track record of deploying funds in collaboration with local philanthropic organizations
- C. Public sector has predictable means of public involvement (e.g. City Council meetings) should stakeholders need to surface questions/concerns about the fund(s)
- D. Centralized analytics that can help track performance of the fund over time and in relation to other citywide trends, policies, investments
- E. Council-approved strategies in place: Anti-Displacement, Workforce Development, Education and Digital Literacy that can be implemented through the fund

FUND MANAGER

I. City of San Jose : **CONS**

- A. Public sector procurement processes may hinder the flexibility and adaptability of the fund(s)
- B. Perception that City has fallen short in including community voice in planning processes and decision making
- C. Concern over political influence over the fund priorities and distributions
- D. Concern around public noticing requirements which may slow down the process
- E. Perception that the City may lack relationships with investment community (e.g. potential private, philanthropic donors to the fund)

FUND MANAGER

- I. **A third party (local foundation, experienced non-profit): PROS**
 - A. Potential for speedier granting process
 - B. Independence from the City could be more attractive to other funders
 - C. Separates fund from political influences
 - D. Stronger fundraising experience
 - E. Stronger relationships with private/philanthropic investors

FUND MANAGER

- I. **A third party (local foundation, experienced non-profit): CONS**
 - A. Potentially limited, less predictable channels for community involvement
 - B. Potential lack of rigor in grantee performance management
 - C. Concern over potentially high administrative costs/overhead

FUND GOVERNANCE

What role should a **governance body** play in the management of the fund?

FUND GOVERNANCE

- I. **Stakeholders generally agreed on the need for a governance or advisory body**
 - A. Works with fund staff to review applications and determine readiness
 - B. Provides subject matter expertise (both technical and lived experience)
 - C. Oversees performance of the fund over time
 - D. Makes recommendations on grants to whoever ultimately has decision making authority

COMMUNITY ENGAGEMENT

How can/should the fund **engage with community?**

COMMUNITY ENGAGEMENT

I. Community must have a substantial decision making role

- A. Must be a part of the governing/advisory group
- B. Must be compensated for their participation
- C. Fund administrators must also support community members by providing capacity building and training opportunities to ensure they are able to participate at the same level as other members
- D. Community members must also play a role in reporting back to their networks

COMMUNITY ENGAGEMENT

- I. Fund administrators can also play a role in ensuring engagement**
 - A. Consistently identifying barriers that may impede community engagement
 - B. Any annual reporting, evaluation, must be publicly available for review
- II. Case Study: Portland Clean Energy Community Benefits Fund**
 - A. The City conducted one-on-one engagement with community to develop guiding principles and the scoring criteria
 - B. Next steps in community engagement
 - 1. Conversations with community residents - proposals that directly address resident needs get additional preference
 - 2. Neighborhood-scale outreach activities
 - 3. Further engagement with non-profit organizations

FUND LEVERAGE

How can the fund ensure it attracts **net new private/philanthropic dollars**?

FUND LEVERAGE

- I. **To attract net new private/philanthropic dollars, the fund must**
 - A. Avoid the perception of being “the Google Fund” or “Diridon Fund”
 - B. Must be perceived as relatively independent from the City or not too closely tied to any one tech company
 - C. Must have a strong clear, vision, mission, funding priorities, metrics for success
 - D. Have more than one major donor at the onset
 - E. Must be aligned with, or fill a different need than the other local funds

CASE STUDY

I. Evergreen Impact Housing Fund

- A. The Seattle Foundation manages the fund and is responsible for fundraising
- B. Investments are divided into annual funding rounds:
 - 1. Round 1 (Credit Unions)
 - 2. Round 2 (Microsoft)
- C. Multiple funding rounds allow individual investors to receive attribution and fund unique projects within the funding priorities
 - 1. Also allows the fund manager to adjust the terms of each investment, as needed

CASE STUDY

I. **Seattle King County Workforce Funders Collaborative**

- A. The collaborative consists of the largest philanthropic funders in Seattle
 - 1. Representatives come together to align their funding strategies
 - 2. Yet, members mainly fund the projects that align with their individual priorities
- B. It is clear that there is value in bringing together big funders - many members continue to join collaborative meetings to learn from one another
- C. More work to be done to achieve the goal of pooling philanthropic resources among the organizations

POTENTIAL FUND STRUCTURE

What are the qualities of a **good fund manager**?

FUND MANAGER

I. Ideal Qualities

- A. **Commitment:** To the mission, vision, and outcomes of the fund(s)
- B. **Experience:** 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

CASE STUDY

I. **Evergreen Impact Housing Fund**

- A. The Seattle Foundation developed and wholly owns the Seattle Foundation Impact Funds Manager LLC, which holds fiduciary responsibility for the Fund
- B. The Seattle Foundation is well-suited to host the Fund for three reasons:
 - 1. Strong investor relationships and fundraising experience
 - 2. Neutral third-party with strong administrative accountability to community members
 - 3. Committed to the issues in the community it serves

FUND STRUCTURE

III. **Recommendation: One fund, One operator, two program areas**

- A. Identify an operator with staff experienced in administering both types of funds.
- B. Funding types should be kept separate (e.g. one fund, multiple funding categories)
- C. Tracking, reporting, evaluation of these program areas must be coordinated and reported concurrently - it must be easy for stakeholders to track the fund's performance
- D. Clearly defined and delineated funding categories may attract additional donors/investors into the fund - they target where their \$ goes

CASE STUDY

- I. **San Francisco South of Market (SoMa) Community Stabilization Fund**
 - A. One fund, but two grant types:
 - 1. Capital grants
 - 2. Service grants
 - B. This two-part focus allows the fund to address the varying timelines, requirements, associated with different types of projects.

What role should a governance body play in the management of the fund?

FUND GOVERNANCE

I. **Recommendation:** Advisory Group Composition

- A. Advisory Group Composition
 1. A third individuals with lived experience (residents of impact areas);
 2. A third technical expertise (e.g. affordable housing finance, grantmaking, workforce development);
 3. A third members representing the City and major funders
 4. For example: 15 board members (5, 5, 5)
- B. Members must commit to the mission, vision, goals of the fund
- C. Ability to make subcommittees
- D. Group members or their organizations would not be eligible for grant funds
- E. Full group meetings should be publicly accessible
- F. Fund manager should offer support and training for residents on the board

CASE STUDY

I. City of Cambridge Community Benefits Fund

- A. The Fund is managed by an Advisory Committee comprised of the following (per the City website):
 - 1. 3 City staff (appointed by City Manager)
 - 2. 3 local nonprofit representatives
 - 3. 1 Cambridge Community Foundation representative
 - 4. 1 business/property development representative
 - 5. 1 University representative
 - 6. 4 local residents

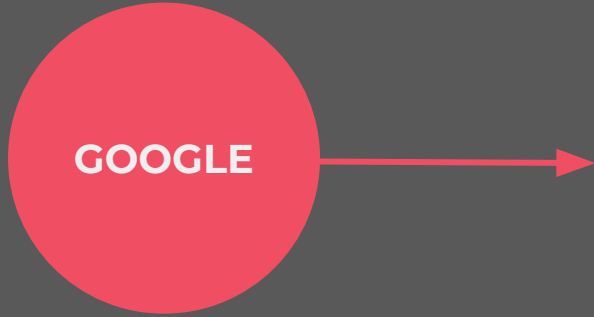
CASE STUDY

I. **Portland Clean Energy Community Benefits Fund**

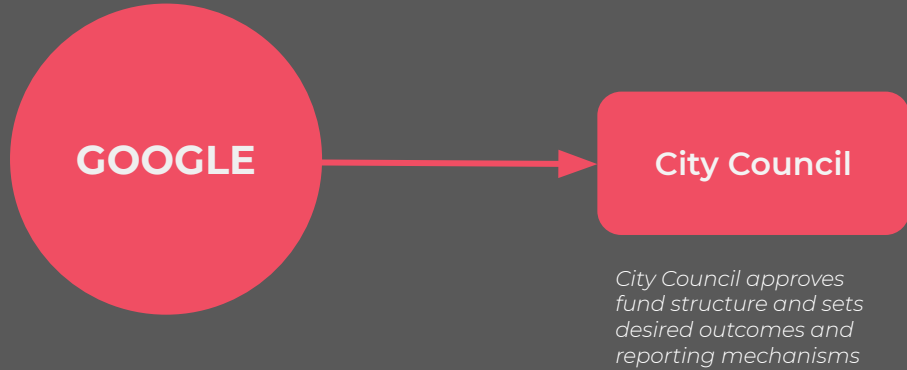
- A. The Fund's Grant Committee consists of nine (9) Portland residents
- B. The Committee structure requires a diverse membership. More specifically, the Committee must:
 - 1. Reflect the racial, ethnic, and economic diversity of Portland
 - 2. Include at least 2 residents living east of 82nd Avenue
 - 3. Have members with experience in the Fund's project areas
- C. The Committee makes funding recommendations to the Mayor and City Council
- D. Following initial nominations from the City Council, the Committee is responsible for appointing new members

Fund Structure (Concept)

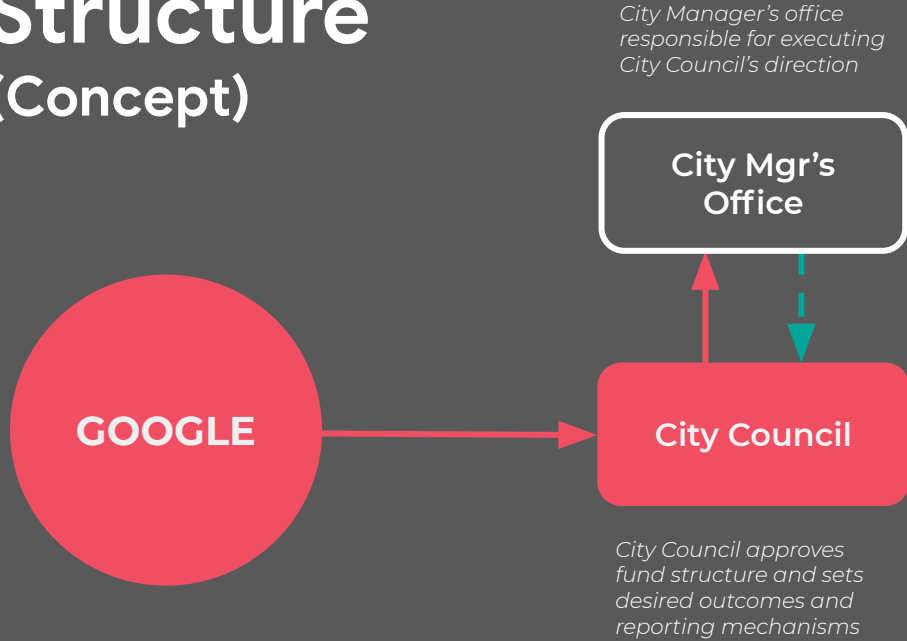
Fund Structure (Concept)



Fund Structure (Concept)

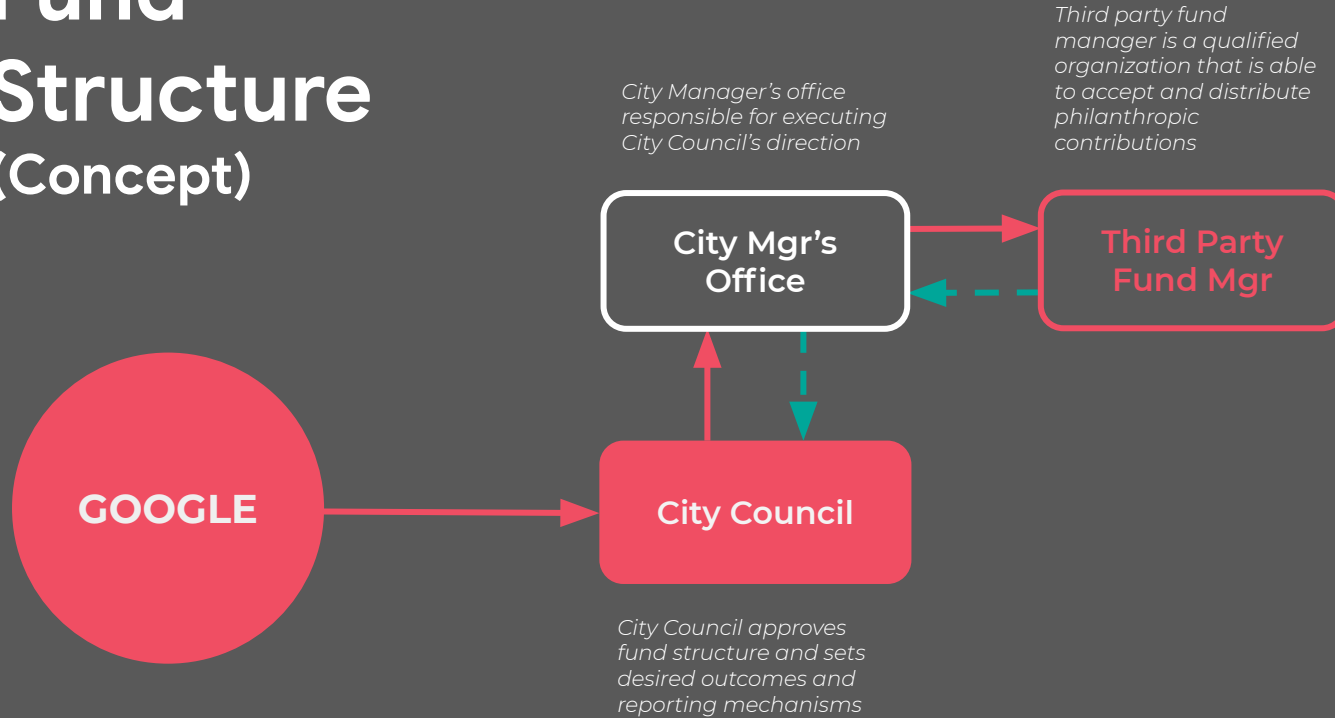


Fund Structure (Concept)



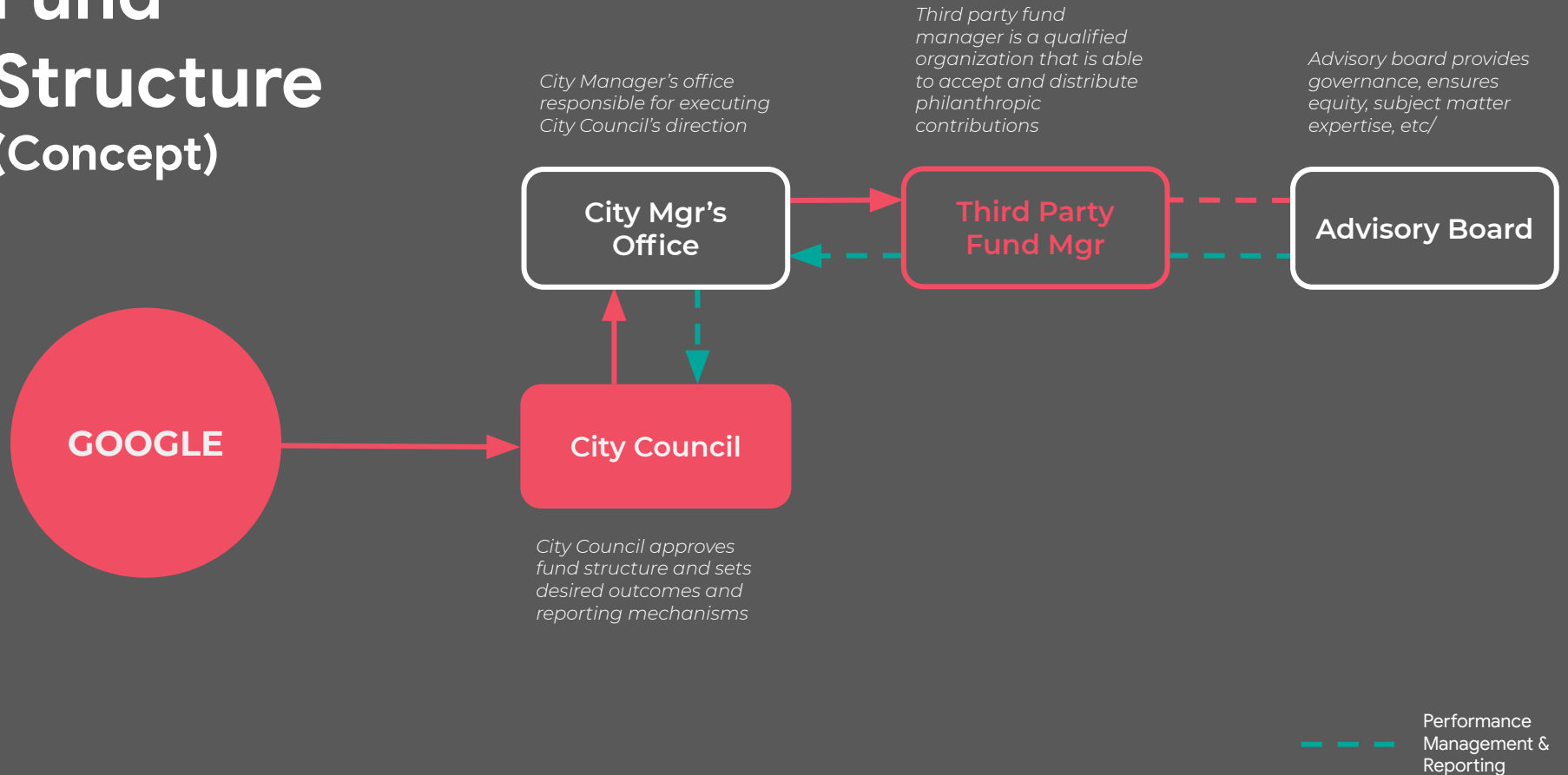
--- Performance Management & Reporting

Fund Structure (Concept)

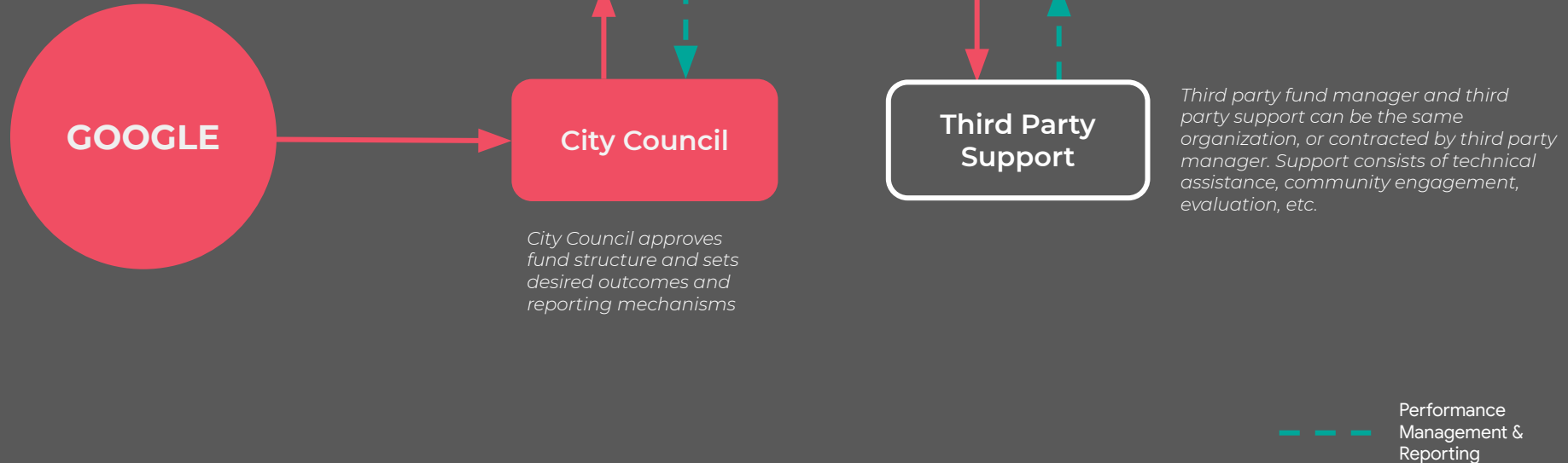


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Management &
Reporting

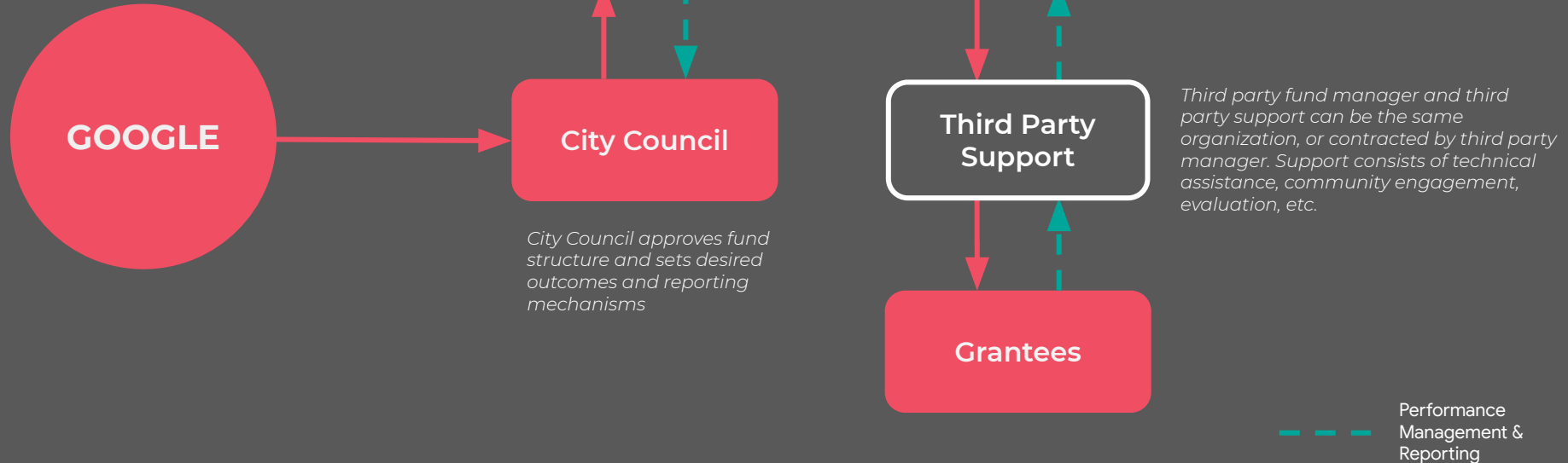
Fund Structure (Concept)



Fund Structure (Concept)



Fund Structure (Concept)



Recommended Initial Activities for Fund Manager

I. These activities below are crucial to the success of the Fund:

- A. Fund Manager Initial Activities (with Advisory Board)
 - 1. Develop a strategic plan
 - 2. Needs assessment and metrics development
 - 3. Expenditure plan
 - a) Identify the right pilot grant period (2-3 years?)
 - b) Encourage partnerships and joint applications
 - c) Assess outcomes after first grant cycle and adjust if necessary
 - 4. Technical Assistance (for applicants)
 - 5. Evaluation Process
 - a) How well did we do with 1-4 (above)?

CASE STUDY

- I. **Seattle King County Workforce Funders Collaborative**
 - A. **Regional Strategic Plan:** The Plan helps align WDC's approach and vision with other efforts in the region
- II. **City of Cambridge Community Benefits Fund**
 - A. **Needs Assessment:** Data findings helped inform the Fund's priorities.

CASE STUDY

I. Portland Clean Energy Community Benefits Fund

- A. The City of Portland provides “Application Support Grants” (of up to \$5k) to support smaller nonprofits in submitting grant applications
- B. Types of supports include the following
 - 1. Training and workshop participation
 - 2. Community Engagement
 - 3. Grant Writing
 - 4. Organizational Technology (e.g. necessary software or hardware)

DISCUSSION

Role of the City: What is the appropriate role of the Council?

Role of the City: How hands off should the Council be?

Role of Google: What is the appropriate role of Google?

Fund Manager: How (if at all) should the Fund Manager be accountable to the City?

Community Engagement: How do we ensure the fund is continuously informed by community priorities?

Fund Leverage: How can the fund best position itself to attract net new private/philanthropic dollars?

NEXT STEPS

Recommended Phased Planning for Fund

1. Concept Plan
 - a. Council approve fund concept, including broad outline of the fund structure and high level direction for fund priorities (e.g. one fund, two program areas, third-party manager, and Advisory Board)
2. Implementation Plan
 - a. Develop, then Council approves, an Implementation Plan for the fund (e.g. Approve details of the governance structure, responsibilities and relationships, solicitation process for fund manager, specific Advisory Board composition and appointment process, address legal issues such as conflict of interest, and Council delegation of authority to third party to make funding decisions, determine required City staff support, and community engagement guidelines)
3. Start Up: Appoint Advisory Group members, Select Fund Manager

Next Steps

1. Draft language describing Fund concept to be included in recommended Development Agreement/Community Benefits Plan (feedback at March 15 SAAG meeting, March 20 community meeting)
2. Council directs Administration to initiate implementation of the Fund, including detailed Implementation Plan for Council approval and solicitation for Fund Manager (with Downtown West approval)

COMMUNITY BENEFITS FUND

RECORDING REQUESTED BY
THE CITY COUNCIL
OF THE CITY OF SAN JOSE

(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

AND WHEN RECORDED MAIL TO:

Johnny V. Phan
Chief Deputy City Attorney
Office of the City Attorney
City of San José
200 East Santa Clara Street
San José, CA 95113-1905

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSE
AND GOOGLE LLC**

**RELATIVE TO THE DEVELOPMENT OF PROPERTY LOCATED IN THE
DIRIDON STATION AREA PLAN**

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- K Downtown West Parking Requirements
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- M List of Applicable City Impact Fees
- N Form of Notice of Completion and Termination
- O Form of Assignment and Assumption Agreement
- P Form of Notice Regarding Status of Satisfaction of Ten or Twenty Year Development Obligation
- Q Copy of Municipal Code Chapter 18.02, and Sections ____ and ____ (as in effect on the Effective Date)

SCHEDULES

- A Form of Reimbursement Agreement

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSE
AND GOOGLE LLC**

THIS DEVELOPMENT AGREEMENT, dated for reference purposes only as of this ____ day of _____, 2021 (the "Reference Date"), is by and between GOOGLE LLC, a Delaware limited liability company (herein, "Google" or "Developer"), and the CITY OF SAN JOSE, a municipal corporation (herein, "City"), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code (herein, "Development Agreement Statute") and pursuant to the City's powers as a charter city and Chapter 18.02 of the San José Municipal Code (herein, "Development Agreement Ordinance"). The City and Developer are also sometimes referred to individually as a "Party" and together as the "Parties". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

A. The City Council of the City adopted the *Envision San José 2040 General Plan* ("General Plan") in 2011 setting forth a vision and comprehensive road map to guide the City's continued growth through the year 2040.

B. The General Plan includes land use policies to shape the transformation of strategically identified "Growth Areas" into higher density, mixed-use, urban districts that can accommodate employment and housing growth and reduce environmental impacts of that growth by promoting transit use and walkability. The Diridon Station Area is located generally within the Downtown Growth Area in the General Plan.

C. The City Council of the City adopted the Diridon Station Area Plan (DSAP) in 2014 to establish a land use plan and policy framework that will guide future development and

redevelopment toward land uses that support transit ridership and economic development, and create a world-class urban destination, among many other objectives.

D. In December 2018, Developer and City entered into a non-binding Memorandum of Understanding (herein, the "MOU") with the intention to "collaborate on development in and around the Diridon Station Area to aid implementation of the planned expansion of San José's Downtown, the Diridon Station Area Plan, and the General Plan." The MOU set forth a vision for new development and optimized redevelopment potential to transform the current area into a vibrant, fully functional transit-oriented neighborhood that embodies a commitment to place-making, social equity, economic development, environmental sustainability, and financially viable private development.

E. The shared goals established in the MOU and advanced by the Project, as described in more detail below, include: balancing the objectives of the City, Developer, and the community; capitalizing on transit synergy; optimizing density and the mix of land uses; preserving existing housing and creating new housing; creating broad job opportunities; and pursuing equitable development. Goals also address high-quality, human-scaled design; improvements to the public realm; enhanced sustainability, environmental stewardship, and innovation; improvements to existing transit access and the minimization of parking; timely implementation; assurance that private developers will fund a fair share of amenities and other improvements and pay prevailing wages to construction workers in office/research and development buildings; and public involvement in discussions regarding public benefits.

F. The MOU states that, should a project be approved, the Developer would enter into a development agreement with the City to "memorialize community benefits and secure vested development rights aligned with any proposed development masterplan." The MOU contemplates

a development agreement that provides, among other things, “certainty with regard to the rules and regulations that will govern the future development in addition to other terms, a time frame for delivery of development projects, a description of the specific project types and densities, and a schedule of payment or delivery and community benefits.” The MOU also recognizes that development agreement negotiations will take into account the financial viability of Developer’s proposed project and the development-related priorities of the City and community.

G. In October 2019, Google submitted an application to the City for the Downtown West Mixed-Use Plan (herein, the "Project"). The Project site is located in the General Plan Downtown Growth Area and mostly within the boundaries of the DSAP, an area of the City that is anchored by public transportation. Additionally, the Project re-envision a significant portion of the DSAP as a mixed-use area that integrates housing and increases open space, rather than solely maximizing office development.

H. The Project site is described in Exhibit A (and its approximate boundaries, as set forth in the Downtown West Planned Development Permit, are depicted in Exhibit B) and is generally bounded by Lenzen Avenue and the Union Pacific Railroad (UPRR) tracks to the north; North Montgomery Street, Los Gatos Creek, the Guadalupe River, Barack Obama Boulevard (formerly South Autumn Street), and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain rail tracks to the west (herein the "Project Site" or "site"). The site is approximately 78 acres in size, approximately one mile long from north to south and generally less than 800 feet wide from east to west, although the site reaches nearly 1,500 feet from east to west at its widest, just south of West Santa Clara Street. Developer and Valley Transportation Authority (VTA) have entered into a Public-Private Partnership Agreement ("P3 Agreement"), dated October 2, 2020, in which VTA has agreed to transfer its fee interest in approximately 6,871

square feet of land identified as APN 259-38-014 and 259-38-133 pursuant to the terms of the P3 Agreement (the “VTA Parcels”). The VTA Parcels are located within the boundaries of the Project Site but are not currently included as Development Parcels for purposes of this Development Agreement. Certain other parcels owned by VTA (APNs 261-34-002, -003, -004, -005, -006, -011, and -023) are within the project site analyzed in the environmental impact report (EIR) for the project, and are included in the Project's Planned Development Zoning and General Development Plan, but are not within the Project Site, and are not Development Parcels, for purposes of this Development Agreement. Certain property owned by the Pacific Gas and Electric Company (a portion of APN 261-35-002), certain property owned by the Peninsula Corridor Joint Powers Board (APN 261-34-020), or certain other property owned by VTA (APNs 259-38-139, 259-38-114, 259-38-134) are included within the boundaries of the Project Site and in the Downtown West Planned Development Zoning and General Development Plan, the Downtown West Design Standards and Guidelines, and the Vesting Tentative Map for the Project, but are not currently Development Parcels for the purposes of this Development Agreement.

I. The Project consists of the phased demolition of most of the existing buildings and phased development of new buildings in the Project Site. The Project includes development of the following land uses: a maximum of 7.3 million gross square feet (gsf) of commercial office space; a maximum of 5,900 residential units; a maximum of 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space); a maximum of 300 hotel rooms; a maximum of 800 limited-term corporate accommodations that would accommodate Google employees for up to 60 days; a maximum of 100,000 gsf of event and conference space; up to 4,800 publicly accessible commercial parking spaces and up to 2,360 unbundled parking

spaces for residential use; a "District Systems" approach to delivery of on-site utilities, including designated infrastructure zones with up to two on-site centralized utility plants totaling up to 130,000 gsf; one or more on-site logistics centers to serve the commercial on-site uses that would occupy a total of about 100,000 gsf; a total of approximately 15 acres of parks, plazas and open space, including areas for outdoor seating and commercial activity (such as retail, cafes, and restaurants), green spaces, landscaping, mid-block passages, riparian setbacks, riparian corridors and trails; and various improvements to the public realm to improve transit access and pedestrian and bicycle circulation and facilitate connectivity, both within the site and to and from surrounding neighborhoods.

J. The Project would provide upwards of eight hundred ninety million dollars (\$890,000,000) in infrastructure investments that include new and improved streets, utilities, open spaces, local transportation improvements, site development, and more. This amount does not include certain discretionary infrastructure-related costs for Project Features that Google is incurring in excess of this amount, such as the costs of enhanced public realm finishes and innovative District Systems.

K. On December 30, 2019, Governor Gavin Newsom certified the Project under the Jobs and Economic Improvement through Environmental Leadership Act of 2011 (Assembly Bill [AB] 900, as amended by Senate Bill 734, Senate Bill 7, adopted _____, 2021), and AB 246). As an environmental leadership development project, the Project must: (1) result in a minimum investment of one hundred million dollars (\$100,000,000) in California upon completion of construction; (2) create high-wage, highly skilled jobs that provide construction jobs and permanent jobs for Californians, and help reduce unemployment; (3) not result in any net additional greenhouse gas (GHG) emissions; (4) comply with state requirements for commercial

and organic waste recycling; and (5) have a binding commitment with the City, as set forth in the conditions of approval for the Downtown West Planned Development Permit and other Approvals, committing to implement and monitor mitigation measures required to comply with AB 900, as amended.

L. The Project requires an amendment to the General Plan and DSAP; Planned Development Rezoning, including a General Development Plan; a Planned Development Permit, including adoption of the Downtown West Design Standards and Guidelines, Downtown West Improvement Standards, and Conceptual Infrastructure Plan Sheets; Vesting Tentative Map(s)/Tentative Map(s)/Final Map(s); Major Encroachment Permit(s); vacations of portions of existing City streets; and related entitlements from the City, including, but not limited, to this Development Agreement, and permits related to tree removal, demolition, grading, building, and historic preservation (collectively, the "Approvals"). The full list of Approvals is provided in Exhibit L hereto.

M. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Statute, which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted the Development Agreement Ordinance establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Development Agreement Ordinance.

N. In addition to the significant housing, jobs, urban revitalization, and economic benefits to the City that will arise from development of the Project, the City and Developer have agreed, as more specifically set forth in this Agreement or in the land use controls applicable to the Project, that the Project will provide additional benefits to the public that could not be otherwise obtained through application of existing City ordinances, regulations, and policies. Major additional benefits to the City from the Project are set forth in Exhibits D, E, G, H, and I hereto, and include: a combination of mechanisms, such as land dedication, moderate income inclusionary housing units, development fees, and other funding sources for affordable housing production and preservation, all of which will contribute significantly to the goal of achieving twenty-five percent (25%) affordable housing overall within the boundaries of the DSAP; development of approximately fifteen (15) acres of new open space, including: (i) approximately ten and two tenths (10.2) acres of privately-owned publicly accessible parks – roughly seven (7) acres of which will be subject to a recorded restrictive covenant, – and (ii) approximately four and eight tenths (4.8) acres of improved parks to be dedicated to the City in satisfaction of the Project's Parkland Obligation for development of 4,000 residential units; new bike and pedestrian infrastructure and enhanced access to public transit, as part of the Project's substantial investment (estimated to be approximately \$890,000,000 in 2021 dollars) in infrastructure improvements, not including additional infrastructure Project Features; workforce commitments, including payment of prevailing wage and local hire goals; seed funding for a Community Stabilization and Opportunity Pathways Fund to invest in education and workforce development, small business capacity building and incubation, affordable housing preservation, anti-displacement, homeless prevention, and homeless services, each as further described in this Agreement.

O. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*; "CEQA"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*; "CEQA Guidelines"), the Development Agreement Statute, the Development Agreement Ordinance, the San José Municipal Code, and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project.

P. The Final Environmental Impact Report ("FEIR") prepared for the Project and certified by the City Council on _____, 2021, together with the CEQA findings (the "CEQA Findings") and the Mitigation Monitoring and Reporting Program ("MMRP") adopted concurrently therewith, comply with CEQA, the CEQA Guidelines, and Title 21 of the City's Municipal Code. The FEIR thoroughly analyzes the Project and Project alternatives, and the Mitigation Measures were designed to mitigate significant impacts to the extent they are susceptible to feasible mitigation. The information in the FEIR and the CEQA Findings were considered by the City Council in connection with approval of this Agreement.

Q. On _____, 2021, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Development Agreement Ordinance. Following the public hearing, the Planning Commission determined among other things that the FEIR thoroughly analyzes the Project, and the Mitigation Measures are designed to mitigate significant impacts to the extent they are susceptible to feasible mitigation, and further determined that the Project and this Agreement will, as a whole, be

consistent with the objectives, policies, and general land uses and programs specified in the General Plan (together the "General Plan Consistency Findings"). The Planning Commission adopted Resolution No. XXX, recommending that the City Council adopt the CEQA findings, approve this Agreement, and approve the Project.

R. On _____, 2021, the City Council, having received the Planning Commission's recommendations, held a public hearing on the FEIR, the Project, and this Agreement pursuant to the Development Agreement Statute and the Development Agreement Ordinance. Following the public hearing, the City Council adopted Resolution No. XXX, certifying the FEIR, making the CEQA Findings required by CEQA, adopting a Mitigation Monitoring and Reporting Program, and adopting a Statement of Overriding Considerations; adopted Resolution No. XXX approving an override of the Santa Clara County Airport Land Use Commission inconsistency determination; adopted Resolution No. XXX, approving amendments to the General Plan; adopted Resolution No. XXX approving amendments to the Diridon Station Area Plan; introduced Ordinance No. XXX, approving a Planned Development Rezoning, including a General Development Plan; adopted Resolution No. XXX, conditionally approving a Vesting Tentative Map(s); adopted Resolution No. XXX, conditionally approving a Planned Development Permit and adopting the Downtown West Design Standards and Guidelines and the Downtown West Improvement Standards, Conformance Review Implementation Guide, and Conceptual Infrastructure Plan Sheets; introduced Ordinance No. XXX approving an amendment to Title 20 of the City's Municipal Code; adopted Resolutions No. XXX and No. XXX, conditionally amending the boundaries for Historic Landmarks (San José Water Company Building at 374 West Santa Clara Street, and Southern Pacific Historic District); adopted Resolution No. XXX, conditionally approving an amendment to Historic Preservation Permit

(HP16-002); adopted Resolution No. XXX, authorizing, with conditions, Major Encroachment Permit(s) for the District Systems infrastructure; adopted Resolution No. XXX, conditionally vacating certain streets within the Project Site; and introduced Ordinance No. XXX, approving this Agreement.

S. On _____, 2021, the City Council adopted Ordinance Nos. _____, approving a Planned Development Rezoning, adopted Ordinance No. ____ approving an amendment to Title 20 of the City's Municipal Code, adopted Resolution No. _____ conditionally approving the vacation of certain streets within the Project Site, and adopted Ordinance No. _____, approving this Agreement, including the Parkland Agreement included herewith as Exhibit E, and authorizing the City Manager to execute this Agreement on behalf of the City (the "Enacting Ordinance"). The Enacting Ordinance took effect on _____, 2021.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

In addition to the definitions set forth in the above preamble paragraph, Recitals, and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.1 "Accepted", "Acceptance" and variations thereof when capitalized in this Agreement shall mean, with respect to any Public Improvement, that the work authorized in the permit or permits for such Public Improvement has been completed to the reasonable satisfaction of the City acting in good faith, as certified by the City's authorized representative, such as the City Engineer, and the City is otherwise ready to prepare and issue a Notice of Acceptance.

1.2 "Affiliate" or "Affiliates" means any entity that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, the specified entity.

1.3 "Affordable Housing Program" shall mean the Affordable Housing Program attached hereto as Exhibit D, pursuant to Municipal Code Chapter 5.08.

1.4 "Affordable Housing Unit" shall have the meaning set forth in the Affordable Housing Program.

1.5 "Agreement" shall mean this Development Agreement, the Exhibits which have been expressly incorporated herein, and any amendments thereto.

1.6 "Applicable Laws" shall have the meaning set forth in Section 5.2 (where "applicable" is not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).

1.7 "Approvals" shall mean the City approvals, entitlements, and permits for the Project listed on Exhibit L.

1.8 "Assembly Bill (AB) 900" shall mean the Jobs and Economic Improvement through Environmental Leadership Act of 2011, effective January 1, 2018, and codified in Public Resources Code Section 21178 *et. seq.*, as amended.

1.9 "Assignment and Assumption Agreement" shall have the meaning set forth in Section 12.2.

1.10 "Base Requirements" shall mean those elements of the Project required to satisfy state and/or City statutory or regulatory requirements, including, but not limited to, payment of fees, CEQA mitigation measures set forth in the MMRP, City-Dedicated Open Space, and the

portion of the Affordable Housing Program that satisfies the requirements of the City's Inclusionary Housing Ordinance (San José Municipal Code Ch. 5.08).

1.11 "Building" or "Buildings" shall mean each of the existing, modified, and new buildings, located on a Development Parcel(s) within the Project Site, and as described in the Project Description.

1.12 "CEQA" shall have the meaning set forth in Recital P.

1.13 "CEQA Findings" shall have the meaning set forth in Recital Q.

1.14 "CEQA Guidelines" shall have the meaning set forth in Recital P.

1.15 "City" shall mean the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City means the City acting by and through the Director of PBCE or, as necessary, the Planning Commission, the City Manager, or the City Council.

1.16 "City Agency" or "City Agencies" shall mean the City departments, agencies, boards, commissions, and bureaus that have subdivision or other permit, entitlement, or approval authority or jurisdiction over development of the Project, or any improvement located on or off the Project Site, including, without limitation, the City Manager, PBCE Department, Director of PBCE, Department of Parks, Recreation, and Neighborhood Services, Environmental Services Department, Housing Department, and Department of Public Works, together with any successors to the foregoing City agencies, departments, boards, or commissions.

1.17 "City Attorney's Office" shall mean the Office of the City Attorney of the City San José.

1.18 "City Costs" shall mean the actual and reasonable third-party costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or

defending its actions under this Agreement, or otherwise contemplated by this Agreement, including reasonable attorneys' fees and costs, consistent with other development projects approved in the City but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default.

1.19 "City Council" or "Council" shall mean the City Council of the City of San José.

1.20 "City-Dedicated Open Space(s)" shall mean the parks and trail to be dedicated to the City and improved by Developer in conformance with the Parkland Agreement, and as set forth in Exhibit E hereto.

1.21 "City Manager" shall mean the City Manager of the City of San José.

1.22 "City Parties" shall have the meaning set forth in Section 4.8.

1.23 "City-Wide" shall mean all real property within the territorial limits of the City of San José, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.

1.24 "Commence Construction", "Commencement of Construction" and similar variations thereof shall mean commencement of vertical physical site work pursuant to a building permit, excluding demolition, grading, excavation, or foundation. For Buildings containing basements, vertical physical site work includes any permanent elements of the basement above the lowest level basement slab.

1.25 "Community Benefits" shall mean those Public Benefits provided by the Project that are generally aligned with the goals and priorities identified in the MOU approved by the City Council, and that exceed the Base Requirements, and are not Project Features.

1.26 "Complete" and any variation thereof when capitalized in this Agreement shall mean, as applicable, that: (i) with respect to Privately-Owned Publicly Accessible Open Space and Privately-Owned Improvements, the City Agencies or the Non-City Agencies with jurisdiction over any required permits for such Privately-Owned Publicly Accessible Open Space or Privately-Owned Improvements have issued any approvals required for use of such space or improvement for the contemplated use with construction having been completed substantially in accordance with the DWDSG and to such an extent that safe use of the space or improvement is viable; (ii) with respect to any Public Improvement, the Public Improvement, or portion thereof, has been completed substantially in accordance with related subdivision map conditions of approval and any applicable Public Improvement Agreement and, if applicable, Exhibit E of this agreement, and has been Accepted by the City; and (iii) with respect to any Building, a Final Certificate of Occupancy has been issued.

1.27 "Conformance Review" shall mean the Downtown West Planned Development Zoning/Design Conformance Review process established by the General Development Plan, pursuant to which the Director of PBCE or Director of PW, as specified in the General Development Plan, reviews Conformance Review Applications for Vertical Improvements, Open Space Improvements, and Horizontal Improvements for conformance with the General Development Plan and Downtown West Planned Development Permit as a prerequisite to the issuance of permits to construct open space, Vertical Improvements, or Horizontal Improvements, as applicable.

1.28 "Conformance Review Application" shall mean a written request on a form approved by the Director of PBCE, along with payment of any then-due Processing Fees, for a Conformance Review determination by the Director of PBCE that Vertical Improvements, open

space and Park Improvements, or Horizontal Improvements for a particular area of the Project Site satisfies the applicable standards of the General Development Plan and Downtown West Planned Development Permit.

1.29 "Construction Cost Index" or "CCI" shall mean the Engineering News Record (ENR) Construction Cost Index for the San Francisco Urban area published by McGraw Hill on January 1 of every year, or its successor publication.

1.30 "Control" means (i) the direct or indirect ownership of more than fifty percent (50%) of the profits or capital of the specified entity; or (ii) the right to dictate the specified entity's major decisions, subject to the rights of other owners; or (iii) the power to direct the day-to-day management or control of the specified entity, directly or indirectly and whether through ownership of voting securities, membership or partnership interests, or other interests, or by contract, or otherwise; or (iv) the right to appoint fifty percent (50%) or more of the specified entity's managers or directors.

1.31 "Default" shall have the meaning set forth in Section 9.3.

1.32 "Developer" shall have the meaning set forth in the opening paragraph of this Agreement, and shall also include any and all authorized successor Transferees of all or any Development Parcel(s) during the Term and any other successors permitted under this Agreement.

1.33 "Development Agreement Ordinance" shall mean Chapter 18.02 of the Municipal Code, as in effect as of the Effective Date.

1.34 "Development Agreement Statute" shall have the meaning set forth in the Preamble to this Agreement, as in effect as of the Effective Date.

1.35 “Development Parcel” shall mean any real property (or vertical subdivision thereon or thereunder) located within the boundaries of the Project Site in which Developer has a legal or equitable interest.

1.36 "Director of PBCE" shall mean the Director of Planning, Building and Code Enforcement of the City of San José.

1.37 Director of PRNS shall mean the Director of Parks, Recreation and Neighborhood Services for the City of San José.

1.38 "Diridon Station Area Plan" or "DSAP" shall mean the Diridon Station Area Plan approved by Resolution No. 77096, as may be amended from time to time.

1.39 "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.

1.40 "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)).

1.41 "District Systems" shall mean the "district system(s)" described in Exhibits I and J.

1.42 "Downtown West Design Standards and Guidelines" or “DWDSG” shall mean that certain Downtown West Design Standards and Guidelines, which are a component of the Downtown West Planned Development Permit, approved by the City Council by Resolution No. _____ on _____, 2021, as same may be amended from time to time.

1.43 "Downtown West Planned Development Permit" shall mean that certain planned development permit effectuating the Downtown West Planned Development Zoning District,

which includes the Downtown West Design Standards and Guidelines, the Downtown West Improvement Standards and Conceptual Infrastructure Plan Sheets, and the Downtown West Conformance Review Implementation Guide, approved by City Council Resolution No. _____ on _____, 2021, as same may be amended from time to time.

1.44 "Downtown West Planned Development Zoning District" shall mean the planned development zoning district established pursuant to Zoning Code Sections 20.60 et seq. and 20.120.500 et seq. by City Council Ordinance No. _____, including its accompanying General Development Plan.

1.45 "DSAP's Boundaries" means the geographic boundaries of the Diridon Station Area Plan, as in effect on the Effective Date of this Agreement.

1.46 "Effective Date" shall have the meaning set forth in Section 2.1.

1.47 "Enacting Ordinance" shall have the meaning set forth in Recital T.

1.48 "Encroachment Agreement" shall refer to Exhibit A of City Council Resolution No. _____."

1.49 "Existing Agreements" shall mean the Option/Negotiation Rights Agreement between the City of San José, a California municipal corporation, and Google LLC, a Delaware limited liability company, dated December 4, 2018, for the property referred to as "Lots A-C," and more particularly described in Exhibit A to that Agreement, located in the City of San José, California; the Purchase and Sale Agreement and Joint Escrow Instructions between the City of San José, a California municipal corporation, and Google LLC, a Delaware limited liability company, dated December 4, 2018, for the property located at 255 South Montgomery Street, San José, California (the "City Fire Training Facility Property"); and the Ground Lease between Google LLC, a Delaware limited liability company, and the City of San José, a California

municipal corporation, dated December 4, 2018, for the property located at 255 South Montgomery Street, San José, California (the “City Fire Training Facility Property”).

1.50 "Existing Standards" shall have the meaning set forth in Section 5.2.

1.51 "Existing Uses" shall mean all existing lawful uses of the existing Buildings and improvements (and including, without limitation, lawful pre-existing, non-conforming uses under the Zoning Code) on the Project Site as of the Effective Date, as the same may be modified by the Approvals and any Subsequent Approvals.

1.52 "Federal or State Law Exception" shall have the meaning set forth in Section 5.8.1.

1.53 "FEIR" shall have the meaning set forth in Recital Q.

1.54 "Final Approval" shall mean that (i) all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Approvals, the Development Agreement or the FEIR shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, the Development Agreement or the FEIR, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Approval, the Development Agreement or the FEIR and the entry of a final judgment, order or ruling upholding the applicable Approval, the Development Agreement or the FEIR; and (ii) if a referendum petition relating to any Approval or the Development Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the City Council in the manner provided by applicable City laws reflecting the approval by voters of the referended Approval or Development Agreement.

1.55 "Final Certificate of Occupancy" shall mean the permit or other documentation issued by the City Building Division following its final inspection of the applicable Building or structure.

1.56 "Final Map" shall mean a "Final Map" as defined in Section 19.08.160 of the Subdivision Code.

1.57 "Force Majeure" or "Force Majeure Event" shall mean, for purposes of this Agreement, any event or condition that: (i) is beyond a Party's control; (ii) prevents the Party's performance of this Agreement; (iii) that the Party could not have reasonably foreseen; and (iv) that arises from one or more of the following: (1) naturally occurring events constituting an act of God; (2) unusually severe and abnormal climactic conditions (as compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Subject Property); (3) strikes, stoppages or boycotts that affect a specific trade on a national or regional level, to the extent not caused by the acts or omissions of the Party; (4) the unavailability of construction materials for projects similar to the Project (i.e. a large scale mixed-use project) that causes significant construction delays, or significant construction delays resulting from such materials being unusually difficult or impossible to obtain, or from defects, tariffs, embargoes, or trade disputes, where, in each case, Developer is unable to obtain alternative or replacement materials, within the same or substantially similar time period at substantially the same cost (and without having to forfeit any significant deposits or advance payments); (4) acts of terrorism or war; (5) riots or other civil unrest; (6) a local, state or federal declaration of emergency based on an epidemic or pandemic, including any quarantine or other health-related orders, directives, regulations, laws or other requirements implemented in response to such epidemic or pandemic; (7) orders issued by any other

governmental body having jurisdiction over the Project; (8) casualty; or (9) condemnation unrelated to DISC or other transit project(s). Neither the inability of Developer to obtain construction financing for the Project nor the condition of, or changes in, the real estate market shall constitute a Force Majeure Event, except to the extent such inability or changes result from a Force Majeure Event.

1.58 "Foreclosure Transferee" shall mean any purchaser at a foreclosure sale or similar transaction under a Mortgage and any person or entity which acquires title to all or any portion of the Project Site in lieu of the foreclosure of a Mortgage, except for Developer or an Affiliate of Developer.

1.59 "Funding Mechanism" shall have the meaning set forth in Section 7.6.1.

1.60 "Future Changes to Existing Standards" shall have the meaning set forth in Section 5.4.

1.61 "General Plan" has the meaning set forth in Recital A.

1.62 "General Plan Consistency Findings" has the meaning set forth in Recital R.

1.63 "Good Faith Efforts" and any variation thereof shall mean the efforts that a reasonable person would determine is a diligent and honest effort under the same or similar set of facts or circumstances.

1.64 "Google Affiliate" shall mean any entity that directly or indirectly Controls, is Controlled by, or is under common Control with Google LLC, including (i) Alphabet, Inc.; (ii) any Affiliate of Alphabet, Inc.; (iii) companies spun-off from Google LLC or Alphabet, Inc. and any of their Affiliates; and (iv) any entities related to Google LLC or Alphabet, Inc. as a result of merger, acquisition or by operation of law.

1.65 "Horizontal Improvement" shall mean (a) the initial construction of any one or more Public Improvements and (b) the initial construction of any one or more Privately-Owned Improvements.

1.66 "Impact Fees" shall mean those fees and exactions set forth on Exhibit M to this Development Agreement.

1.67 "Infrastructure" shall mean the facilities, both on- and off-site and in District Systems, described in the Infrastructure Plan included herewith as Exhibit I, and including the electrical microgrid ("Microgrid") described in Exhibit J.

1.68 "Infrastructure Plan" shall mean the Infrastructure Plan attached as Exhibit I.

1.69 "Law(s)" shall mean the Constitution and laws of the United States of America, the Constitution and laws of the State of California, the charter and laws of the City of San José, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction, or writ) thereunder. The term "Laws" shall refer to any or all Laws as the context may require.

1.70 "Lendlease Affiliate" shall mean any Affiliate of Lendlease Americas Holdings Inc., a Delaware corporation.

1.71 "Litigation Extension" shall have the meaning set forth in Section 11.5.1.

1.72 "Losses" shall have the meaning set forth in Section 4.9.

1.73 "Major Encroachment Permit" shall refer to a permit issued under Title 13.37.400 of the Municipal Code."

1.74 "Material Change" shall mean any modification that would materially alter the rights, benefits, or obligations of the City or Developer under this Agreement that (i) extends or reduces the Term, (ii) changes the permitted uses of the Project Site, except as permitted by, and

approved in the manner set forth in the Downtown West Planned Development Zoning District and/or the Downtown West Design Standards and Guidelines, (iii) decreases or increases the Community Benefits, except as permitted as a Community Benefits Adjustment, (iv) as to a particular Building, increases the maximum density, or overall square footage of the Project, in each case by more than 10%, (v) decreases the parking ratios, except as permitted by the Approvals and this Agreement, or (vi) reduces or changes the Impact Fees applicable to the Project, except as authorized on the Effective Date, or imposes any new development or impact fees or exactions or other fees, contributions, special taxes, exactions, impositions or dedications, whether any of the foregoing are imposed as a fee, a zoning requirement or otherwise, except as expressly permitted in this Agreement.

1.75 "Mitigation Measures" shall mean the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Subsequent Approval.

1.76 "MMRP" shall mean that certain mitigation monitoring and reporting program adopted by the City for the Project.

1.77 "Mortgage" shall mean a mortgage, deed of trust, or other lien on all or part of the Project Site to secure an obligation made by Developer to repay borrowed funds to be used by Developer to improve the applicable property so encumbered in a manner consistent with this Agreement, but shall not include any mortgage, deed of trust or other lien that is also secured by real property that is not part of the Project Site or which secures an obligation to repay borrowed funds used to acquire or improve real property that is not part of the Project Site, or which is cross-defaulted with any obligation relating to or secured by real property that is not part of the Project Site.

1.78 "Mortgagee" shall mean a person or entity that is not an Affiliate of Developer and that is the holder of, and beneficiary or mortgagee under, a Mortgage.

1.79 "Municipal Code" shall mean the San José Municipal Code.

1.80 "Non-City Agency" shall have the meaning set forth in Section 7.3.

1.81 "Non-City Approval" shall have the meaning set forth in Section 7.3.

1.82 "Notice of Completion" means the form of Form of Notice of Completion and Termination attached to this Agreement at Exhibit N.

1.83 "Official Records" shall mean the official real estate records of the City of San José, as maintained by the Santa Clara County Assessor-Recorder's Office.

1.84 "Open Space Improvements" shall mean, collectively, City-Dedicated Open Space and Privately-Owned Publicly Accessible Open Space (defined as Project-Sponsor Owned Open Space in the Downtown West Planned Development Zoning District and Downtown West Planned Development Permit).

1.85 "Parcel Map" shall mean a Parcel Map as defined in Section 19.08.320 of the Subdivision Code.

1.86 "Park Construction Right of Entry", as more specifically described in Exhibit E, shall mean a temporary Right of Entry Agreement within a City-Dedicated Open Space entered into by the Parties following Acceptance of the Open Space by the City, for the purpose of allowing Developer to complete construction of an adjacent Building(s).

1.87 "Park Improvements" shall have the meaning set forth in the Parkland Agreement included herewith as Exhibit E.

1.88 "Parkland Fee" shall mean the fee established by the City Council pursuant to Chapters 14.25 or 19.38 of the San José Municipal Code.

1.89 "Party" and "Parties" shall have the meaning set forth in the opening paragraph of this Agreement.

1.90 "PBCE Department" shall mean the Planning, Building, and Code Enforcement Department of the City of San José.

1.91 "Planned Development Permit" means the Planned Development Permit approved by Resolution No. XXX.

1.92 "Planning Commission" means the Planning Commission of the City of San José.

1.93 "Potentially Participating Parcels" shall mean (a) any land that is located within the Project Site as to which Developer acquires after the Effective Date, either (i) fee title or (ii) any other legal or equitable interest that includes a right of possession; and (b) any VTA Parcels.

1.94 "Privately-Owned Publicly Accessible Open Space" shall mean those parks and open spaces described in Section 4.1.3 hereto, and in the Downtown West Design Standards and Guidelines, that are not City-Dedicated Open Spaces.

1.95 "Privately-Owned Improvements" shall mean those facilities and services that are privately-owned and privately-maintained, at no cost to the City (other than any costs related to public financing, such as an infrastructure finance district), for the public benefit and not dedicated to the City, including Privately-Owned Publicly Accessible Open Spaces and Park Improvements thereto, and any Infrastructure that is not a Public Improvement. The Privately-Owned Improvements do not include City-Dedicated Open Space or any Public Improvements.

1.96 "Processing Fees" shall mean, as applicable, the (i) standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee, in accordance with the City practice on a City-Wide basis or within the DSAP's Boundaries, for the same or similar permits or approvals and applied in an equitable and non-discriminatory

manner; or (ii) the City's standard hourly rate and standard charges for review of an application for a permit approval, in accordance with the City practice on a City-Wide basis or within the DSAP's Boundaries, to the same or similar work and applied in an equitable and non-discriminatory manner, for City staff who are processing the application.

1.97 "Project" shall mean the mixed use development project as described in Recital D and the Approvals, together with Developer's rights and obligations under this Agreement.

1.98 "Project Description" shall refer to the Project described in the FEIR. In the event that the Director of PBCE approves a request by Developer to convert land uses pursuant to the General Development Plan, then any references to the Project Description herein shall be deemed to automatically incorporate such changes without requiring amendment of this Agreement.

1.99 "Project Documents" shall mean, individually or collectively as the context requires, the Project Boundaries, Base City Housing Requirements and Community Benefits Schedule, Infrastructure Plan, Parkland Agreement, Affordable Housing Program, Downtown West Design Standards and Guidelines, Downtown West Improvement Standards, Conceptual Infrastructure Plan Sheets, Downtown West Conformance Review Implementation Guide, Major Encroachment Agreement, Transportation Demand Management Plan, and this Agreement.

1.100 "Project Feature" shall mean features or elements of the Project that Developer has voluntarily agreed to construct or include that are not Community Benefits or Base Requirements and that provide a benefit to the public.

1.101 "Project Site" shall have the meaning set forth in Recital G, and as more particularly described in Exhibit A and depicted in Exhibit B.

1.102 "Public Health and Safety Exception" shall have the meaning set forth in Section 5.8.1.

1.103 "Public Benefit" shall mean, collectively, the (i) Base Requirements, (ii) Community Benefits, and (iii) Project Features that benefit the public.

1.104 "Public Improvement" shall mean the facilities, both on- and off-site, to be improved, constructed, and dedicated by Developer and, upon completion in accordance with the Public Improvement Agreement, or the Parkland Agreement, as applicable, Accepted by the City. Public Improvements include the public streets within the Project Site shown on Exhibit I and/or within the Local Transportation Analysis Report prepared by Fehr & Peers, dated _____, 2021, all Infrastructure and public utilities within such streets (such as electricity, water and sewer lines, but excluding any non-municipal utilities or Privately-Owned Infrastructure), including sidewalks, landscaping, bicycle lanes, street furniture, and paths and intersection improvements (such as curbs, medians, signaling, traffic controls devices, signage, and striping), and all improvements that Developer is required to complete within City-Dedicated Open Spaces. The Public Improvements do not include Privately-Owned Publicly Accessible Open Space or any Privately-Owned Improvements, including Privately-Owned Improvements within the public right-of-way, if any.

1.105 "Public Improvement Agreement" shall mean an agreement between the City and Developer for the completion of improvements required as a condition of subdivision map approval pursuant to Government Code Section 66462.

1.106 "Public Works" shall mean the San José Department of Public Works.

1.107 "Public Works Director" shall mean the Director of Public Works.

1.108 "Qualified Developer" shall mean any entity, or such entity's project team, with experience developing projects of a similar scale in a similar urban environment and have completed a minimum of two (2) similar scale projects in an urban environment within the seven

(7) year period preceding the effective date of the Transfer, as shown by reasonable evidence delivered to City for reasonable review and approval.

1.109 "Reimbursement Agreement" shall mean a form of reimbursement agreement entered into between the Parties with respect to the payment of Processing Fees and City Costs, which agreement shall be substantially in the form attached hereto at Schedule A to this Agreement.

1.110 "Subdivision Code" shall mean Title 19 of the San José Municipal Code.

1.111 "Subdivision Map Act" shall mean the California Subdivision Map Act, California Government Code § 66410 *et seq.*

1.112 "Subsequent Approval" shall mean any other land use approvals, entitlements, or permits from the City other than the Approvals that are necessary or advisable for the implementation of the Project, including without limitation, Conformance Review determinations or approvals, demolition permits, grading permits, site permits, building permits, right-of-way work permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, permits to alter, certificates of occupancy, transit stop relocation permits, subdivision maps, improvement plans, lot mergers, lot line adjustments, and re-subdivisions. A Subsequent Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.

1.113 "Substantial Completion" shall mean that construction of the base building is sufficiently complete and the City has issued a Temporary Certificate of Occupancy.

1.114 "Temporary Certificate of Occupancy" shall mean the permit or other documentation issued by the City Building Division following its inspection(s) of the applicable building or structure that is not a Final Certificate of Occupancy (i) but allows temporary occupancy of the Building or structure for its intended use, or (ii) means that the Building or structure is ready for tenant improvements or similar work.

1.115 "Ten Year Development Obligation" shall mean (i) the Substantial Completion of the base building(s) for not less than two million (2,000,000) gross square feet of office development within the Project Site, and completion of all payments or contributions, including Community Benefits, due pursuant to this Agreement and Exhibits hereto with respect to such two million (2,000,000) gross square feet of office development at or prior to the end of the 10-year period described in Section 2.2; or (ii) Developer's satisfaction, whether by payment or performance as applicable and prior to the expiration of the 10-year period described in Section 2.2, of the Community Benefits associated with such two million (2,000,000) gross square feet of office development, which Community Benefits are equal to \$24.26/gsf of office (\$21.20/gsf for Community Stabilization and Opportunity Fund and \$3.06/gsf for Unallocated Community Benefit Commitment); or (iii) partial performance of the obligations described in the preceding clauses (i) and (ii), which, when such partial performance under each clause is combined, results in satisfaction of the Ten Year Development Obligation (for the purposes of illustration only, the sum of Substantial Completion of only 1,000,000 gross square feet of office development and all payments or contributions due, including Community Benefits, with respect to such square footage and Developer's satisfaction of the Community Benefits associated with an additional 1,000,000 gross square feet of office development would constitute satisfaction of the Ten Year Development Obligation).

1.116 "Tentative Map" shall mean both a "Tentative Map" as defined in Section 19.08.460 of the Subdivision Code and a "Vesting Tentative Map" as defined in Section 19.13.020(A) of the Subdivision Code.

1.117 "Term" shall have the meaning set forth in Section 2.2.

1.118 "Third-Party Challenge" shall have the meaning set forth in Section 7.4.

1.119 "Third Party Transferee" shall mean any entity that is not Google LLC, a Google Affiliate or a Lendlease Affiliate.

1.120 "Transfer" shall have the meaning set forth in Section 12.

1.121 "Transferee" shall mean any party that is the transferee in a Transfer.

1.122 "Transportation Demand Management Plan" shall mean the transportation demand management plan attached to the FEIR, as the same may be modified from time to time at the request of Developer and subject to the approval of the Director of PBCE in his or her sole discretion..

1.123 "Twenty Year Development Obligation" shall mean (i) the Substantial Completion of the base building(s) for not less than two million (2,000,000) additional gross square feet of office development within the Project Site (four million (4,000,000) gross square feet total including the Ten Year Development Obligation), and completion of all payments or contributions due pursuant to this Agreement and the Exhibits hereto with respect to such additional 2,000,000 gross square feet of office development at or prior to the end of the 20-year period described in Section 2.2; or (ii) Developer's satisfaction, whether by payment or performance as applicable and prior to the expiration of the 20-year period described in Section 2.2, of the Community Benefits associated with such additional 2,000,000 gross square feet of office development, which Community Benefits are equal to \$24.26/gsf of office (\$21.20/gsf for Community Stabilization

and Opportunity Fund and \$3.06/gsf for Unallocated Community Benefit Commitment); or (iii) partial performance of the obligations described in the preceding clauses (i) and (ii), which, when such partial performance under each clause is combined, results in satisfaction of the Twenty Year Development Obligation (for the purposes of illustration only, the sum of Substantial Completion of only 1,000,000 additional gross square feet of office development and all payments or contributions due with respect to such square footage and Developer's satisfaction of the Community Benefits associated with an additional 1,000,000 gross square feet of office development would constitute satisfaction of the Twenty Year Development Obligation). For clarity, the amount of office development or Community Benefits under this Twenty Year Development Obligation shall be in addition to the amount of office development or Community Benefits required to satisfy the Ten Year Development Obligation.

1.124 "Vertical Improvement" shall mean a Building or other improvement to be developed under this Agreement that is not parks and open space or infrastructure, or any portion thereof that is considered a Horizontal Improvement.

1.125 "Vested Elements" shall have the meaning set forth in Section 5.1.

1.126 "VTA Parcels" shall mean all or any of VTA Parcels as such term is defined in Recital H above and any other parcels which the VTA owns and which are described in Recital H above.

1.127 "Zoning Code" shall mean Title 20 of the San José Municipal Code.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties, and (ii) the date the Enacting Ordinance is effective ("Effective Date").

2.2 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for thirty (30) years thereafter unless extended or earlier terminated as provided herein ("Term"); provided, however, that (i) the Term shall be extended for each day of a Litigation Extension, Force Majeure, or any other extension provided under this Agreement, and (ii) upon Completion of Building(s) within a Development Parcel reflected on the Final Map and the Community Benefits required for that Building(s), as set forth in Section 7.1, including any associated park and open space delivery obligations, and provided that any and all ongoing Developer or owner obligations, including but not limited to Community Benefit obligations, shall survive such termination and remain in full force and effect as required by the Approvals, this Agreement, or combination thereof, Developer shall have the right to terminate this Agreement with respect each such Development Parcel by submitting a completed Notice of Completion to the City that demonstrates Completion of the Community Benefits as set forth in the checklist attached to such notice. The completed checklist shall be consistent with (i) Developer's obligations under the Approvals, this Agreement, and the Subsequent Approvals for such Building(s), and (ii) any written summary of such obligations that Developer submitted in connection with the then most-recent annual review, if any, of such Buildings pursuant to Section 8.1 of this Agreement. The City shall have the right to terminate this Agreement prior to the expiration of the Term as follows: (a) if, on or before the date that is the last day of the tenth (10th) year after the Effective Date (as such 10-year period may be extended by a Litigation Extension, Force Majeure, or any other extension provided under this Agreement) the Ten Year Development Obligation has not been satisfied; or (ii) if, on or before the date that is the last day of the twentieth (20th) year after the Effective Date (as such 20-year period may be extended by a Litigation Extension, Force Majeure, or any other extension provided under this Agreement) the Twenty

Year Development Obligation has not been satisfied. Section 11.2 below sets forth the procedures for terminating this Agreement for failure to satisfy the Ten Year Development Obligation or the Twenty Year Development Obligation. If Developer is satisfying its obligations under the Ten or Twenty Year Development Obligation by means of clause (ii) or clause (iii) in the definitions of the Ten Year Development Obligation or the Twenty Year Development Obligation above by paying or performing the required Community Benefits, then any such payment or performance shall be due or completed prior to the expiration of the respective ten (10) or twenty (20) year time periods specified in clause (a) above in this Section 2.2, with respect to the Ten Year Development Obligation, and clause (b) above in this Section 2.2 with respect to the Twenty Year Development Obligation.

3. GENERAL RIGHTS AND OBLIGATIONS; DEVELOPMENT PROCESS

3.1 Development of the Project. Developer shall have the vested right to develop the Project, including any and all Development Parcels, in accordance with and subject to the provisions of this Agreement and the Approvals, and the City shall consider and process all Subsequent Approvals for development of the Project, including any and all Development Parcels, in accordance with and subject to the provisions of this Agreement and the Approvals. Developer may proceed (in accordance with this Agreement and the Approvals) with the construction, and upon Completion, use and occupancy of the Project, including any and all Development Parcels, as a matter of right, subject to obtaining any required Subsequent Approvals and any Non-City Approvals.

3.2 Timing of Base Requirements, Community Benefits, and Infrastructure. Because the Project will be built out over a number of years, the amount and timing of the Base Requirements and Community Benefits, including the Public Improvements, Affordable Housing

Program, and City-Dedicated Open Space are to be provided as set forth in Exhibit C1, the Affordable Housing Program included herewith as Exhibit D, the City-Dedicated Open Space Dedication and Improvements Schedule included herewith as Exhibit E3.1, the Infrastructure Plan included herewith as Exhibit I, and as more particularly described in Section 4.1. For certain Project Features, such as the District Systems, timing requirements have been intentionally omitted, and these Features are otherwise subject to receipt of necessary permits or other conditions precedent, as noted or described in the applicable Exhibit or as may be required in the Project's conditions of approval. The scope and timing of Infrastructure that is associated with specific parcels or Buildings, as described in Exhibit I, shall be reviewed and approved by the City through the Conformance Review process as set forth in the General Development Plan and Implementation Guide.

3.3 Approval of Subdivision Maps. Developer shall obtain approval of Tentative Maps, Final Maps and Parcel Maps as required by the Subdivision Map Act and the Subdivision Code to subdivide the Project Site for purposes of disposition and development as contemplated by this Agreement. Developer may pursue a single Tentative Map covering the entire Project site or multiple Tentative Maps. Approval of any Tentative Map shall require compliance with California Government Code Section 66473.7, and Tentative Maps shall include conditions that Developer Complete any required Public Improvements and Privately-Owned Publicly Accessible Open Spaces in a manner consistent with the terms and conditions printed on the face of said map and the Project Documents which terms and conditions shall be consistent with the requirements of this Development Agreement, the Approvals and any conditions imposed on the Approvals. Developer may pursue approval of Final Maps in phases that include only portions of the associated Tentative Map. Developer acknowledges that approval of any Final Map for a

subdivision that will rely on District Systems for utility service shall require compliance with all Tentative Map conditions of approval pertaining to District Systems.

3.4 Conformance Review. The Approvals and the Project Documents are intended to ensure that the urban, architectural, and landscape design of the Buildings, the Public Improvements, and the public realm at the Project Site will be of high quality and appropriate scale, include sufficient open space, and promote the public health, safety and general welfare. The Conformance Review procedures applicable to Vertical Improvements, Open Space Improvements, and Public Improvements and Horizontal Improvements, as indicated in the Downtown West Design Standards and Guidelines, shall be as set forth in the General Development Plan, the Downtown West Planned Development Permit (consisting of the Downtown West Design Standards and Guidelines, the Downtown West Improvement Standards, the Conceptual Infrastructure Plan Sheets and the Conformance Review Implementation Guide), the Major Encroachment Agreement, and Exhibits hereto. The City shall review and approve or disapprove any Conformance Review Application in accordance with the requirements of this Agreement and the procedures specified in the General Development Plan, and the Downtown West Planned Development Permit. In considering a Conformance Review Application and any Subsequent Approval for those aspects of the Conformance Review Application the City acknowledges and agrees that (i) it has exercised its discretion in approving the Downtown West Planned Development Zoning District and the Project Documents, including all applicable conditions of approval and (ii) any proposed Conformance Review Application or Subsequent Approval shall be reviewed pursuant to the standard of review for Conformance Review Applications established in the General Development Plan and Downtown West Planned Development Permit.

3.5 Timing for Completion of Public Improvements and Privately-Owned Improvements. All Public Improvements that are required to serve a Building or Buildings (as identified in Exhibit C1, E3.1, E3.2, I, and/or Section 4.1) must be performed and Completed as specified in this Agreement, the applicable Exhibit to this Agreement, in the Public Improvement Agreement and/or in the Infrastructure Plan, as applicable.

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 documentation 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).

4. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE

4.1 Public Benefits Exceed Those Required by Existing Ordinances and Regulations.

The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of Community Benefits and Project Features to the City beyond those required by or achievable through existing Laws, including, but not limited to, those set forth in this Section 4. The City acknowledges and agrees that the Community Benefits and Project Features would not otherwise be achievable without the express agreement of Developer under this Agreement. Upon Developer's receipt of a building permit, the Public Benefit obligations tied to, or triggered by that Building shall survive the expiration or termination of this Agreement to the date of the Completion of the applicable Public Benefit.

4.1.1 Base Requirements. In satisfaction of City statutory and/or regulatory requirements, Developer shall, provide the following Base Requirements in accordance with Exhibit C1, D, E, and I, as applicable, and as set forth herein:

(a) the Affordable Housing Program benefits in satisfaction of the City Inclusionary Housing Ordinance (San José Municipal Code Ch. 5.08) and Commercial Linkage Fee requirements, as further described in Exhibit D;

(b) the City-Dedicated Open Spaces in satisfaction of Developer's Parkland Obligation, as further described in Exhibit E and the DWDSG;

(c) those elements of the Infrastructure Plan (including all of the Public Improvements and all of the Privately-Owned Improvements) as further described in Exhibit I (not including the enhanced infrastructure, District Systems, and Microgrid elements described in Section 4.1.3(c)).

Unless indicated elsewhere in this Agreement, Developer shall Complete each of the foregoing Base Requirements on or before the applicable dates provided in this Agreement and Exhibits hereto, and the Approvals; if no deadline is provided in this Agreement and Exhibits hereto or the Approvals, the normal deadline pursuant to City rules, standards, and/or practice shall apply. This Section 4.1.1 shall not be construed to limit Developer's obligations to comply with all applicable Existing Standards and Applicable Laws whether listed in this Section 4.1.1 or not.

4.1.2 Community Benefits Provided By Project. In addition to the Base Requirements, Developer agrees to provide the Community Benefits described in this Section 4.1.2 and Exhibit C1. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits described herein, and that the City would not be willing to enter into this Agreement without the Developer's obligation to provide, among other things, such Community Benefits:

(a) Community Stabilization and Opportunity Pathways Fund. Developer and/or Google, as applicable, shall establish and provide funding for the Community Stabilization and Opportunity Pathways Fund, as described in Exhibit H;

(b) the Affordable Housing Program benefits described in Exhibits C1 and D that exceed Developer's Base Requirements pursuant to the City Inclusionary Housing Ordinance (San José Municipal Code Ch. 5.08); and

(c) Fee simple transfer to City of "Autumn Street Parcels" (Contiguous parcels: 255 Autumn St., 260 & 240 N Montgomery St. San Jose, 95110, as shown on Exhibit C2 (Site Plan and Legal Descriptions)) three (3) months after Final Approval, free and clear of any occupants and leases, but in its otherwise as-is condition. The Autumn Street Parcels may allow for approximately two hundred (200) units of affordable housing, if the City approves a rezoning and any necessary project approvals and CEQA review.

(d) Job Readiness and Stabilization. Developer shall provide seven million five hundred thousand dollars (\$7,500,000) in funding for jobs readiness and stabilization programs, to be paid on or before one hundred twenty (120) days after Final Approval, as set forth in Exhibit C1.

(e) Unallocated Community Benefit Commitment. Developer shall provide additional funding as a community benefit in the amount of three and 06/100 dollars (\$3.06) per gross square foot of office development, to be paid upon issuance of a Temporary Certificate of Occupancy for an office Building.

4.1.3 Project Features. In addition to the Community Benefits, Developer has opted to provide the following additional Project Features as a Public Benefit:

(a) Privately-Owned Publicly Accessible Open Space. In addition to the City-Dedicated Open Space described in Exhibit E hereto, and the Park Improvements to the City-Dedicated Open Space described therein, Developer is providing as a Project Feature certain Privately-Owned Publicly Accessible Open Space totaling approximately 10.2 acres (approximately seven (7) acres of which will be further subject to restrictive covenants as described herein, referred to herein as the "Covenant Privately-Owned Publicly Accessible Open Space"),

generally depicted on Exhibit E3.2 hereto and as described in the Downtown West Design Standards and Guidelines (referred to therein as "Project Sponsor-Owned Open Space").

Prior to issuance of a Temporary Certificate of Occupancy for any Building on the Development Parcel corresponding to a Covenant Privately-Owned Publicly Accessible Open Space, as provided by the schedule in Section 4.1.3(a)(i) below, Developer shall execute and record a declaration of public access covenants and restrictions, in form and substance satisfactory to the City Attorney and substantially in the form attached hereto as Exhibit F1 ("Declaration of Public Access Covenants and Restrictions").

The Declaration of Public Access Covenants and Restrictions shall set forth the categories and limitations on use of the Covenant Private-Owned Publicly Accessible Open Space, all in accordance with the DWDSG and this Agreement. The hours of operation and scope of permissible park use are set forth in Exhibit F2, which Exhibit shall be incorporated by reference into the Public Access Restrictive Covenants. The provisions in Exhibit F2 may not be changed or modified with respect to the Covenant Privately-Owned Publicly Accessible Open Spaces if such change or modification would be more restrictive, meaning that the change would reduce the hours of operation, or restrict or eliminate a permissible park use, without prior written approval by the Director of PRNS; provided, however, that a permanent decrease in the hours of operation by five percent (5%) or more for any Covenant Privately-Owned Publicly Accessible Open Space shall require a public hearing by the City Council and approval by a majority vote.

For provisions regarding public events, private events, and temporary closures, which provisions are set forth in Exhibit F3, except as set forth in paragraph (p) therein regarding closures for maintenance and repair, or to protect the public health and safety, any permanent change or modification to these provisions that would reduce by ten percent (10%) or more the

cumulative amount of reservable areas or the number of days or hours during which private events may occur shall require prior written approval by the Director of PRNS.

In addition to the provisions included in Exhibits F2 and F3, which apply to all Privately-Owned Publicly Accessible Open Spaces, Developer will provide rules for the Privately-Owned Publicly Accessible Open Spaces regarding prohibited conduct, which rules generally will prohibit conduct that interferes with permissible park uses and general public use and enjoyment of the Privately-Owned Publicly Accessible Open Spaces. These rules, and any updates to the same, will be posted on a website and at each Privately-Owned Publicly Accessible Open Space.

The final acreage and/or boundaries of each Privately-Owned Publicly Accessible Open Space, including each Covenant Privately-Owned Publicly Accessible Open Space, may be subject to adjustment pursuant to the provisions of the DWDSG, except that any reduction in acreage of an individual Covenant Privately-Owned Publicly Accessible Open Space of more than five percent (5%), unless reallocated to another Covenant Privately-Owned Publicly Accessible Open Space, shall only be permissible if necessary due loss of developable area resulting from eminent domain by a DISC Agency(ies) or other government entity, or street vacation. The Privately-Owned Publicly Accessible Open Space shall also be permitted to be reconfigured as permitted by the DWDSG and/or the General Development Plan, with written approval by the Director of PBCE, in consultation with the Director of PRNS, so long as the Project at full buildout continues to provide 7 acres of Covenant Privately-Owned Publicly Accessible Open Space. As provided in the General Development Plan, final acreage shall be identified and finally approved at the Conformance Review stage or the processing of a final map that includes the subject open space, whichever occurs first.

The public right of access to the Privately-Owned Publicly Accessible Open Spaces is a Public Benefit that exceeds what would be required under the City's Parkland Dedication Ordinance; however, Privately-Owned Publicly Accessible Open Spaces shall not be used to satisfy Developer's Parkland Dedication Obligation. The Privately-Owned Publicly Accessible Open Space categories, design, boundaries, and programming are set forth in the DWDSG.

(i) Completion of Privately-Owned Publicly Accessible Open Space. Completion of the Privately-Owned Publicly Accessible Open Spaces means that City sign-off of final inspection has occurred; however, Completion does not include or require completed installation of design elements, art, structures, or features not essential to the intended use of the park by the public, so long as final installation of such elements or features does not interfere with safe use of the open spaces; nor does Completion include or require improvement of the fifty (50) feet of a Privately-Owned Publicly Accessible Open Spaces that fronts an incomplete vertical parcel (the "Temporary Construction Area") to allow for safe construction on that vertical parcel, so long as the Temporary Construction Area is relinquished and improved within six (6) months of issuance of a Final Certificate of Occupancy for the Building located on the vertical parcel.

Subject to Sections 4.2 and 11.5, Developer shall deliver the Completed Privately-Owned Publicly Accessible Open Spaces identified in Exhibits E2 and E3.2, within thirty (30) months following issuance of a Temporary Certificate of Occupancy for any Building on the Development Parcels as indicated in the following schedule:

- Creekside Walk (the later of D8, D9, D10, D11, D12 or D13)
- Gateway to San José (E1)
- Los Gatos Creek East (the later of E1 or E2)

- the Meander (F Office [excluding areas between F2/F4/150 South Montgomery, which are to be delivered within 30 months from the issuance of Temporary Certificate(s) of Occupancy for the final Building of F2, F4 or 150 South Montgomery]);
- Los Gatos Creek Park 2 (H2)
- N. Montgomery Pocket Park (B1)
- Los Gatos Creek Riparian Setback adjacent to Los Gatos Creek Connector (later of H3 and H5)

Semi-Public Open Space, as defined in the DWDSG, that is adjacent to a City-Dedicated Open Space shall be Completed within thirty (30) months of issuance of a Temporary Certificate of Occupancy for the fronting Building.

The following Privately-Owned Publicly Accessible Open Spaces shall be delivered within eighteen (18) months following issuance of a Temporary Certificate of Occupancy for a Building on the indicated Development Parcels, which delivery trigger is the same as for the adjacent City-Dedicated Open Space, as indicated in the following schedule and as referenced in Exhibit E3.2:

- Los Gatos Creek Park (G1)
- Northend Park (A1)

(ii) Term of Privately-Owned Publicly Accessible Open Space.

The approximately seven (7) acres of Covenant Privately-Owned Publicly Accessible Open Space consists of the Privately-owned Public Parks, Los Gatos Creek Riparian Setback, and Los Gatos Creek Riparian Corridor. Each Public Access Restrictive Covenant shall ensure the Covenant Privately-Owned Publicly Accessible Open Space is maintained and open for public use per the terms of the Public Access Restrictive Covenant until either: (i) the end of the useful life of the

Building that triggers the specific Covenant Privately-Owned Publicly Accessible Open Space, or (ii) the City Council approves or authorizes an alternate use of the specific Covenant Privately-Owned Publicly Accessible Open Space, which approval or authorization shall require a minimum two-thirds affirmative vote of the City Council.

(iii) Penalty Fee For Covenant Privately-Owned Publicly Accessible Open Space Delay. In no event shall a delay in the Completion of any Privately-Owned Open Space constitute a Default pursuant to this Agreement. For the Covenant Privately-Owned Publicly Accessible Open Space, in the event Developer fails to Complete any such Open Space in accordance with the Completion schedule set forth in Section 4.1.3(a)(i), subject to any extensions that may be provided by this Agreement, Developer shall be required to pay a penalty fee to the City (the "Private Open Space Delay Penalty Fee"). The Private Open Space Delay Penalty Fee shall be based on the total square footage of the delayed Covenant Privately-Owned Publicly Accessible Open Space, and shall be paid for each month the Completion of that Covenant Privately-Owned Publicly Accessible Open Space is delayed beyond the thirtieth (30th) month following issuance of a Temporary Certificate of Occupancy for the corresponding Building shown in Section 4.1.3(a)(i), as follows:

- Months 31 to 36: Private Open Space Delay Penalty Fee of fifty cents (\$0.50) per square foot of the delayed Covenant Privately-Owned Publicly Accessible Open Space;
- Months 37 to 42: Private Open Space Delay Penalty Fee of one dollar (\$1.00) per square foot of the delayed Covenant Privately-Owned Publicly Accessible Open Space;
- After Month 42: Private Open Space Delay Penalty Fee of ten dollars (\$10.00) per square foot per month of the delayed Covenant Privately-Owned Publicly Accessible Open Space; provided, however, that the total Private Open Space Delay Penalty Fee

shall not exceed an amount equal to the total fair market land value at the time that the final Penalty is paid, plus the value of the Park Improvements for the delayed Covenant Privately-Owned Publicly Accessible Open Space, which total Park Improvements Value shall be determined by multiplying the total acreage of that Covenant Privately-Owned Open Space by one hundred ninety-five dollars (\$195) (total acreage x \$195 = total value), subject to escalation based on the Construction Cost Index based on the date on which the final Penalty is paid.

Pursuant to the terms of the Parkland Agreement, included as Exhibit E to this Agreement, the Parties acknowledge and understand that a delay in the Completion of any Covenant Privately-Owned Publicly Accessible Open Space could impair the Project's ability to provide a cumulative minimum fifty-two (52) square feet of Completed open space (inclusive of both City-Dedicated Open Space and Covenant Privately-Owned Publicly Accessible Open Space) for each residential unit that is constructed, as set forth in and required by Exhibit E. As provided in the Parkland Agreement, City shall deny Conformance Review for a subsequent residential Building that would cause the cumulative minimum square feet of open space for each residential unit to fall below fifty-two (52) square feet.

(iv) Transfer of Privately-Owned Publicly Accessible Open Space. Any Privately-Owned Publicly Accessible Open Space shall only be Transferred together with the adjacent Building or Buildings that trigger delivery of the subject Open Space and, except for midblock passages as defined in the DWDSG, where there are multiple potential trigger Buildings the Privately-Owned Publicly Accessible Open Space shall be Transferred with a trigger Building that is at least one hundred thousand (100,000) square feet in size. In addition to complying with all applicable requirements of this Agreement, for a Transfer of a Privately-Owned

Publicly Accessible Open Space, Transferee shall expressly be required to comply with the Completion requirements set forth herein, including payment of the Private Open Space Delay Penalty Fee, if owed, and shall continuously provide the subject Privately-Owned Publicly Accessible Open Space, including the amenities/improvements thereon, in compliance with the applicable regulations set forth in the Project Approvals, including the DWDSG and this Agreement.

(b) Publicly Available Parking Spaces. Developer shall provide publicly available parking spaces within the Project in the manner and number set forth in Exhibit K.

(c) Enhanced Infrastructure, District Systems, and Microgrid. Subject to receipt of necessary state and Non-City Agency permits and approvals, the Project proposes a District Systems approach to handle many of its utilities—such as electricity, thermal, wastewater, recycled water, and solid waste, as described in Exhibit I. The Project's Infrastructure Plan (Exhibit I) also includes enhanced right of way improvements, utility upgrades and relocation, undergrounded overhead power and communication lines, rehabilitation work to Los Gatos Creek, and replacement of the San Fernando Bridge as additional Project Features. In addition, if feasible, the Project will connect some or all Buildings to an electric microgrid.

(d) Workforce, Learning, and Education. Developer and/or Google, as applicable, will provide the additional Workforce, Learning, and Education benefits described in Exhibit G.

(e) AB 900; Environmental Leadership Project Features. As described in Recital K, the Project is an Environmental Leadership Project pursuant to AB 900. As such, Developer has included as part of its AB 900 package the following Project Features: the Project

will be designed in pursuit of LEED for Neighborhood Development Gold Certification based on requirements in effect as of the Effective Date, with efforts to design vertical office Buildings to be eligible for LEED Gold Certification based on requirements in effect as of the Effective Date; and the Project would offset emissions, resulting in no net new greenhouse gas emissions, in part through a combination of design measures intended to reduce energy consumption described in Exhibit I and in the FEIR, switching to equipment utilizing lower emission energy sources, water use and vehicular movement efficiencies, and purchasing GHG emissions offsets.

4.2 Community Benefits Adjustments.

4.2.1 Definition. "Community Benefits Adjustment" 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 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.

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 (shown thereon as consisting of the “HSR Buffer Zone” and “DISC Buffer Zone”). 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, then (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 Construction Cost Index):

Lost Land Area outside the Transit Buffer Zone x Office Parcel Yield PSF (see Appendix A to Exhibit C3) = Total Lost Office Program

(Total Lost Office Program x PSF Base Diminution Value) - Severance Damages = Net Value Loss

Remaining Community Benefits - Net Value Loss = Adjusted Community Benefits Value

Adjusted Community Benefits Value / (Remaining Office Program-Total Lost Office Program) = 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, for purposes of this Section 4.2.2 only, will be calculated for individual parcels based on the values in Appendix A to Exhibit C3. Remaining Community Benefits will be calculated by the City and are equal to two hundred million dollars (\$200,000,000), less the value of Moderate Inclusionary Units (\$7,000,000), Prepayment for Job Readiness and Stabilization (\$7,500,000), Autumn Street Parcel Donation (\$8,400,000), and Developer Community Benefits Payments for office development that has received the Temporary Certificate of Occupancy (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 a Temporary Certificate of Occupancy.

(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 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 of the Parcel.

(e) 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. However, if following receipt of a Community Benefits Adjustment as described in this paragraph Developer does develop on these sites, then any such development shall be credited back to the total developable square footage on which the Community Benefits are based.

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.

4.2.3 Community Benefits Adjustment Due to Construction Crane Policy. In the event the City adopts a construction Crane Policy, if the aggregate fees owed or costs incurred across the Project pursuant to that Crane Policy exceed [AMOUNT TBD], Developer shall receive a Community Benefits Adjustment in an amount equal to one dollar for every dollar over \$[TBD] that is owed or incurred.

(a) In furtherance of the Project and the shared objectives articulated in the MOU and in this Agreement, the City further agrees that it will not create new policies or guidance that adversely affect the crane or building heights within the Project boundary. For the Term of this Agreement, while it is understood that the Norman Y. Mineta San Jose International Airport (the "Airport") is required to communicate with the Federal Aviation Administration (FAA) on airspace when requested by the FAA, the Parties acknowledge and support that the Airport will defer to the FAA process for all determinations of height for cranes and buildings set forth in the following table:

Building	Maximum Building Height Desired (AGL)	Minimum Crane Height Clearance Required
A1	180	70
B1	200	70
C2	230	70
C3	230	40
D4	255	70
D7	270	70

E1	260	70
F1	280	70
G1	290	70

4.3 Conditions to Performance of Public Benefits. Developer's obligation to perform Public Benefits is expressly conditioned upon the satisfaction of each and all of the following conditions precedent:

4.3.1 Final Approval has occurred for all Approvals (including any Subsequent Approvals as set forth in Section 4.3.3 below);

4.3.2 The City and any applicable Non-City Agency(ies) shall have performed or granted all of their respective actions, approvals or authorizations and/or issued such permits or licenses required in order to permit Developer to Commence Construction of the Building(s) or Project component(s) to which the particular Public Benefit applies, and Final Approval shall have occurred for same except to the extent that such actions, approvals or authorizations, or permits or licenses have not been performed or granted due to the failure of Developer to timely initiate in conformance with the Approvals and then diligently and using Good Faith Efforts pursue such actions, approvals, authorizations, or issuances; provided, however, Developer shall be deemed to have timely initiated and diligently pursued such actions, approvals, authorizations, or issuances notwithstanding a determination of inconsistency if Developer complies with the requirements for obtaining the same as set forth in the applicable Approvals and Project Documents; and

4.3.3 Developer shall have obtained all Subsequent Approvals necessary to Commence Construction of the applicable Building(s) or Project component(s) to which the Public Benefit applies, and Final Approval shall have occurred for same, except to the extent that such Subsequent Approvals have not been obtained or Final Approval has not occurred for same due to the failure of Developer to timely initiate in conformance with the Approvals and then diligently

and using Good Faith Efforts pursue such Subsequent Approvals; provided, however, Developer shall be deemed to have timely initiated and diligently pursued a Subsequent Approval notwithstanding a determination of inconsistency if Developer complies with the requirements for obtaining the Subsequent Approval as set forth in the applicable Approvals and Project Documents.

Except as expressly set forth in any of the applicable Exhibits to this Agreement, and in addition to any other available remedy, whenever this Agreement requires completion of a Public Benefit at or before Completion of a Building, the City may withhold a Final Certificate of Occupancy for that Building until the required Public Benefit is Completed.

4.4 Limited Term Corporate Accommodations Contributions. Developer agrees to make certain contributions to City related to development of Limited-Term Corporate Accommodations, as such use is defined in the Downtown West Planned Development Zoning District and General Development Plan. The contribution mechanism set forth below is a one-time arrangement for no more than eight hundred (800) Limited-Term Corporate Accommodations within the Project, and in no event shall more than 100,000 net square feet of Limited-Term Corporate Accommodations be permitted on parcels zoned for residential uses. The net square footage for purposes of this clause shall be measured using all net rentable square footage, which includes measurements from the outside surface of the exterior stud walls and include all finished living space, and any Limited Term Corporate Accommodation designated common areas. The net square footage does not include parking areas, common hallways, building lobbies, balconies, elevator shafts, building common stairways, utility shafts, janitorial closets, and storage lockers not located within Limited-Term Corporate Accommodations. This arrangement shall in no way

serve as a precedent or guide for any other contributions, uses, agreements, or projects in the City, by Developer or any other developer.

4.4.1 Limited Term Corporate Accommodations Affordable Housing Contribution. Developer shall contribute to City the amount of eighteen and 70/100 dollars (\$18.70) per net square foot of Limited-Term Corporate Accommodations (the "Corporate Accommodations Affordable Housing Contribution"). The calculation of net square footage shall:

- exclude areas outside the usable accommodation such as lobby, storage areas, mechanical/utility rooms, etc.; and
- if there are shared kitchen facilities, then shall include community rooms, common rooms/lounges together with supporting facilities such as kitchens and restrooms and other heated interior residential areas associated with the dwelling units or suites.

This Contribution shall be paid upon issuance of a building permit for a Building containing Limited-Term Corporate Accommodations. The Corporate Accommodations Affordable Housing Contribution shall be vested for the term of this Agreement, subject to escalation based on the Construction Cost Index. Pursuant to Section 5.6 of this Agreement, Developer shall not be subject to any new Impact Fee (or any new development or impact fees or exactions or other fees, contributions, special taxes, exactions, impositions or dedications, whether any of the foregoing are imposed as a fee, a zoning requirement or otherwise) for Limited-Term Corporate Accommodations or similar use that City may adopt. Any amounts collected would be used by the City for affordable housing City-Wide.

4.4.2 Limited Term Corporate Accommodations Parks Contribution. Developer shall contribute to City the amount of four thousand eight hundred fifty dollars (\$4,850) for each Limited-Term Corporate Accommodation bedroom (i.e. separate enclosed sleeping quarter)

developed within the Project (the "Corporate Accommodations Parks Contribution"), which Contribution shall be paid upon issuance of a building permit for a Building containing Limited-Term Corporate Accommodations. The Corporate Accommodations Parks Contribution shall be vested for the term of this Agreement. Pursuant to Section 5.6 of this Agreement, Developer shall not be subject to any new Impact Fee (or any new development or impact fees or exactions or other fees, contributions, special taxes, exactions, impositions or dedications, whether any of the foregoing are imposed as a fee, a zoning requirement or otherwise) for Limited-Term Corporate Accommodations or similar use that City may adopt. Any amounts collected would be spent by the City on parks consistent with the City's 2009 Greenprint for Parks, Recreation Facilities and Trails, as it may be amended from time to time, and City will distribute funds within nexus.

4.5 No Additional CEQA Review Required; Reliance on FEIR for Future Discretionary Approvals. The Parties acknowledge that the FEIR prepared for the Project complies with CEQA. The Parties further acknowledge that (a) the FEIR contains a thorough analysis of the Project and possible alternatives, (b) the MMRP has been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the City Council adopted CEQA Findings, including a statement of overriding considerations in connection with the Approvals, pursuant to CEQA Guidelines Section 15093, for those significant impacts that could not be mitigated to a less than significant level. For these reasons, the City shall rely on the FEIR, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review, at Developer's expense, in connection with any Subsequent Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA. Developer acknowledges that if the City determines, based on

additional required environmental review in accordance with CEQA, that the modified project will result in significant new effects or substantially increases the severity of effects beyond those identified in the FEIR for the Project, City may require, and Developer shall comply at its expense with all additional mitigation measures required to mitigate such impacts.

4.5.1 Compliance with CEQA Mitigation Measures. Developer shall comply with all Mitigation Measures imposed as applicable on each Project component, except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all Mitigation Measures identified as the responsibility of the "owner" or the "project sponsor" or the "project applicant". The Parties expressly acknowledge that the FEIR and the associated MMRP are intended to be used in connection with each of the Approvals and any Subsequent Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from a modification to the Project, as such conditions are determined by the City to be necessary to mitigate potentially significant adverse environmental impacts identified through any subsequently required CEQA process and associated with that Project modification or a Subsequent Approval or permit; provided, however, any such conditions must be in accordance with Applicable Law.

4.6 Nondiscrimination. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City employee working with any Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of

a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

4.7 City Cost Recovery.

4.7.1 Developer shall timely pay to the City the Impact Fees set forth in Exhibit M with respect to the Project or the Project Site as set forth in Section 5.6. Such fees shall be the only Impact Fees applicable to the Project or Project Site during the Term of this Agreement (and no new development or impact fees or exactions or other fees, contributions, special taxes, exactions, impositions or dedications, whether any of the foregoing are imposed as a fee, a zoning requirement or otherwise, shall apply to the Project or Project Site, except as expressly permitted in this Agreement).

4.7.2 Except as otherwise set forth in this Agreement and/or the Exhibits hereto, Developer shall timely pay to the City all applicable Processing Fees with respect to the processing or review of applications for the Approvals and Subsequent Approvals as set forth in Section 5.6.

4.7.3 Developer shall pay to the City all Processing Fees and City Costs incurred in connection with the drafting and negotiation of this Agreement, and defending the Approvals as set forth in Section 7.4, and in processing and issuing any Subsequent Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), in accordance with any existing or future Reimbursement Agreement between Developer and the City with respect to such Processing Fees and City Costs.

4.7.4 The Parties shall enter into a Reimbursement Agreement with respect to Processing Fees and City Costs pursuant to which Developer shall reimburse the City for

Processing Fees and City Costs incurred in performing work in connection with coordinating and processing Subsequent Approvals required to implement the Project, including but not limited to any further environmental review, Conformance Review Applications, phased final subdivision maps, and grading and building permits, all on an expedited basis. The Reimbursement Agreement shall establish the City's commitment to process Subsequent Approvals on an expedited basis and the terms for Developer's reimbursement to the City for such Processing Fees and City Costs, and shall set forth (i) the scope of City Costs eligible for reimbursement; (ii) a process for the parties to agree to an annual (or other applicable period based on the anticipated scope of the work) budget of Processing Fees and City Costs based on anticipated schedule of reimbursable work, a reconciliation process for budget inconsistencies, and a process for periodically reducing or augmenting the budget where necessary; (iii) Developer's rights to review or challenge Processing Fees and City Costs; (iv) Developer's rights to review and verify for reasonableness consultant scopes of work, expenses, and budgets; (v) the City's responsibility for tracking, maintaining, and reporting Processing Fees and City Costs incurred in relation to an approved budget; (vi) the process for Developer's payment of Processing Fees and City Costs; and (vii) any other related terms mutually agreed upon between the Parties. The Reimbursement Agreement shall be in a form substantially similar to the form attached hereto as Schedule A.

4.8 Prevailing Wages. Developer acknowledges that Developer shall be required to pay prevailing wages to all persons performing labor in the construction of public improvements on the Project Site to the extent required by California law, including specifically the California Labor Code, the California Public Resources Code, and the requirements of the Department of Industrial Relations, and as may be required by the Municipal Code or City rules, regulations, or policies. Developer shall include this requirement in any contract entered into by Developer for the

construction of any such public improvements. Upon request, Developer and its contractors shall provide to City any workforce payroll records as needed to confirm compliance with this Section.

4.9 Indemnification of City. To the fullest extent by law, Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "City Parties") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, judgments, attorney fee awards, and claims ("Losses") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Subsequent Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals, Subsequent Approvals, or this Agreement, to comply with any Federal or State Laws, the Existing Standards or any permitted Future Changes to Existing Standards, (iv) any accident, bodily injury, death, personal injury, or loss of or damage to property occurring on a Project Site (or off-site, with regard to the Public Improvements) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Subsequent Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any contract dispute between Developer, its contractors or subcontractors, any other third party, or any combination thereof, relating to the construction of any part of the Project, including but not limited to disputes related to prevailing wage requirements, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any portion of the Project Site or development thereof relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be

imposed on, the City or any of the City Parties, except to the extent that such indemnity is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the sole negligence or willful misconduct of any City Party. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement.

4.9.1 The City shall promptly notify Developer of any claim, action or proceeding within the scope of this Section and the City shall cooperate fully in the defense of any such claim or action, but shall have the right to resolve any challenge, in any manner, in its sole discretion, provided, however, Developer's consent shall be required if the resolution of the challenge shall require a payment by Developer or limit Developer's rights under this Agreement. The City shall invoice Developer for any City costs or fees for which Developer is responsible under Section 4.8 in the manner and subject to the provisions of Section 4.6, including pursuant to a Reimbursement Agreement.

5. VESTING AND CITY OBLIGATIONS

5.1 Vested Rights. By granting the Approvals, the City has made a policy decision that the Project, as described herein and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. Developer shall have the vested right to develop the Project as set forth in this Agreement, and authorized by the Approvals, including but not limited to, the Downtown West Planned Development Zoning District, the General Development Plan, the Downtown West Planned Development Permit, the Vesting Tentative Map for Downtown West, and including without limitation with the following vested elements: the land uses, height and bulk limits, including the maximum density, intensity

and gross square footages, the permitted uses, the provisions for open space, and the Impact Fees set forth in Exhibit M (collectively, the "Vested Elements"). The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent building permits or approvals, including Subsequent Approvals at any time during the Term, any of which shall be governed by Applicable Laws. Each Subsequent Approval, once granted, shall be deemed an Approval for purposes of this Section 5.1.

5.2 Existing Standards. The City shall process, consider, and review all Subsequent Approvals in accordance with (i) the Approvals, (ii) the San José General Plan, the Municipal Code (including the Subdivision Code), amendments to the Municipal Code set forth in City Council Ordinance No. ____ and all other applicable City policies, rules, and regulations, as each of the foregoing is in effect on the Effective Date ("Existing Standards"), as the same may be amended or updated in accordance with permitted Future Changes to Existing Standards as set forth in Section 5.4, and (iii) this Agreement (collectively, "Applicable Laws").

5.3 Criteria for Subsequent Approvals; Limitation on City's Future Discretion. As set forth in Section 5.6 below, Developer and City shall commence the preparations necessary for the City to be ready to receive and promptly process applications for Subsequent Approvals. Developer shall be responsible for obtaining any required Subsequent Approvals. The City, in granting the Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to Subsequent Approvals to the extent that they are consistent with the Approvals and this Agreement. The City acknowledges and agrees that (i) Developer's commitment to provide the various benefits described in this Agreement is, in part, consideration for the City's agreement to limit its discretion with respect to Subsequent Approvals and to process

Subsequent Approvals in a prompt and efficient manner, and (ii) the City's inability or refusal to process Subsequent Approvals in such manner and otherwise in accordance with this Agreement and the Approvals may cause Developer significant harm. Accordingly, in no event shall a City Agency deny, or withhold issuance of a Subsequent Approval based upon items that are in compliance with the Approvals and this Agreement, unless required by Applicable Law, and shall consider all such applications pursuant to the procedures set forth in the Approvals (including the Downtown West Planned Development Zoning District and its accompanying General Development Plan, and the Downtown West Design Standards and Guidelines), as applicable, and in accordance with its customary practices (subject to the requirements of this Agreement). Subject to the requirements of this Agreement, the City shall not impose any new condition for a Subsequent Approval that conflicts with the Approvals, except when such condition is necessary to bring the Subsequent Approval into compliance with Applicable Laws. For any part of a Subsequent Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Approvals and otherwise in accordance with the City's customary practice (but subject to the requirements of this Agreement). City Agency discretion for certain Subsequent Approvals, including but not limited to Conformance Review Applications, shall be exercised consistent with the General Development Plan, Downtown West Planned Development Permit, and other Approvals as applicable. Consequently, the City shall not use its discretionary authority to change the policy decisions reflected by the Approvals and this Agreement or in such manner as would prevent or delay development of the Project as contemplated in the Approvals and this Agreement. If the City denies any application for a Subsequent Approval that implements the Project as contemplated by the Approvals, then such denial must be consistent with Applicable

Laws and the City must specify in writing the reasons for such denial and shall suggest, in a detailed writing, modifications required for approval of the application. Any such specified modifications shall be consistent with Applicable Laws and City staff shall promptly approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with Applicable Laws and does not include significant new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement. Nothing in the foregoing shall impact or limit the City's discretion with respect to: (i) proposed Subsequent Approvals that seek a Material Change to the Approvals, or (ii) City approvals of subsequent tentative maps or vesting tentative maps, to the extent required by Law, not contemplated by the Approvals; (iii) City's ability to address any public health, or safety concerns, or to comply with applicable State or Federal Laws. Until such time as the City approves the application for Subsequent Approval, Developer shall have no obligation to provide any of the Public Benefits specifically associated with the development that is the subject of the Subsequent Approval. Notwithstanding the foregoing, and for clarity, deviations or modifications authorized to be approved pursuant to procedures established by the General Development Plan, without requiring amendment to the General Development Plan, shall not constitute a Material Change. By way of example and without limitation, approval of allowable transfers and allowable conversions described on Sheet 3.03 of the General Development Plan and of minor modifications, exceptions, deferrals, amendments to the Planned Development Permit, including DWDSG, DISC process, each as described on Sheet 8.02 of the General Development Plan would not constitute Material Changes. Additionally, adjustments, deviations or modifications authorized to be approved pursuant to procedures established by the Planned Development Permit, and Non-

Material Amendments authorized by the Downtown West Improvement Standards or the Infrastructure Plan shall not constitute a Material Change.

5.4 Future Changes to Existing Standards. All future changes to Existing Standards and any other Laws, plans, or policies adopted by the City or adopted by voter initiative after the Effective Date ("Future Changes to Existing Standards") shall apply to the Project and the Project Site, except to the extent they conflict with this Agreement, or the terms and conditions of the Approvals, it being agreed that, in order to give Developer certainty with regard to the rules and regulations that will govern the future development of the Project, and give City certainty of Public Benefits in exchange, the City and Developer have agreed upon a mix of rights and obligations under this Agreement that are vested in accordance with the terms of this Agreement. Accordingly, except as expressly set forth in this Agreement, Future Changes to Existing Standards that would substantially or materially increase Developer's rights or obligations or decrease Developer's rights or obligations under this Agreement shall conflict with terms of this Agreement and the Approvals and shall not apply to this Agreement or the Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of this Section 5.4.

5.4.1 Developer and the City have provided for changes or adjustments to the Project due to DISC or Cranes in Sections 4.2.2 and 4.2.3 of this Agreement. As such, this Section 5.4.1 addresses other potential future changes to Existing Standards. Future Changes to Existing Standards shall be deemed to conflict with this Agreement and the Approvals if they substantially or materially:

(a) limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage or number of proposed Buildings

or change the location of proposed Buildings or change or reduce other improvements from that permitted under this Agreement for the Project, the Existing Standards, or the Approvals;

(b) limit or reduce the height or bulk of the Project, or any part thereof, or otherwise require any reduction in the height or bulk of individual proposed Buildings or other improvements that are part of the Project from that permitted under this Agreement, the Existing Standards, or the Approvals;

(c) limit, reduce or change the allowed location of vehicular access or parking from that permitted under this Agreement, the Existing Standards, or the Approvals;

(d) limit any land uses for the Project from that permitted under this Agreement, the Existing Standards, the Approvals, or the Existing Uses;

(e) materially limit or control the rate, timing, phasing, or sequencing of the approval, development, or construction of all or any part of the Project in any manner, including the demolition of existing Buildings at the Project Site;

(f) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except as otherwise provided in Section 5.4.2;

(g) limit or control the availability or the type or nature of public utilities, services, or facilities, or any privileges or rights to public utilities, services, or facilities for the Project as contemplated by the Approvals;

(h) conflict with, or otherwise limit, control, or change the management, delivery, or governance of a Privately-Owned Publicly Accessible Open Space as set forth in this Agreement;

(i) materially and adversely limit the processing or procuring of applications and approvals of Subsequent Approvals that are consistent with Approvals; or

(j) increase or decrease any Impact Fees, as they apply to the Project, except as permitted under Section 5.4.2, or impose any new development or impact fees or exactions or other fees, contributions, special taxes, exactions, impositions or dedications, whether any of the foregoing are imposed as a fee, a zoning requirement or otherwise, except as expressly permitted in this Agreement.

Developer and City, working together in good faith, shall reasonably determine whether any Future Change(s) to Existing Standards shall be deemed to conflict with this Agreement or the Approvals in any material or substantial way and shall take into account the aggregate effect of all previous Future Changes and any then-proposed Future Changes on this Agreement or the Approvals when considering any material or substantial effect(s).

5.4.2 Pursuant to the Downtown West Planned Development Zoning District and General Development Plan, Developer may request to have a Future Change to Existing Standards that is different or conflicts with this Agreement and the Approvals applied to the Project or the Project Site. Developer must make such a request in writing to the Director of PBCE, and the request shall identify the specific standard and state a rationale for the request. The Director of PBCE may approve the request in his or her sole reasonable discretion; provided, however, that if the application of such Future Change to Existing Standards would constitute a Material Change, the application of such Future Change to Existing Standards shall require the approval of the City Council. The Director of PBCE's or the City Council's decision, as applicable, to approve or disapprove Developer's request is not subject to appeal. If Developer's request is approved, the Future Change to Existing Standards shall be deemed to be an Existing Standard. Nothing in this Agreement shall preclude Developer from pursuing any challenge to the application by the City of any Future Changes to Existing Standards to all or part of the Project Site.

5.4.3 The Parties acknowledge that, for certain parts of the Project, Developer must submit a variety of applications for Subsequent Approvals before Commencement of Construction. Developer shall be responsible for obtaining all Subsequent Approvals before the start of any construction to the extent required under Applicable Law. Notwithstanding anything in this Agreement to the contrary, when considering any such application for a Subsequent Approval, the City shall apply the then-applicable provisions, requirements, rules, or regulations that are contained in the California Building Standards Code, as amended by the City, including, without limitation, the requirements of the City's Building Code, Housing Code, Mechanical Code, Electrical Code, Plumbing Code, Fire Code, and other uniform construction codes applicable on a City-Wide basis or within the DSAP's Boundaries, to the same or similarly situated uses and applied in an equitable and non-discriminatory manner.

5.5 Filing of Subdivision Maps. Developer shall have the right, from time to time and at any time, to file subdivision-related applications (including but not limited to applications for maps to help effectuate a Transfer or other assignment of the Developer's rights and obligations under this Agreement, tentative maps, vesting tentative maps, final maps or phased final maps, lot line adjustments, lot mergers, and certificates of compliance) with respect to some or all of the Project Site, to subdivide, reconfigure, or merge the parcels comprising the Project Site as may be necessary or desirable in order to develop a particular part of the Project as shown generally in Exhibit B. The specific boundaries of parcels shall be set by Developer in accordance with all applicable subdivision and development standards and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease, or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting

or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement, including any timing requirements set forth herein or in the Exhibits, or with the Approvals.

5.6 Impact Fees; Processing Fees. Developer shall endeavor to contact the City at least six (6) months prior to the date on which Developer anticipates submitting its first application for a Subsequent Approval. Following such contact, Developer and the City shall promptly meet and confer and work with Google in good faith to (i) arrange for the City to prepare its staff for receipt and processing of such application and the requested Subsequent Approvals and (ii) enter into a Reimbursement Agreement with respect to the Processing Fees and City Costs for such work. Developer acknowledges and agrees that in order for the City to receive and process the initial and subsequent applications for Subsequent Approvals in the time frames specified in the Approvals, the City will need sufficient advance notice in order to have available staff to do such work. Accordingly, if Developer does not contact the City in advance and thereafter meet, confer and work with the City as set forth hereinabove, then the City will be unable to timely process applications for Subsequent Approvals until the City has had sufficient time to provide available staff and enter into a Reimbursement Agreement. Similarly, the City agrees to meet, confer and work with Google as set forth hereinabove in order to help assure the timely processing of Subsequent Approvals, including as set forth in the Implementation Guide.

5.6.1 Generally. The Project shall be subject to only those Impact Fees set forth in Exhibit M, as set forth in this Section 5.6, and the City shall not impose any new development or impact fees or exactions or other fees, contributions, special taxes, exactions, impositions or dedications, whether any of the foregoing are imposed as a fee, a zoning requirement or otherwise, on the development of the Project or impose new conditions or requirements for the right to

develop the Project (including required contributions of land, public amenities, or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this Section 5.6 are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

5.6.2 Applicable Impact Fees. The Impact Fees that apply to the Project are those Impact Fees set forth in Exhibit M hereto.

(a) The Parties acknowledge that the Diridon Infrastructure Fee is otherwise an impact fee applicable to the Project. However, in-lieu of paying the fee, Developer intends to construct in-kind infrastructure improvements as more particularly described in Exhibit I and Exhibit M.

(b) The Parties acknowledge that the Parkland Dedication requirements of Chapter 19.38 of the San José Municipal Code, including payment of the Parkland Fee, otherwise apply to the Project. Developer will satisfy this obligation as more specifically described in Exhibit E and the exhibits and schedules thereto, subject to the default provisions provided therein. To the extent any Parkland Fee is owed, it shall be the Parkland Fee in effect upon the Effective Date of this Agreement, which Fee is reflected in Exhibit E8, subject only to escalation based on the Construction Cost Index.

5.7 Processing Fees; Reimbursement Agreement. Processing Fees for the Project shall be limited to the Processing Fees in effect, on a City-Wide basis or within the DSAP's Boundaries, applicable to the same or similarly situated (i) uses or (ii) work that Developer is asking the City

to undertake, and applied in an equitable and non-discriminatory manner, at the time that Developer applies for the Subsequent Approval for which such Processing Fee is payable in connection with the applicable portion of the Project. The Reimbursement Agreement to be entered into between City and Developer pursuant to Section 4.6.4 shall provide for Processing Fees paid by Developer to be credited against any Developer obligation to pay City Costs in connection with City processing of Subsequent Approvals.

5.8 Public Health and Safety; Changes in Federal or State Laws.

5.8.1 City's Exceptions. Each City Agency having jurisdiction over the Project shall exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is reasonably necessary to protect the physical health and safety of the public, abate public nuisance, (the "Public Health and Safety Exception"), or that is reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "Federal or State Law Exception"), including the authority to condition or deny a Subsequent Approval, or to adopt a new Law applicable to the Project, so long as such condition or denial or new regulation (i) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, or (ii) is required to comply with a Federal or State Law, and (iii) is applicable City-Wide, or within the DSAP's Boundaries, to the same or similarly situated uses and applied in an equitable and non-discriminatory manner, and in the case of each of (i), (ii) and (iii) is not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception.

5.8.2 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits, or obligations, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of Section 5.8.4, as applicable.

5.8.3 Changes to Development Agreement Statute or Development Agreement Ordinance. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute and the Development Agreement Ordinance. No amendment of or addition to the Development Agreement Statute or Development Agreement Ordinance that would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder, shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

5.8.4 Termination of Agreement. If any of the modifications, amendments or additions described in Section 5.8.2 or Section 5.8.3 or any changes in Federal or State Laws described above would materially and adversely affect the construction, development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project becomes economically infeasible as reasonably determined

by Developer (a "Law Adverse to Developer"), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments, or additions described in Sections 5.8.2 or Section 5.8.3 or any changes in Federal or State Laws described thereunder would materially and adversely affect or limit the Community Benefits (a "Law Adverse to the City"), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 5.8.4, the Parties agree to meet and confer in good faith for a period of not less than thirty (30) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in thirty (30) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San José for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then (i) Developer shall have the right to terminate this Agreement following a Law Adverse to Developer, upon not less than thirty (30) days prior notice to the City, and (ii) the City shall have the right to terminate this Agreement following a Law Adverse to the City, upon not less than thirty (30) days prior notice to Developer; provided, notwithstanding any such termination, Developer shall be required to Complete, in accordance with this Agreement, the Base Requirements, Community Benefits, and Privately-Owned Publicly Accessible Open Space for which substantial site work, including any demolition, grading and foundation work, has occurred in connection with any particular new Building as set forth in Section 4.

5.9 No Action to Impede Approvals. Except and only as required under Section 5.8, the City shall take no action under this Agreement, nor impose any condition on the Project, that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall

be deemed to be in conflict with this Agreement or the Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 5.6.1.

5.10 Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Director of PBCE requesting that the Director of PBCE certify to Developer, a potential Transferee, a potential lender to Developer, or a Mortgagee in writing that to the best of the Director of PBCE's knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) Developer is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 8 of this Agreement. The Director of PBCE, acting on behalf of the City, shall execute and return such certificate within forty-five (45) days after receipt of the request.

5.11 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to the Zoning Code and the applicable provisions of Section 5. Developer may install interim or limited term and/or special event uses on the Project Site as provided for in, and consistent with, the requirements of the Downtown West Planned Development Zoning District, the accompanying General Development Plan, and/or the Downtown West Planned Development Permit.

5.12 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute on its own initiative proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*), but not including business improvement districts or community benefit districts formed by a vote of the affected property owners), that includes the Project Site unless Developer gives its express, prior written consent (which it may withhold in its sole discretion except to the extent Developer has expressly requested that City institute proceedings for any such new or increased special tax or assessment, in which case Developer shall not unreasonably withhold its consent) to or specifically requests such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at all or any part of the Project Site, unless Developer gives its express, prior written consent (which it may withhold in its sole discretion) to or specifically requests such proceedings. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any portion thereof, that is enacted in accordance with Law and applies on a City-Wide basis to the same or similarly situated property or uses in an equitable and non-discriminatory manner.

Developer shall require the following provision, or a substantially similar version thereof, to be included in any general contract for the construction of core and shell work (including windows, elevators, and escalators) in the Project:

“Contractor shall, to the extent allowed by the California Department of Tax and Fee Administration and applicable sales and use tax laws and regulations ("Sales and Use Tax Laws"), coordinate with the City of San José to designate the City of

San Jose as the place of use of any materials, goods, or services purchased by Contractor and the origin of any local sales taxes generated by Contractor. Notwithstanding the foregoing sentence, in no event shall Contractor be required to do anything that is in violation of or inconsistent with such Sales and Use Tax Laws.”

6. NO DEVELOPMENT OBLIGATION

Except as set forth in this Agreement and the Approvals, including, without limitation, the Ten Year and Twenty Year Development Obligations and other requirements set forth in Section 2.2, the timing of delivery of Base Requirements and Community Benefits as set forth in Exhibit C1, D, E, and I, the timing and delivery of Privately-Owned Publicly Accessible Open Space as described in Section 4.1.3(a), and the timing or phasing requirements forth in the FEIR and MMRP, there is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof, or that development be initiated or completed within any period of time or in any particular order. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and such other factors. Except as expressly required by this Agreement and the Approvals, the City acknowledges that Developer may develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner

set forth herein. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, the Development Agreement Ordinance and this Agreement.

7. MUTUAL OBLIGATIONS

7.1 Notice of Completion, Revocation or Termination. Upon any early revocation or termination of this Agreement (as to all or any part of the Project Site) under the circumstances and in the manner permitted herein, the Parties agree to execute, if requested in writing by the other Party, a written statement acknowledging such revocation or termination in the form attached as Exhibit N, signed by the appropriate agents of the City and Developer, and record such instrument in the Official Records. In addition, upon Developer's request, when one or more Buildings have been Completed, and all of the Base Requirements and Community Benefits, and other obligations and requirements tied to those specific Buildings have, in accordance with this Agreement, also been Completed, as more specifically set forth in the Notice of Completion, the City and Developer shall execute and record a Notice of Completion in the form attached as Exhibit N for the applicable property on which the Buildings, other facilities or improvements, or any combination thereof, are located.

7.2 General Agreement to Cooperate. As set forth in Section 5.3 above, in this Section 7.2 (including Section 7.2.1 below) and elsewhere in this Agreement, the Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Subsequent Approvals and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals and any Subsequent Approvals are implemented, including any stated

review periods therein. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that Developer must reimburse through the payment of permitted Processing Fees. The Parties agree that the PBCE Department or Public Works Department, as appropriate (or such other department to whom the obligation is delegated by the Director of PBCE after notice to Developer), will act as the City's lead agency to facilitate coordinated City review of applications for the Project. As such, PBCE Department or Public Works Department (or such other designated department) staff will: (i) work with Developer to ensure that all such applications to the City are technically sufficient and constitute complete applications, and (ii) interface with City staff responsible for reviewing any application under this Agreement to facilitate an orderly, prompt and efficient review process that avoids delay and redundancies, and that is undertaken in the manner set forth in the Approvals, and any Subsequent Approvals.

7.2.1 Specific Actions by the City. The City actions and proceedings subject to this Agreement shall be through the PBCE Department, as well as affected City Agencies (and when required by applicable Law, the City Council), and shall include, upon application by Developer, instituting and completing proceedings for the temporary or permanent closing or occupancy, widening, modifying (including changes from vehicular to pedestrian use) or changing the grades of streets, alleys, sidewalks, and other rights-of-way, and other necessary modifications of the streets, the street layout, and other public or private rights-of-way in or near the Project Site, including streetscape improvements, encroachment permits, improvement permits, and any requirement to abandon, remove, and relocate public utilities (and, when applicable, City utilities) within the public rights-of-way as identified in the Approvals and Subsequent Approvals. Except as set forth in Section 9.3.4 and upon receiving payments of all applicable Processing Fees then

due, City Agencies shall process with due diligence all complete submissions and applications by Developer on all permits, approvals, construction, or occupancy permits for the Project, subject to the acceptance of the same as complete; provided, however, that any delays in City's processing of such submission and applications attributable to a delay or failure by any Non-City Agency to perform or grant any required action, approval, or authorization, shall not be deemed to be breach by City of this Section.

7.3 Non-City Approvals; Cooperation to Obtain Permits. The Parties acknowledge that certain portions of the Project may require the approval of Federal, State, and local governmental agencies that are independent of the City and not a Party to this Agreement ("Non-City Agencies"). The City will cooperate with reasonable requests by Developer in connection with Developer's efforts to obtain permits, agreements, or entitlements from Non-City Agencies as may be necessary or desirable for the development, operation and use of the Project, including with respect to the study and development of the District Systems as contemplated by the MOU (each, a "Non-City Approval").

7.3.1 City Cooperation Regarding Trail Alignments. City and Developer understand and agree that the proposed Los Gatos Creek Trail Multi-Use Trail segments included as part of the Project will enhance trail connectivity in the City of San José, and also will provide for the cohesive open space network envisioned by the Developer and City as part of the Project. To allow for Completion of the trail alignments, City and Developer specifically agree to cooperate in good faith, and City shall lead such efforts as appropriate or necessary, to secure authorization, including an easement, joint use, or similar agreement, for trail alignments and under-crossings that may affect property owned by the Santa Clara Valley Water District.

7.3.2 Conditions of Cooperation to Obtain Permits. The City's commitment to Developer under this Section 7.3 is subject to the following conditions:

(a) Throughout the permit process for any Non-City Approval, Developer shall consult and coordinate with each affected City Agency in Developer's efforts to obtain the permits, agreements, or entitlements, and each such City Agency shall cooperate reasonably with Developer in Developer's efforts to obtain the same.

(b) Developer shall not agree to conditions or restrictions in any Non-City Approval that could create: (1) any obligations on the part of any City Agency that are in addition to any obligations under applicable Laws or other agreements with the applicable Non-City Agency, unless the City Agency agrees in writing, in its sole discretion and following the receipt of any necessary governmental approvals, to assume such obligations; or (2) any restrictions on City property that are in addition to any obligations under applicable Laws or other agreements with the applicable Non-City Agency, unless in each instance the City, including each affected City Agency, has previously approved, in its sole discretion and in writing, the conditions or restrictions following the receipt of any necessary governmental approvals. If the City does not agree to any such conditions or restrictions, and such refusal results in Developer's inability to resolve a conflicting obligation, then the City shall cooperate with Developer and the applicable Non-City Agency to arrive at a mutually acceptable resolution.

(c) The City shall cooperate with public utilities and communication service providers, including as necessary for the District Systems, to the extent that the cooperation efforts requested by Developer are consistent with the City's typical efforts in connection with other major development and construction projects in the City, subject to Processing Fees and Reimbursement Agreement.

7.3.3 Costs. Developer shall bear all costs associated with applying for and obtaining any necessary Non-City Approval, including reimbursement of City for any City Costs incurred in performing work in connection with Section 7.3 that is beyond the City's typical efforts in connection with other major development and construction projects in the City. Developer, at no cost to the City, shall be solely responsible for complying with any Non-City Approval and any and all conditions or restrictions imposed on Developer or the Project as part of a Non-City Approval. Developer shall pay or otherwise discharge any fines, penalties, or corrective actions imposed as a result of Developer's failure to comply with any Non-City Approval.

7.4 Cooperation in the Event of Third-Party Challenge. In the event any administrative, legal, or equitable action or proceeding is instituted by any party, other than the City or Developer, challenging the validity or performance of any provision of this Agreement, the Project, the Approvals or Subsequent Approvals, the adoption or certification of the FEIR or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or Developer in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof ("Third-Party Challenge"), the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City and/or the Project. To the extent permitted by then-applicable law, City agrees to take reasonable actions consistent with AB 900 to facilitate expedited legal review of any Third Party Challenge related to a Subsequent Approval.

7.4.1 Developer shall assist and cooperate with the City at Developer's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense

of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office and any outside counsel retained in connection with the defense and any consultants pursuant to a Reimbursement Agreement.

7.4.2 To the extent that any such Third-Party Challenge results in the entry of a final judgment or order limiting Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project commenced or not), including the City's actions taken pursuant to CEQA, Developer may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and Developer shall jointly seek to have the Third-Party Challenge dismissed. Developer shall be responsible for payment of any costs, damages, attorney fee awards, or combination thereof that any court of competent jurisdiction may award to the third party as a result of any Third-Party Challenge.

7.5 Permits to Enter City Property. Subject to the rights of any third party, the rights of the public, and the City's agreement on the scope of the proposed work and insurance and security requirements, each City Agency with jurisdiction shall grant permits to enter City-owned property on the City's standard form permit, including, without limitation, provisions regarding release, waivers, and indemnification in keeping with the City's standard practices, so long as the same is consistent with Applicable Law, in order to permit Developer to enter City-owned property as necessary to construct the Project or comply with or implement the Approvals, Subsequent Approvals, or other requirements in this Agreement. The City and Developer acknowledge that the Major Encroachment Permit includes a form of Major Encroachment Agreement that will provide for certain access rights and obligations between the Parties.

7.6 Infrastructure Reimbursement. The Project provides for the construction of significant new or upgraded public infrastructure within the Project Site. Developer has provided a cost estimate of approximately one hundred seventy-four million dollars (\$174,000,000) for the upgraded public infrastructure, which includes costs for improvements both included and not included in the existing Diridon Station Area Basic Infrastructure Fee pursuant to San José Municipal Code Chapter 14.35. Developer's cost estimate for public infrastructure improvements includes, among other improvements, enhanced right-of-way improvements, utilities upgrades and relocation, as further detailed in the Infrastructure Plan included as Exhibit I. The Developer and the City have agreed to a range of horizontal improvements to be confirmed as part of a future updated infrastructure plan or Nexus Study.

7.6.1 The City recognizes that some of the new and/or upgraded public infrastructure (excluding District Systems) may be beneficial not only to development within the Project Site but also to existing and future development outside of the Project Site, including development within the broader DSAP's Boundaries and surrounding portions of the City. Therefore, subject to appropriation of the funding by the City Council, the City will take actions reasonably necessary, and Developer will cooperate reasonably, to develop an updated or new infrastructure program (excluding District Systems), including preparation of appropriate infrastructure plans, technical (e.g., "nexus") studies and associated financial feasibility studies, that include the Project Site and which analyze the public infrastructure improvements to be installed by Developer. Such an infrastructure program may include impact mitigation fees, community facilities districts, infrastructure facilities districts, or other similar programs or mechanisms for the funding of the cost of public infrastructure improvements ("Funding Mechanism"). Upon adoption of a Funding Mechanism(s), Developer would be eligible to receive

a credit and/or reimbursement (including pursuant to Municipal Code Section 14.35 et seq.) for the costs of installing qualifying improvements within the Plan Area, and the City and Developer would then reasonably cooperate to enter into a reimbursement agreement, for such reimbursement and/or credit. To be eligible for such credit and/or reimbursement, all of the following would need to occur:

- (a) City Council approval of a Funding Mechanism(s) in accordance with State laws;
- (b) Construction of qualifying infrastructure subject to credit or reimbursement, which are supported by the appropriate technical (e.g., "nexus") studies and associated financial feasibility studies;
- (c) City Council approval of a reimbursement agreement between the City and Developer setting forth the terms and conditions for reimbursement, consistent with the above conditions;
- (d) City collection of sufficient funding in the infrastructure program(s) to provide reimbursement, subject to annual appropriation of the City Council; and
- (e) Compliance with applicable local, state, and federal laws.

The City agrees to work with Developer to secure additional infrastructure funding, including grants and/or reimbursement from available programs to provide infrastructure improvements in the Plan Area. For example, the City will work with Developer to implement the undergrounding of overhead electrical facilities by the Developer if legally permissible under the California Public Utilities Commission (CPUC) Electric Rule No. 20 program (https://www.pge.com/nots/rates/tariffs/tm2/pdf/ELEC_3860-E.pdf) and related CPUC regulations and orders subject to CPUC and PG&E approval, as well as, San Jose Municipal Code,

Chapters 15.20, 15.24 and/or 15.26. Any and all undergrounding of electric facilities in the Plan Area by the Developer or a third party such as PG&E, shall also comply with the City's undergrounding policies, including any electrical voltage level within the project area (currently set up to 115kV), and further including without limitation, the City's annual Fiscal Year Workplan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program and the Fiscal Year Rule 20B (In-Lieu Fee) Undergrounding Master Plan, as may be approved by the City Council.

7.6.2 In addition, City and Developer shall work together towards the solution of modifying the existing North Montgomery Street at-grade railroad crossing to serve as the sole emergency vehicle access point to Block A. Such work shall include obtaining any necessary CPUC approval of changes to the crossing. New technologies would be introduced at that crossing, such as remotely controlled bollards/gates and integrated communications between building fire alarm systems and rail and/or mass notification systems. City and Developer shall work in coordination to implement the appropriate technologies and necessary upgrades to the crossing to achieve safe and reliable emergency vehicle access to Block A.

7.6.3 Cinnabar Storm Drain Reimbursement. With respect to Developer's work to upgrade the City-owned stormwater drainage within Cinnabar Street (the "Cinnabar Storm Drain Work" or "Work"), Developer shall not undertake such Work unless City agrees to reimburse Developer in full. Developer shall not proceed with the Work unless and until City has provided Developer with sufficient information to demonstrate that it has funding sources available to fully reimburse Developer for its costs associated therewith immediately upon Completion of the Work. Alternatively, City and Developer may agree that Developer is to be reimbursed through the form of credits toward connection fees.

7.7 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals and any Subsequent Approvals. In their course of performance under this Agreement, each Party shall refrain from doing anything that would render its performance under this Agreement impossible. The Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement, including such actions as may be necessary to satisfy or effectuate any applicable conditions precedent to the performance of the Public Benefits.

7.8 Other Necessary Acts. Each Party shall use Good Faith Efforts to take such further actions as may be reasonably necessary to carry out this Agreement, the Approvals, and any Subsequent Approvals, in accordance with the terms of this Agreement (and subject to all applicable Laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

8. ANNUAL REVIEW OF DEVELOPER'S COMPLIANCE

8.1 Annual Compliance Review. Pursuant to Section 65865.1 of the Development Agreement Statute and the Development Agreement Ordinance, annual compliance review shall be conducted in accordance with Section 18.02.300 of the Development Agreement Ordinance. In the event of a conflict between the provisions of Section 18.02.300 and this Agreement, the terms of this Agreement shall apply. A copy of Chapter 18.02 of the Municipal Code as in effect on the Effective Date is attached hereto at Exhibit Q.

8.1.1 Effect on Transferees. If Developer has effected a Transfer or another assignment, transfer or conveyance permitted under this Agreement has occurred so that its interest in the Project Site and Public Benefit obligations, or a portion or portions thereof, has/have been

divided between Developer and/or Transferees, then the annual review hereunder shall be conducted separately with respect to Developer and each Transferee, and the Planning Commission or City Council, as applicable, shall make its determinations and take its action separately with respect to Developer and each Transferee, as applicable, pursuant to the Development Agreement Ordinance; provided, however, that if Developer and Transferee do not agree as to which party is responsible (as between Developer or Transferee) for fulfilling or performing a duty under this Agreement, then City shall have the right to require Developer and Transferee to submit to a joint annual review until the dispute is resolved. If the City Council terminates, modifies, or takes such other actions as may be specified in the Development Agreement Ordinance and this Agreement in connection with a determination that Developer or a Transferee has not complied with the terms and conditions of this Agreement, such action by the Director of PBCE, Planning Commission, or City Council shall be effective only as to the party to whom the determination is made and the portions of the Project Site in which such party has an interest.

9. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

9.1 Enforcement. The only Parties to this Agreement are the City and Developer (and any successors and Transferees). This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

9.2 Meet and Confer Process. Before sending a notice of Default in accordance with Section 9.3, the Party that may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than thirty (30) days and not more than sixty (60) days, to respond to or cure such alleged failure; provided,

however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement, or (ii) if a delay in sending a notice pursuant to Section 9.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within twenty (20) business days following the request and if, despite the Good Faith Efforts of the requesting Party, such meeting has not occurred within twenty (20) business days of such request, such Party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 9.3.

9.3 Default. Except as otherwise set forth herein and/or in the Exhibits hereto, the following shall constitute a "Default" under this Agreement: (i) the failure to make any payment when due; or (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement, where in each case such failure remains uncured after the expiration of applicable notice and cure periods. The City shall follow the procedures set forth in Sections 18.02.260 and 18.02.300 of the Development Agreement Ordinance with respect to any alleged or actual Default of Developer. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a Default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter. Any notice of Default given by Developer to the City shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). The City shall follow the aforementioned provisions of the Development Agreement Ordinance with respect to any notice of Default to Developer. Notwithstanding any other provision in this Agreement to the contrary but subject to Article 12 below, if Developer conveys or Transfers some but not all of the Project and there is more than one Party that assumes obligations

of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations. Accordingly, if, for example, a Transferee Defaults, it shall not be a Default by any other Transferee or Developer that owns a different portion of the Project Site. As an alternative to the Default procedure set forth herein, the City may elect to first hold a compliance review as set forth in the Development Agreement Ordinance. Further, in the event of noncompliance with a condition required under an administrative permit or any subsequent planned development permit issued for a conditional or special use, the PBCE Director may revoke, suspend or modify the administrative permit or subsequent planned development permit or otherwise enforce the requirements of the administrative permit and subsequent planned development permit pursuant to the remedies available to the City under the Municipal Code. A violation of an administrative permit or a subsequently issued planned development permit for a conditional or special use shall not, by itself, constitute a violation of the Downtown West PD Permit.

9.4 Remedies.

9.4.1 Specific Performance. Subject to, and as limited by, the provisions of Section 9.3.3, 9.3.4 and 9.3.5, in the event of a Default, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law (including, under Section 18.02 of the Development Agreement Ordinance) or in equity.

9.4.2 Termination. Subject to the limitation set forth in Section 9.2, 9.3.4 and 9.3.5, in the event of a Default by the City, Developer may elect to terminate this Agreement by sending a notice of termination to the City, which notice of termination shall state the Default. This Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice.

The City shall follow the provisions of Sections 18.02.260 and 18.02.300 of the Municipal Code with respect to any termination of this Agreement as a result of Developer's Default.

9.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 9.3.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law not including damages but including specific performance, termination, and other injunctive or declaratory relief are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer and the City each agrees that it shall not be liable to the other for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due, including any applicable Base Requirements or Community Benefits that are in the form of a cash payment, under this Agreement, (3) for any Base Requirement or Community Benefit for which specific performance is determined by a court of competent jurisdiction not to be an available remedy (and the attached Exhibit does not include a liquidated damages remedy), except if and to the extent directly or indirectly resulting from significant action or material omission by or on behalf of the City or any City Agencies, the City shall have the right to monetary damages according to proof against Developer equal to the costs that would have been incurred by Developer to Complete the required Base Requirements or Community Benefits, and (4) the City shall have the right to administrative

penalties or liquidated damages if and only to the extent expressly stated in an Exhibit or in Applicable Laws. For purposes of the foregoing, "actual damages" means the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

9.4.4 City Processing/Certificates of Occupancy. Except as otherwise set forth in this Agreement, including the Exhibits and Schedules attached hereto and Section 9.3 above (regarding no cross-defaults), the City shall not be required to process any requests for approval, including any Conformance Reviews or Subsequent Approvals, or take other actions under this Agreement during any period in which payments from Developer are past due or if Developer has committed a Default under this Agreement. Except as otherwise set forth in this Agreement, including the Exhibits and Schedules attached hereto and Section 9.3 above (regarding no cross-defaults), the City shall have the right to withhold a Final or Temporary Certificate of Occupancy for a Building, or both, as may be applicable under the requirements of this Agreement, until all of the required Public Benefits and other obligations triggered by, or associated with that Building have been Completed or otherwise substantially satisfied; provided, however, if the City issues a Final or Temporary Certificate of Occupancy, or both, before such obligations are Completed or substantially satisfied, then Developer shall promptly Complete (in accordance with this Agreement) such obligations following issuance.

9.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding

upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than as specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm. Except as expressly stated in this Agreement to the contrary, no right or remedy is intended to be exclusive of any other right or remedy; and each and every such right or remedy shall be cumulative.

9.6 Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall not be entitled to recover its attorneys' fees and costs from the other Party. Each Party to the legal action shall bear its own attorneys' fees and costs.

10. MORTGAGE PROTECTION.

10.1 Mortgage Protection. This Agreement shall be superior and senior to the lien of any Mortgage placed upon the Project Site or any portion thereof after the date of recording of this Agreement. Notwithstanding the foregoing, no breach of or Default under this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any Mortgagee or Foreclosure Transferee who acquires title or possession to the Project Site, or any portion thereof.

10.2 Mortgagee Not Obligated; Exception for Community Benefits. Notwithstanding the provisions of Section 10.1 above, no Mortgagee or Mortgage Transferee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion, on the Project Site or applicable portion thereof, except that Base Requirements, Community Benefits, and Privately-Owned Publicly Accessible Open Space must nevertheless be completed as set forth in Section 4.1 and otherwise in accordance with this Agreement; provided, however, that a Mortgagee or Foreclosure Transferee shall not be entitled to devote the Project Site to any use, or to construct any improvements thereon, or to institute any uses other than those uses or improvements provided for or authorized by this Agreement, or otherwise allowed under the Vested Elements and Approvals. Additionally, notwithstanding that title to or possession of all or any portion of the Project Site shall have been acquired by a Mortgagee or Foreclosure Transferee, a failure to meet any construction deadlines under this Agreement as to any portion of the Project Site shall not relieve Developer of the consequences under this Agreement of, or liability under this Agreement for, the failure of such improvements to be completed.

10.3 Notice of Default to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any notice of Default given Developer hereunder and specifying the address for service thereof and enclosing a copy of its Mortgage, then City agrees (i) to use its best efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed a Default, and (ii) that if City determines that Developer is not in compliance with this Agreement, City shall likewise use its best efforts to serve notice of such noncompliance on such Mortgagee concurrently with service thereon on Developer. Each Mortgagee shall have the right during the same period

available to Developer to cure or remedy, or to commence to cure or remedy, the Default claimed or the areas of noncompliance set forth in City's notice, plus additional time, as reasonably determined by the Director of PBCE under Section 18.02.300, to allow Mortgagee sufficient time to make the election to cure and thereafter prosecute such cure to completion. If a Mortgagee shall be required to obtain title or possession in order to cure any Default, the time to cure shall be tolled so long as the Mortgagee is diligently attempting to obtain possession, including by appointment of a receiver or foreclosure, and provides City upon written request from time to time of reasonable evidence of such diligent efforts. A delay or failure by the City to provide such notice required by this Section shall extend, for the number of days until notice is given, the time allowed to the Mortgagee for cure.

11. AMENDMENT; TERMINATION; EXTENSION OF TERM

11.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer, provided following a Transfer, the City and Developer or any Transferee may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Similarly, subject to any required environmental review, this Agreement may be amended to include any land or legal parcels that are located within the Project's Planned Development Zoning and General Development Plan, but which are not originally included in this Agreement, and in which Developer has a legal or equitable interest and to which Developer desires to have this Agreement apply, and any such amendment may approved and entered into by the Director of PBCE. Other than upon the expiration of the Term and except as provided in Sections 3.2, 5.8.4, 7.4.2, 9.2, and 11.2, this Agreement may only be terminated

with the mutual written consent of the Parties. The procedure for an amendment shall be as specified in the Development Agreement Ordinance.

11.2 City's Early Termination Rights for Failure to Satisfy Ten or Twenty Year Development Obligations. At each annual compliance review of this Agreement and of Developer's performance hereunder pursuant to Section 18.02.300 of the Development Agreement Ordinance, the City and Developer shall discuss the then-current status of Developer's satisfaction of the Ten Year or Twenty Year Development Obligation, as applicable, and, whether development and payment obligations remain to be performed in order to satisfy the Ten or Twenty Year Development Obligation. In addition, if Developer has not already satisfied the Ten Year or Twenty Year Development Obligation, as applicable, then, no earlier than one (1) year and not less than ninety (90) days prior to the end of the ten (10) or twenty (20)-year period described in Section 2.2, Developer shall give City notice of the status of Developer's satisfaction of the Ten Year or Twenty Year Development Obligation, as applicable, substantially in the form of the notice letter attached hereto at Exhibit P (the "Status Notice"). If Developer has given the City a Status Notice, and Developer thereafter fails to satisfy the Ten Year Development Obligation or the Twenty Year Development Obligation on or before the applicable deadline for satisfying the obligations thereunder, then the City may give Developer a termination notice at any time after the last date by which Developer must satisfy (a) the Ten Year Development Obligation, in the case of a notice regarding the failure to satisfy the Ten Year Development Obligation or (b) the Twenty Year Development Obligation, in the case of a notice regarding the failure to satisfy the Twenty Year Development Obligation, which termination notice shall terminate this Agreement effective as of the date of Developer's receipt of such termination notice; provided, however, that if Developer satisfies the applicable obligation prior to the date on which Developer receives the

termination notice, then such termination notice shall be null and void and this Agreement shall remain in effect. If (i) Developer fails to provide a Status Notice and (ii) Developer has not satisfied the Ten Year Development Obligation or Twenty Year Development Obligation, as applicable, and such failure to satisfy the applicable obligation is not then the subject of a dispute between the City and Developer, then this Agreement shall terminate on the date immediately following the end of the ten (10) or twenty (20)-year period described in Section 2.2, as applicable, without the need for the City to give Developer a termination notice.

11.3 Termination and Vesting. The term of any non-legislative Approvals, including any subdivision map approval, and Subsequent Approval shall coincide with and in no event extend beyond the Term of this Agreement notwithstanding any other statute, rule, or authority that purports to set a different term for such Approvals, and, except as expressly set forth in this Agreement, any termination under this Agreement shall concurrently effect a termination of the Approvals with respect to the terminated portion of the Project Site. Notwithstanding the foregoing, the General Plan amendments and adopted Downtown West Planned Development Zoning District and accompanying General Development Plan shall not be affected by the termination of this Agreement. If a Conformance Review has been approved during the Term of the Development Agreement, then the Project Sponsor shall be entitled to apply for, process, and obtain a building permit and introduce uses in reliance upon such Conformance Review even after termination of the Development Agreement provided that (i) in no event shall such rights apply to more than one million two hundred fifty thousand (1,250,000) rentable square feet of office, residential or commercial development in the aggregate and (ii) such termination of the Development Agreement shall not have occurred as a result of a Default by Developer. A Planned Development Permit issued for any portion of the Project Site shall not expire if Developer has

received a building permit for any part of the development described in the Planned Development Permit prior to termination of the Development Agreement. A Planned Development Permit issued for any portion of the Project Site shall not expire as to those uses commenced or Buildings that have Commenced Construction, during the term of the Development Agreement. In the event of any termination of this Agreement by Developer resulting from a Default by the City and except to the extent prevented by such City Default, Developer's obligation to Complete the applicable Base Requirements, Community Benefits, Privately-Owned Publicly Accessible Open Space, and/or payments required in satisfaction of City statutory and/or regulatory requirements as described in Section 4 shall continue as to any Building which has Commenced Construction and all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction, interpretation, or enforcement of this Agreement as to any such surviving obligations. The City's and Developer's rights and obligations under this Section 11.3 shall survive the termination of this Agreement.

11.4 Amendment Exemptions; Addition of Potentially Participating Parcels. The addition to this Development Agreement of any Potentially Participating Parcels shall not constitute a Material Change and shall not require an amendment to this Agreement; provided, however, that Developer or City may request an amendment (which may be approved by the Director of PBCE or the City Manager and executed by the City Manager) to formally memorialize the addition of any such parcels. No modification to a diagram or figure included as an Exhibit to this Agreement, and that is marked as "conceptual", shall by itself require an amendment to this Agreement. No issuance of a Subsequent Approval, or amendment of an Approval or Subsequent Approval, shall by itself require an amendment to this Agreement. No change, modification, deviation, or amendment to the Project that is authorized to be approved pursuant to procedures

described in the Downtown West Planned Development Zoning District or the Downtown West Planned Development Permit shall require an amendment to this Agreement. Further, in the event a Community Benefits Adjustment is required, such Adjustment shall not by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Subsequent Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Subsequent Approval, or between this Agreement and any amendment to an Approval or Subsequent Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Subsequent Approval or the proposed amendment to an Approval or Subsequent Approval. The Director of PBCE, Director of Public Works, and the Planning Commission, as applicable, shall have the right to approve changes to the Project as described in the Exhibits, including the Downtown West Planned Development Zoning District and the Downtown West Planned Development Permit, and in keeping with the City's customary practices, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Subsequent Approval or any amendment to an Approval or Subsequent Approval that conflicts with this Agreement.

11.5 Extension Due to Legal Action or Referendum; Force Majeure; Rail Improvement Activity.

11.5.1 Litigation and Referendum Extension. If any litigation is filed challenging this Agreement, the FEIR, or an Approval having the direct or indirect effect of delaying this Agreement or any Approval (including but not limited to any CEQA determinations), including any challenge to the validity of this Agreement or any of its provisions, or if this Agreement or an Approval is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and all Approvals shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension (or as to Approvals, the date of the initial grant of such Approval) to the end of such litigation or suspension (a "Litigation Extension"); provided, however, that if any litigation is filed challenging any Subsequent Approval which has the effect of delaying any Subsequent Approval, the term of this Agreement solely as it applies to the specific Subsequent Approval(s) shall receive a Litigation Extension. The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

11.5.2 Force Majeure. Upon the request of any party hereto, an extension of time will be granted for the period of delay caused by a Force Majeure Event, as provided in this Section 11.5.2, and no party shall be deemed to be in Default under this Agreement where delays in performance or failure to perform are caused by a Force Majeure Event and authorized pursuant to this Section 11.5.2. Promptly after learning of the occurrence of a Force Majeure Event that actually causes delay, the affected Party shall notify the other Party in writing of the occurrence of such Force Majeure Event, the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement, and the anticipated length

of delay in performance resulting from the Force Majeure Event. Upon the other Party's receipt of such notice, the Term of this Agreement then in effect shall be extended by a period of time equal to the number of days during which performance is delayed due to the specified Force Majeure Event.

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 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 Agency ("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, except the Ten Year Development Obligation and the Twenty Year Development Obligation deadlines, 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.

12. TRANSFER OR ASSIGNMENT

12.1 Permitted Transfer of this Agreement. Subject to Sections 12.2 and 12.5 and contingent upon the assignor and assignee entering into an Assignment and Assumption Agreement meeting the criteria set forth in Section 12.2 below, Developer shall have the right to sell, assign, convey, hypothecate, or otherwise transfer or alienate in whole or in part its rights, duties, obligations, or interests under this Agreement to any person or entity at any time during the term of this Agreement (a "Transfer") without the consent of City; provided, however, that in no event shall the obligations or benefits conferred upon Developer under this Agreement be at any time so Transferred except through a transfer of the associated, concomitant portion of the Project Site to which that obligation or benefit relates. In the event of a transfer of a portion of the Project Site, Developer shall have the right to Transfer its rights, duties, obligations or interests under this Agreement that are identified as Transferred with the transferred real property and to retain all rights, duties, obligations or interests other than those Transferred with the transferred real property; however, if an obligation relating to a portion of the Project Site is not Transferred together with the applicable portion of the Project Site itself, and the obligation is a condition to development of the portion transferred, then satisfaction of the obligation shall continue to be a condition to development of the portion transferred.

12.2 Assignment and Assumption Agreement. Subject to the provisions and conditions of this Subsection, upon the Transfer of any or all of the rights, duties, obligations or interests under this Agreement and receipt by City of an Assignment and Assumption Agreement in substantially the form provided as Exhibit O and as provided for herein, or a substantially similar

form acceptable in good faith to City (each an "Assignment and Assumption Agreement"), Developer may assign those obligations under this Agreement and the Approvals that: (a) are specified in the Assignment and Assumption Agreement as having been Transferred with the transferred real property and assumed by the Transferee, or (b) necessarily relate to the development or redevelopment of improvements located on the transferred real property owned by the Transferee. Upon providing such Assignment and Assumption Agreement to City, any Default by a Transferee of any rights, duties, obligations or interests so Transferred and assumed by the Transferee shall not thereby constitute a Default by Developer with respect to the rights, duties, obligations or interests not Transferred, but any obligations that are conditions to development on the applicable portion of the Project Site and any conditions to development on said portion shall remain conditions to development on said portion. Notwithstanding anything to the contrary in this Section 12, the Assignment and Assumption Agreement with respect to any Transfer of the legal parcel that is currently referred to as the "Social Heart" in the Parkland Agreement shall contain the express assignment and assumption of the bonding requirements with respect to such parcel that are set forth in the Parkland Agreement. Further, the airspace parcel for the subterranean garage beneath the Social Heart City-Dedicated Open Space (the "Garage") may only be Transferred with an office Building that is at least four hundred thousand (400,000) square feet in size. Following Completion of construction of the Social Heart City-Dedicated Open Space and the Garage, a reciprocal easement agreement ("REA") between the City and owner of the Garage shall be promptly executed following City's issuance of a Notice of Acceptance (as defined in the Parkland Agreement) for the Social Heart City-Dedicated Open Space and recordation of the grant deed. The REA shall include provisions to require commercially reasonable property and liability insurance that includes coverage for the replacement of the Garage.

12.2.1 Failure by a Transferee to deliver a written Assignment and Assumption Agreement hereunder shall not affect the validity of a transfer by Developer of the portion of the Project Site so transferred to the Transferee, except that the Assignment and Assumption Agreement shall only be effective and Transferee shall only obtain any rights for the transferred property pursuant to the terms of this Agreement at such time as the City has received a fully executed copy of the Assignment and Assumption Agreement. The parties to an Assignment and Assumption Agreement shall use Good Faith Efforts to coordinate with City (including City's attendance at meetings) to address in detail whether and how each obligation and right set forth in this Agreement shall be divided, allocated, assigned or otherwise Transferred, in whole or in part, between Developer and a Transferee so as to avoid later confusion regarding what obligations and rights have and have not been Transferred. Developer shall reimburse City for the City Costs of coordination with the Developer and each potential Transferee, whether or not the coordination results in a transfer. Where a transfer of a portion of the Project Site has been completed, Developer and said Transferee shall be jointly and severally liable and obligated to City to fulfill any duty or obligation under this Agreement (and under the other Approvals or Vested Elements) where Developer and a Transferee do not agree as to which party is responsible (between Developer or a Transferee) for fulfilling or performing a duty or obligation under an Assignment and Assumption Agreement. Where a transfer of a portion of the Project Site has been completed but City has not received an Assignment and Assumption Agreement that Transfers a particular duty or obligation under this Agreement or under the Approvals or Vested Elements in question, then, notwithstanding the foregoing, City shall have the right to look to Developer (i.e., the assignor), and such Developer shall remain liable and obligated to City to fulfill those duties or obligations under this Agreement.

12.2.2 Provided that City has received an Assignment and Assumption Agreement pursuant to Section 12.2 hereof, any Impact Fees set forth in Exhibit M, Mitigation Measures, Processing Fees, taxes or special assessments, and any other costs, burdens, obligations, mitigation measures, and exactions of any kind to implement development of the Project pursuant to this Agreement (which City may impose or require only consistent with this Agreement) (collectively, "Additional Conditions") imposed by City as a condition to the approval of any development permit application for such development submitted or authorized to be submitted to City by any Transferee of any portion of the Project Site related to a portion of the Project Site owned or controlled by the Transferee shall be imposed entirely on such portion of the Project Site and shall not be imposed by City directly on other portions of the Project Site or the owners of such other portions; provided, however, that nothing in this Section precludes City from imposing upon a Transferee that applies or authorizes an application for a development project those costs, burdens, obligations, mitigation measures, conditions of approval, and exactions appropriate to such proposed development project and otherwise consistent with this Agreement. Further, in the event of any Transfer pursuant to Section 12 hereof, all fees, costs, burdens, obligations, exactions, or other requirements of any kind transferred to Transferee shall be completed in accordance with the timing required under this Agreement, including any applicable Exhibits or Schedules to this Agreement.

12.3 Notice of Transfer. Developer shall, in accordance with the notice provisions of Section 14.11 and at least thirty (30) days prior to the anticipated effective date of a proposed Transfer of any portion of the Project Site, provide written notice to the City Manager and the Director of PBCE of (a) the identity or identities and addresses for notices of said Transferee(s), (b) the anticipated effective date of the Transfer of the portion of the Project Site at issue, and (c)

the right, title, or interest in the portion of the Project Site that is the subject of the proposed Transfer. Additionally, a Transferor, including without limitation Developer, shall provide the City Manager and the Director of PBCE with written notice of the effective date of a Transfer of any right, title or interest in any portion of the Project Site within ten (10) days after such effective date. Subject to Section 12.2 hereof, notwithstanding the foregoing, failure to provide either notice required under this Section 12.3 shall not, by itself, affect: (a) the validity of the Transfer at issue nor (b) the ability of a Transferee to provide an Assignment and Assumption Agreement to City pursuant to the provisions of this Section.

12.4 District Systems Transfers. Notwithstanding any of the foregoing, any transfers of District Systems, including infrastructure, rights and obligations relating to service shall be consistent with the requirements of the conditions of approval relating to District Systems in Council Resolution No. _____.

12.5 Certain Limitations on Transfers of Office and Residential Development. Notwithstanding the foregoing, with respect to office development:

12.5.1 (1) Developer shall not have the right to Transfer to a Third Party Transferee portions of the Project Site designated for development of office space under the General Plan and DSAP land use maps (without first obtaining the City's written consent, which shall not be unreasonably withheld, conditioned or delayed) if such Transfer would be effective prior to the date on which Google LLC or any Google Affiliate has achieved Substantial Completion of two million (2,000,000) gross square feet of office development in the Project Site; and (2) at no time may the aggregate amount of gross square feet of potential office development on the portions of the Project Site Transferred to a Third Party Transferee(s) exceed forty percent (40%) of the amount of gross office square footage for which the Substantial Completion of the

base Building(s), by or on behalf of Google LLC or any Google Affiliate has occurred. City Manager shall consider, in good faith, any request by Google LLC or any Google Affiliate to Transfer office development rights to a Third Party Transferee(s) in a manner inconsistent with this Section 12.5 if such Transfer would likely result in the development of office space earlier than would otherwise occur if such Transfer were not to proceed; and

12.5.2 with respect to residential, hotel, limited-term corporate accommodations, and retail development, City's consent shall not be required for any Transfer so long as such Transfer is to (1) Lendlease or any Lendlease Affiliate or (2) a Qualified Developer.

12.6 Non-Transfers. Subject to the terms and conditions, herein, the following shall not be considered a Transfer and shall not require the City's consent and shall not be subject to Section 12.5: (i) leases, subleases, licenses, other occupancy agreements, or easements, sale-leaseback transactions; or the granting of any mortgage or deed of trust or any foreclosure thereof or deed-in-lieu with respect thereto; (ii) any change, directly or indirectly, in the ownership interests of Google LLC or any Google Affiliate or any Transferee or any of their respective affiliates, (iii) joint ventures in which Google LLC or any Google Affiliate has major decision rights; and (iv) any transfer of land or improvements to the City or the City's designee or to non-profits approved by City in satisfaction of obligations under this Agreement or the Approvals. Notwithstanding the foregoing provisions of this Section 12.6 but subject to Section 12.5 above, (i) if any such transaction includes the transfer of rights and obligations under this Agreement and (ii) Developer and the transferee enter into an Assignment and Assumption Agreement as described herein above and provide a copy of such agreement to the City, then Developer may elect to have any of the transactions described in this Section 12.6 be treated as a "Transfer" under this Agreement and the transferee with respect thereto be a treated as a "Transferee".

12.7 Reasonableness of Transfer Requirements. The parties agree that the restrictions and conditions on the right to assign any portion of the Project Site set forth in this Agreement are necessary and appropriate to assure the achievement of the objectives of the General Plan, the Approvals and this Agreement and are reasonable. Developer agrees to and accepts the restrictions herein set forth in this Section 12 as being a material inducement to the City to enter into this Agreement.

12.8 City Administration. City shall administer the provisions of this Section 12 through the City Manager.

13. DEVELOPER REPRESENTATIONS AND WARRANTIES

13.1 Interest of Developer; Due Organization and Standing. Developer represents that it has a legal or equitable interest in the Development Parcels described in Exhibit B1 to this Agreement, with authority to enter into this Agreement on behalf of all fee owners of the Project Site. Developer is a Delaware limited liability company, duly organized and validly existing and in good standing under the Laws of the State of Delaware, and in full compliance with all applicable Laws of the State of California. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer represents and warrants that there is no existing lien or encumbrance recorded against any Development Parcel that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.

13.2 No Inability to Perform; Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated

hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid, and binding obligation of Developer, enforceable against Developer in accordance with its terms.

13.3 Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 607 of the City's Charter, Title 12 of the City's Municipal Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

13.4 Other Documents. To the current, actual knowledge of [_____], after reasonable inquiry, no document furnished by Developer to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

13.5 No Bankruptcy. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or Laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

14. MISCELLANEOUS PROVISIONS.

14.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.

14.2 Incorporation of Exhibits. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.

14.3 Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and, subject to Section 12, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof (including any Potentially Participating Parcels) or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions on Transfers set forth in Section 12, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Section 1468.

14.4 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the Laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City of San José, and the County of Santa Clara shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

14.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal

counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and the Development Agreement Ordinance, the provisions of this Agreement will govern and control.

14.6 Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

14.7 Recordation. Pursuant to the Development Agreement Statute and Development Agreement Ordinance, the City Clerk shall have a copy of this Agreement recorded in the Official

Records within ten (10) days after the mutual execution and delivery of this Agreement or any amendment thereto, with costs to be borne by Developer.

14.8 Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

14.9 Survival. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survive the expiration or termination of this Agreement.

14.10 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

14.11 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

Director of Planning, Building, and Code Enforcement
Planning Department
City of San José
200 East Santa Clara Street
San José, CA 95113-1905

with a copy to:

City Attorney
Office of the City Attorney
City of San José
200 East Santa Clara Street
San José, CA 95113-1905

City Manager
Office of the City Manager
City of San José
200 East Santa Clara Street
San José, CA 95113-1905

Director of Economic Development
Office of the City Manager
City of San José
200 East Santa Clara Street
San José, CA 95113-1905

To Developer:

Google LLC
1600 Amphitheatre Parkway
Mountain View, Ca 94043
Attn: REWS Department / Downtown West SJ Project Executive

with a copy to:

Google LLC
1600 Amphitheatre Parkway
Mountain View, Ca 94043
Attn: Legal Department / R/E Matters

Coblentz Patch Duffy & Bass LLP
One Montgomery Street, Suite 3000
San Francisco, CA 94104
Attn: Head of the Real Estate and Land Use Department

14.12 Severability. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect

unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

14.13 Public Records Act. Developer understands and agrees that under the City's Open Government Ordinance (Municipal Code, Title 12, Chapter 12.21) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Public Records Act and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines, in its sole discretion, that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

14.14 Non-Liability of City Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to Developer, its successors and assigns, in the event of any Default by City, or for any amount which may become due to Developer, its successors and assigns, under this Agreement.

14.15 Non-Liability of Developer Officers and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, officer, employee, official, partner, employee or agent of Developer or any Affiliate of Developer shall be personally liable

to City, its successors and assigns, in the event of any Default by Developer, or for any amount which may become due to City, its successors and assign, under this Agreement.

14.16 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

14.17 Number of Days. Provisions in this Agreement relating to the number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice, or to undertake any other action occurs on a Saturday, Sunday, or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding City working day.

[signatures follow on next page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day
and year first above written.

CITY:

CITY OF SAN JOSÉ,
a municipal corporation

Approved as to form:

Nora Frimann, City Attorney

By: _____
Toni Taber, City Clerk

By: _____
Johnny V. Phan
Chief Deputy City Attorney

Approved on _____, 2021
City Council Ordinance No. _____

[**Note:** City will need a corporate resolution
from Google establishing who has authority
to execute on behalf of Google, LLC.
Signatures will need to be notarized for
recording.]

Exhibit A



EXHIBIT "A"
DESCRIPTION OF PROJECT SITE'S
APPROXIMATE BOUNDARIES

PARCEL 1

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEGINNING at the northerly corner of Parcel A as shown on that certain Parcel Map filed for record on December 3, 1986, in Book 567 of Maps, page 46, Santa Clara County Records; Thence along the general northeasterly line of said Parcel A and Parcel B on said Parcel Map the following nine courses:

1. Thence South 29°54'10" East, 122.40 feet;
2. Thence South 45°48'10" East, 13.33 feet;
3. Thence South 33°09'10" East, 79.65 feet;
4. Thence South 30°29'10" East, 89.01 feet;
5. Thence South 24°52'10" East, 14.03 feet;
6. Thence South 27°37'10" East, 195.26 feet;
7. Thence South 41°41'04" East, 37.79 feet;
8. Thence South 04°31'49" East, 142.32 feet;
9. Thence South 60°08'04" West, 5.24 feet;

Thence South 29°54'03" East, 10.98 feet, to the southeasterly line of West San Fernando Street;

Thence along said southeasterly line, South 60°06'23" West, 125.37 feet;

Thence northeasterly, along a non-tangent curve to the left, having a radius of 240.00 feet, whose center bears North 29°53'39" West, through a central angle of 03°14'17" for an arc length of 13.56 feet;

Thence North 36°05'14" West, 1.28 feet;

Thence westerly, along a non-tangent curve to the right, having a radius of 45.93 feet, whose center bears North 36°40'03" West, through a central angle of 45°01'00" for an arc length of 36.09 feet;

Thence westerly, along a non-tangent curve to the left, having a radius of 154.85 feet, whose center bears South 08°20'58" West, through a central angle of 23°25'42" for an arc length of 63.32 feet;

Thence South 74°55'16" West, 91.62 feet;

Thence South 77°14'33" West, 52.37 feet;

Thence South 74°55'16" West, 360.08 feet;

Thence North 15°04'46" West, 8.91 feet, to the easterly line of Los Gatos Creek;

Thence along said easterly line the following twelve courses:

1. Thence northerly, along a non-tangent curve to the left, having a radius of 485.98 feet, whose center bears South 89°54'28" West, through a central angle of 06°11'20" for an arc length of 52.49 feet;
2. Thence North 06°16'51" West, 43.04 feet;
3. Thence along a tangent curve to the right, having a radius of 1,473.94 feet, through a central angle of 00°45'12" for an arc length of 19.38 feet;
4. Thence North 01°33'50" West, 113.38 feet;
5. Thence North 00°06'09" West, 110.80 feet;

6. Thence North 02°54'34" East, 54.23 feet;
7. Thence northerly, along a non-tangent curve to the right, having a radius of 1,473.94 feet, whose center bears South 84°41'38" East, through a central angle of 00°41'40" for an arc length of 17.86 feet;
8. Thence South 59°52'09" West, 1.02 feet;
9. Thence North 07°28'10" East, 51.95 feet;
10. Thence North 02°28'10" East, 93.01 feet;
11. Thence North 29°51'51" West, 30.65 feet;
12. Thence North 60°06'24" East, 30.26 feet to the southeasterly line of West Santa Clara Street;

Thence along said southeasterly line, North 60°06'24" East, 436.98 feet, to the POINT OF BEGINNING.

Containing 8.94 acres, more or less.

PARCEL 2

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, described as follows:

COMMENCING at the northerly corner of the 7.11 acre parcel of land as shown on that certain Record of Survey filed for record on May 4, 1987, in Book 573 of Maps, page 28, Santa Clara County Records;

Thence South 49°47'16" West, 8.62 feet, to the True POINT OF BEGINNING, .

Thence South 55°49'47" East, 125.65 feet;

Thence along a tangent curve to the left, having a radius of 1,000.00 feet, through a central angle of 24°33'10" for an arc length of 428.53 feet;

Thence South 80°22'57" East, 99.66 feet;

Thence South 40°12'37" East, 79.87 feet, to the southeasterly line of Cinnabar Street;

Thence along said southeasterly line, South 49°47'23" West, 233.38 feet, to the northeasterly line of North Montgomery Street;

Thence along said northeasterly line and its southeasterly prolongation, South 40°09'41" East, 1,721.51, to the southerly line of West Saint John Street;

Thence along said southerly line and the southwesterly line of North Montgomery Street, the following two courses:

1. Thence South 60°22'40" West, 61.03 feet;
2. Thence North 40°09'41" West, 7.74 feet;

Thence South 87°34'04" West, 192.97 feet;

Thence South 02°28'43" East, 515.24 feet, to the northerly line of The Alameda;

Thence along said northerly line, South 87°38'19" West, 293.19 feet;

Thence North 13°53'44" West, 162.78 feet;

Thence North 06°00'51" West, 142.79 feet;

Thence North 14°47'17" West, 144.81 feet;

Thence North 24°39'40" West, 14.49 feet;

Thence North 49°48'04" East, 37.34 feet;

Thence North 40°08'37" West, 195.34 feet;

Thence North 34°08'37" West, 99.45 feet;
Thence North 33°36'42" West, 90.81 feet;
Thence North 40°10'41" West, 60.03 feet;
Thence North 34°56'31" West, 120.52 feet;
Thence North 16°45'52" West, 65.46 feet;
Thence North 33°02'18" West, 161.30 feet;
Thence North 49°40'11" East, 24.62 feet;
Thence North 40°16'38" West, 88.07 feet;
Thence North 27°31'59" West, 31.22 feet;
Thence northerly, along a non-tangent curve to the right, having a radius of 533.14 feet, whose center bears North 73°24'52" East, through a central angle of 24°49'56" for an arc length of 231.06 feet;
Thence North 40°09'42" West, 19.38 feet;
Thence North 49°40'17" East, 15.18 feet;
Thence northerly, along a non-tangent curve to the right, having a radius of 538.14 feet, whose center bears South 79°10'14" East, through a central angle of 05°28'18" for an arc length of 51.39 feet;
Thence North 16°18'03" East, 157.35 feet;
Thence North 40°09'41" West, 59.99 feet;
Thence South 16°18'03" West, 190.49 feet;
Thence southerly, along a non-tangent curve to the left, having a radius of 588.14 feet, whose center bears South 73°41'56" East, through a central angle of 34°06'20" for an arc length of 350.09 feet;
Thence South 49°47'51" West, 33.22 feet;
Thence North 40°10'59" West, 549.49 feet;
Thence North 49°47'23" East, 31.00 feet;
Thence North 40°10'53" West, 461.21 feet;
Thence northwesterly, along a non-tangent curve to the right, having a radius of 1,260.74 feet, whose center bears North 62°30'37" East, through a central angle of 06°13'20" for an arc length of 136.91 feet;
Thence North 49°47'16" East, 351.13 feet, to the TRUE POINT OF BEGINNING.

Containing 28.17 acres, more or less.

PARCEL 3

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEGINNING at the southerly corner of Parcel 1 as shown on that certain Parcel Map filed for record on August 22, 1980, in Book 469 of Maps, page 28, Santa Clara County Records;
Thence northwesterly, along a curve to the right, having a radius of 1,395.47 feet, whose center bears North 51°07'40" East, through a central angle of 14°26'44" for an arc length of 351.83 feet;
Thence North 46°22'55" East, 15.00 feet;
Thence North 41°54'05" West, 44.50 feet;

Thence northerly, along a non-tangent curve to the right, having a radius of 1,395.47 feet, whose center bears North 67°31'07" East, through a central angle of 05°07'56" for an arc length of 125.00 feet;

Thence northerly, along a non-tangent curve to the right, having a radius of 240.00 feet, whose center bears North 86°12'10" East, through a central angle of 30°18'30" for an arc length of 126.96 feet;

Thence South 20°30'14" East, 19.21 feet;

Thence North 16°56'12" East, 64.61 feet, to the general southerly line of West San Carlos Street;

Thence along said general southerly line, North 28°34'20" East, 18.65 feet;

Thence North 45°22'33" East, 156.65 feet, to the general southeasterly line of Los Gatos Creek;

Thence along said general southeasterly line the following seven courses:

1. Thence North 37°39'18" East, 43.69 feet;
2. Thence along a tangent curve to the left, having a radius of 30.00 feet, through a central angle of 72°50'16" for an arc length of 38.14 feet;
3. Thence North 35°10'58" West, 36.03 feet;
4. Thence along a tangent curve to the right, having a radius of 20.00 feet, through a central angle of 72°50'16" for an arc length of 25.43 feet;
5. Thence North 37°39'18" East, 220.47 feet;
6. Thence along a tangent curve to the left, having a radius of 640.00 feet, through a central angle of 08°00'00" for an arc length of 89.36 feet;
7. Thence North 29°39'18" East, 59.96 feet, to the westerly line of Barack Obama Boulevard;

Thence along said westerly line the following two courses:

1. Thence northerly, along a non-tangent curve to the right, having a radius of 678.00 feet, whose center bears North 87°33'58" East, through a central angle of 04°12'15" for an arc length of 49.75 feet;
2. Thence North 01°46'13" East, 102.39 feet, to the general northwesterly line of Los Gatos Creek;

Thence along said general northwesterly line the following twelve courses:

1. Thence South 30°12'09" West, 43.87 feet;
2. Thence South 39°24'09" West, 67.85 feet;
3. Thence southwesterly, along a non-tangent curve to the left, having a radius of 80.00 feet, whose center bears South 39°36'08" East, through a central angle of 20°44'34" for an arc length of 28.96 feet;
4. Thence South 29°39'18" West, 1.85 feet;
5. Thence South 39°24'09" West, 164.53 feet;
6. Thence North 87°30'06" East, 23.16 feet;
7. Thence South 37°39'18" West, 199.56 feet;
8. Thence along a tangent curve to the right, having a radius of 20.00 feet, through a central angle of 80°24'15" for an arc length of 28.07 feet;
9. Thence along a reverse curve to the left, having a radius of 40.00 feet, through a central angle of 80°24'15" for an arc length of 56.13 feet;
10. Thence South 37°39'18" West, 29.98 feet;
11. Thence South 52°20'42" East, 29.94 feet;
12. Thence South 30°09'18" West, 79.72 feet;

Thence North 03°13'24" West, 554.12 feet;

Thence North 00°08'17" East, 27.82 feet;

Thence South 87°30'11" West, 59.00 feet;
Thence North 02°31'01" West, 210.98 feet;
Thence North 87°30'06" East, 7.91 feet;
Thence North 02°51'32" East, 175.70 feet;
Thence North 01°01'33" East, 158.87 feet;
Thence North 02°01'13" West, 63.18 feet;
Thence North 02°55'42" West, 61.74 feet;
Thence North 87°52'02" East, 92.48 feet;
Thence South 02°29'54" East, 102.19 feet;
Thence North 87°30'13" East, 58.38 feet;
Thence North 02°29'47" West, 207.03 feet;
Thence South 87°53'28" West, 27.35 feet;
Thence North 02°30'02" West, 40.00 feet;;
Thence North 87°53'28" East, 50.00 feet;
Thence North 02°30'02" West, 110.48 feet;
Thence North 87°34'58" East, 69.50 feet;
Thence North 02°25'02" West, 204.22 feet, to the southerly line of West San Fernando Street;
Thence along said southerly line, South 87°34'45" West, 40.80 feet, to the westerly line of Cahill Street;
Thence along said westerly line, North 02°29'04" West, 49.99 feet, to the westerly prolongation of the northerly line of West San Fernando Street;
Thence along said westerly prolongation and said northerly line, North 87°34'31" East, 270.99 feet, to the westerly line of South Montgomery Street;
Thence along said westerly line, North 02°28'43" West, 935.37 feet, to the southerly line of West Santa Clara Street;
Thence along said southerly line, North 87°38'19" East, 548.46 feet, to the general westerly line of Los Gatos Creek;
Thence along said general westerly line the following twelve courses:
1. Thence South 08°12'27" West, 60.98 feet;
2. Thence North 81°47'33" West, 7.38 feet;
3. Thence southerly, along a non-tangent curve to the left, having a radius of 1,556.00 feet, whose center bears South 79°43'21" East, through a central angle of 03°27'16" for an arc length of 93.82 feet;
4. Thence South 17°25'29" West, 47.05 feet;
5. Thence South 17°26'53" West, 18.99 feet;
6. Thence South 05°53'13" West, 69.38 feet;
7. Thence South 10°02'04" East, 94.06 feet;
8. Thence southerly, along a non-tangent curve to the left, having a radius of 1,556.00 feet, whose center bears North 88°32'05" East, through a central angle of 00°55'17" for an arc length of 25.02 feet;
9. Thence continuing along said curve to the left, having a radius of 1,556.00 feet, through a central angle of 03°41'05" for an arc length of 100.06 feet;
10. Thence continuing along said curve to the left, having a radius of 1,556.00 feet, through a central angle of 00°12'32" for an arc length of 5.67 feet;
11. Thence South 06°16'48" East, 43.04 feet;
12. Thence along a tangent curve to the right, having a radius of 404.00 feet, through a central angle of 07°24'45" for an arc length of 52.27 feet;

Thence westerly, along a non-tangent curve to the right, having a radius of 880.01 feet, whose center bears North 12°14'07" West, through a central angle of 04°33'06" for an arc length of 69.91 feet;

Thence South 79°17'06" West, 70.51 feet, to the easterly line of Barack Obama Boulevard;

Thence along said easterly line the following two courses:

1. Thence South 02°27'56" East, 75.81 feet;
2. Thence along a tangent curve to the left, having a radius of 999.96 feet, through a central angle of 00°14'11" for an arc length of 4.12 feet;

Thence North 87°32'04" East, 120.89 feet, to the westerly line of Los Gatos Creek;

Thence along said westerly line, South 12°11'03" West, 51.68 feet;

Thence South 87°32'04" West, 106.37 feet, to the easterly line of Barack Obama Boulevard;

Thence along said easterly line the following nine courses:

1. Thence southerly, along a non-tangent curve to the left, having a radius of 1,000.00 feet, whose center bears North 84°25'55" East, through a central angle of 01°45'13" for an arc length of 30.61 feet;
2. Thence along a reverse curve to the right, having a radius of 1,000.00 feet, through a central angle of 04°48'47" for an arc length of 84.00 feet;
3. Thence South 02°28'55" East, 117.24 feet;
4. Thence South 02°30'02" East, 228.27 feet;
5. Thence along a tangent curve to the right, having a radius of 572.00 feet, through a central angle of 39°34'46" for an arc length of 395.13 feet;
6. Thence along a reverse curve to the left, having a radius of 450.00 feet, through a central angle of 35°44'53" for an arc length of 280.77 feet;
7. Thence South 01°44'30" West, 270.74 feet;
8. Thence South 01°46'13" West, 63.60 feet;
9. Thence South 01°46'32" East, 118.56 feet, to the southeasterly line of Lorraine Avenue;

Thence along said southeasterly line, North 54°47'45" East, 125.01 feet;

Thence South 35°09'56" East, 240.05 feet, to the general northwesterly line of West Sant Carlos Street;

Thence along said general northwesterly line the following five courses:

1. Thence South 54°48'18" West, 178.14 feet;
2. Thence South 54°48'50" West, 255.34 feet;
3. Thence South 54°49'02" West, 146.58 feet;
4. Thence North 35°10'58" West, 2.03 feet;
5. Thence westerly, along a non-tangent curve to the right, having a radius of 323.50 feet, whose center bears North 24°34'12" West, through a central angle of 04°11'06" for an arc length of 23.63 feet;

Thence South 35°10'05" East, 617.30 feet;

Thence South 54°48'50" West, 120.00 feet;

Thence North 35°10'05" West, 5.00 feet, to the northwesterly line of Auzerais Avenue;

Thence along said northwesterly line, South 54°48'50" West, 270.61 feet;

Thence South 35°11'10" East, 5.00 feet;

Thence South 54°48'50" West, 75.00 feet, to the POINT OF BEGINNING.

excepting therefrom, the following area:

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of Property ID No. V014-01 described in the Final Order of Condemnation recorded August 22, 2002, in Document No. 16434322, Santa Clara County Records.

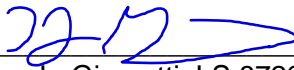
Containing 40.53 acres, more or less.

Total combined area of Parcels 1, 2 & 3 containing 77.64 acres, more or less.

For assessment or zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.

This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 3.26.21


Tracy L. Giorgetti, LS 8720

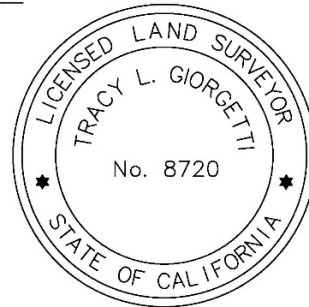


Exhibit B

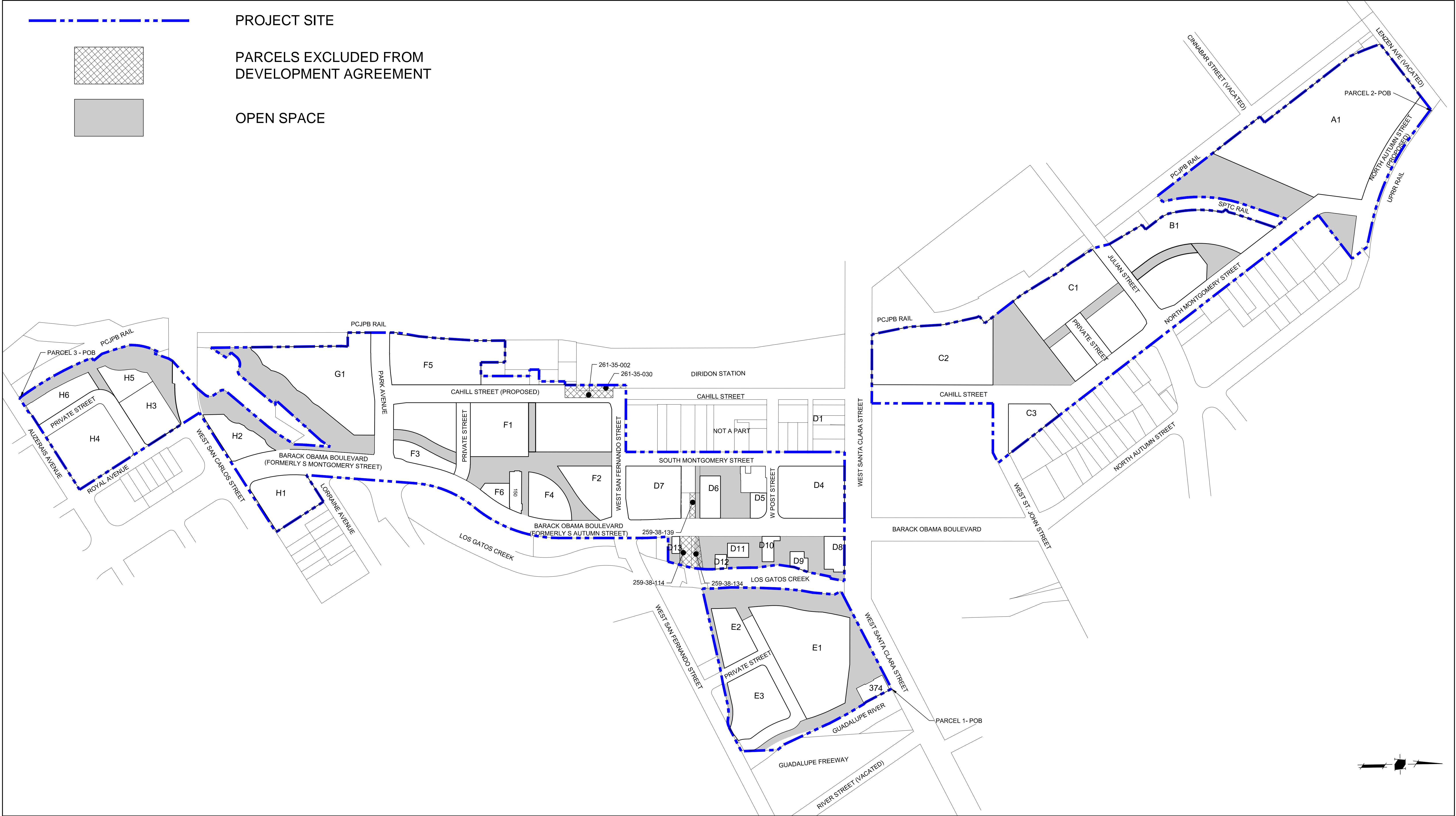


EXHIBIT B - PROJECT BOUNDARIES

Scale: 1" = 180'

Drawn: DMJ Reviewed: DM
HMH#5719.00 | 02/11/21

Exhibit B1

Exhibit B1
Legal Descriptions of Development Parcels Located Within the Project Boundaries
[full legal descriptions to follow]

APN	Address
259-26-017	587 CINNABAR ST
259-27-017	501 CINNABAR ST
259-27-003	357 N MONTGOMERY ST
259-27-007	311 N MONTGOMERY ST
259-27-008	551 W JULIAN ST
259-27-009 01	559 W JULIAN ST
259-27-010	573 W JULIAN ST
259-27-011	341 N MONTGOMERY ST
259-27-014	345 N MONTGOMERY ST
259-27-015	347 N MONTGOMERY ST
259-27-016	333 N MONTGOMERY ST
259-38-009	35 S AUTUMN ST
259-38-010	55 S AUTUMN ST
259-38-011	57 S AUTUMN ST
259-38-015	75 S AUTUMN ST
259-38-018	93 S AUTUMN
259-38-019	92 S MONTGOMERY ST
259-38-027	50 S MONTGOMERY ST
259-38-028	40 S MONTGOMERY ST
259-38-029	40 S MONTGOMERY ST
259-38-087	87 S AUTUMN ST
259-38-090	82 S MONTGOMERY ST
259-38-088	91 S AUTUMN ST
259-38-089	82 S MONTGOMERY ST
259-38-113	74 S AUTUMN ST
259-38-116	58 S AUTUMN ST
259-38-117	56 S AUTUMN ST
259-38-018	93 S. AUTUMN ST
259-38-119	52 S AUTUMN ST
259-38-121	20 S AUTUMN ST
259-38-122	34 S AUTUMN ST
259-38-123	24 S AUTUMN ST
259-38-124	24 S AUTUMN ST
259-38-132	450 W SANTA CLARA ST
259-38-135	58 S. AUTUMN
259-38-141	59 S AUTUMN ST
259-38-130	8 S MONTGOMERY ST
259-38-036	402 W SANTA CLARA ST
259-38-039	45 DELMAS AVE
259-38-040	55 DELMAS AVE
259-38-041	63 DELMAS AVE
259-38-042	73 DELMAS AVE
259-38-109	35 DELMAS AVE
259-38-110	35 DELMAS AVE
259-38-128	374 W SANTA CLARA

259-38-129	374 W SANTA CLARA
259-38-142	384 W SANTA CLARA
259-38-145	415 W SAN FERNANDO ST
259-38-146	419 W SAN FERNANDO ST
259-38-147	384 W SANTA CLARA
259-38-148	415 W SAN FERNANDO ST
259-48-011	510 W SAN FERNANDO ST
259-48-012	102 S MONTGOMERY ST
259-48-013	510 W SAN FERNANDO ST
259-48-052	140 S MONTGOMERY ST
259-48-053	150 S MONTGOMERY ST
261-35-003	105 S MONTGOMERY ST
261-35-006	105 S MONTGOMERY ST
261-35-007	145 S MONTGOMERY ST
261-35-010	105 S MONTGOMERY ST
261-35-014	645 PARK AVE
261-35-027	145 S MONTGOMERY ST
261-37-031	255 S MONTGOMERY
259-47-038	597 W SAN CARLOS ST
259-47-040	580 LORRAINE AVE
259-47-077	580 LORRAINE AVE
259-47-079	580 LORRAINE AVE
259-47-080	282 S MONTGOMERY ST
261-37-016	655 W SAN CARLOS ST
261-37-020	691 W SAN CARLOS ST
261-37-021	691 W SAN CARLOS ST
261-37-023	695 W SAN CARLOS ST
261-37-029	655 W SAN CARLOS ST
261-37-030	697 W SAN CARLOS ST
264-15-015	365 ROYAL AVE
264-15-016	379 ROYAL AVE
264-15-017	655 AUZERAIS AVE
264-15-018	661 AUZERAIS AVE
264-15-019	667 AUZERAIS AVE
264-15-063	720 W SAN CARLOS ST
264-15-064	720 W SAN CARLOS ST
264-15-065	720 W SAN CARLOS ST
259-28-031	566 W JULIAN ST
259-28-041	525 W SANTA CLARA ST
259-28-043	525 W SANTA CLARA ST
259-28-044	525 W SANTA CLARA ST
259-38-085	56 S MONTGOMERY ST
259-38-014	70 S AUTUMN ST
259-38-133	68 S MONTGOMERY ST

Exhibit C

Public Benefits

Exhibit C1

Exhibit C1

Base City Housing Requirements and Community Benefits Schedule

Base City Requirements + Community Benefits	Base Requirement		Community Benefits		Timing and Notes
	Basis	Per 7.3M gsf of Office	Basis	Per 7.3M gsf of Office	
Affordable Housing: IHO “Mixed Compliance Option”	\$18.70/nsf Residential	Equivalent of: \$5.55 x 7.3M gsf Office: ~\$40,500,000			This fee requires provision of Moderate Inclusionary units as described in Exhibit D.
Affordable Housing: Moderate Inclusionary Units	170 Units	Equivalent of \$5.45 x 7.3M gsf Office: \$39,785,000	30 Units	Equivalent of: \$0.96 x 7.3M gsf Office: ~\$7,000,000	Delivered with market rate residential development at a ratio of 5.88% of total market rate units
Commercial Linkage Fee	\$12/gsf Office	\$12.00 x 7.3M gsf Office: \$87,600,000			Pay at TCO of each office building
Community Stabilization and Opportunity Fund			\$21.20/gsf Office	\$21.20 x 7.3M gsf Office: \$154,760,000	Pay at TCO of each office building
Prepayment for Job Readiness and Stabilization			~\$1.03/gsf Office	~\$1.03 x 7.3M gsf Office: \$7,500,000	Pay 120 days after Final Approval
Unallocated Community Benefit Commitment			\$3.06/gsf Office	\$3.06 x 7.3M gsf Office: \$22,340,000	Pay at TCO of each office building
Autumn Street Parcels			In-kind (\$1.15/gsf Office)	\$1.15 x 7.3M gsf Office: ~\$8,400,000	Fee simple transfer to the City 3 months after Final Approval in the transfer condition described in DA Section 4.1.2(c)
Total Baseline City Requirements + Community Benefits	\$23.00/gsf Office	\$23.00 x 7.3M gsf Office: ~\$167,885,000	\$27.40/gsf Office	\$27.40 x 7.3M gsf Office: ~\$200,000,000	

Exhibit C2





March 11, 2021
HMH 5719.00.270
Page 1 of 1

APN 259-29-012
260 NORTH MONTGOMERY STREET

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of Parcel Two described in the Grant Deed recorded August 15, 2019, in Document No. 24255972 of Official Records, Santa Clara County Records, described as follows:

BEGINNING at the southerly corner of said Parcel Two, being on the northeasterly line of North Montgomery Street;

Thence along said northeasterly line, North 40°09'41" West, 50.00 feet, to the northwesterly line of said Parcel Two;


Thence along said northwesterly line and the northeasterly and southeasterly lines of said Parcel Two the following three courses:

1. Thence North 49°50'18" East, 118.81 feet;
2. Thence South 38°44'42" East, 50.02 feet;
3. Thence South 49°50'18" West, 117.57 feet, to the POINT OF BEGINNING.

Containing 5,910 square feet or 0.14 acres, more or less.

This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

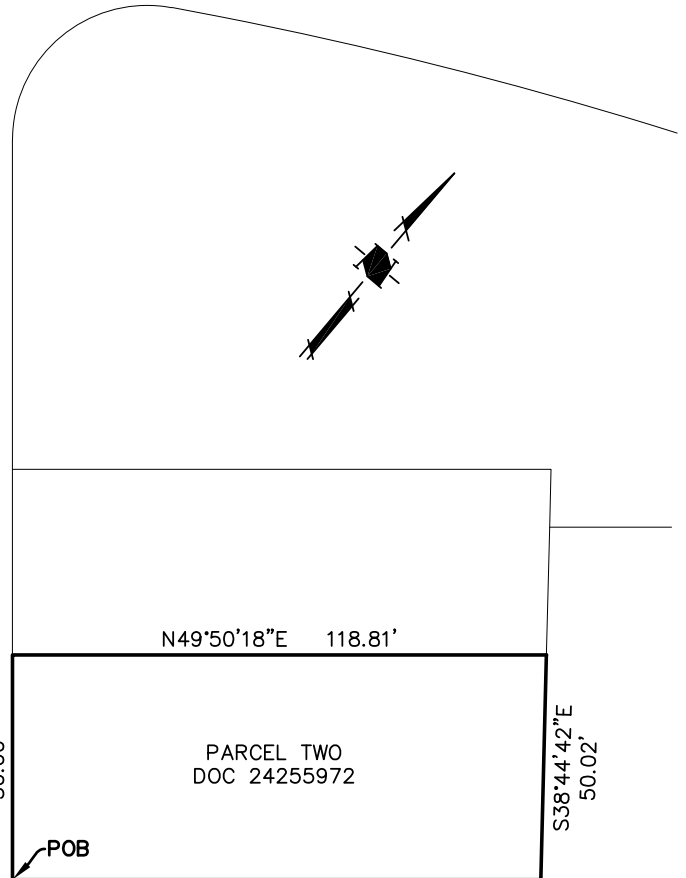
Date: 3-11-21


Tracy L. Giorgetti, LS 8720



WEST JULIAN STREET

NORTH MONTGOMERY STREET



0 20 40
1 IN. = 40 FT.

LEGEND

POB POINT OF BEGINNING

SHEET 1 OF 1

Date: 2021-03-11
Designed: DM
Drawn: RF
Checked: TG
Proj. Engr.: —
571900PL21



PLAT TO ACCOMPANY DESCRIPTION:
APN 259-29-012
260 NORTH MONTGOMERY STREET

SAN JOSE

CALIFORNIA



March 11, 2021
HMH 5719.00.270
Page 1 of 1

APN 259-29-020
255 NORTH AUTUMN STREET

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of Parcel One described in the Grant Deed recorded August 15, 2019, in Document No. 24255972 of Official Records, Santa Clara County Records, described as follows:

BEGINNING at the northerly corner of said Parcel One, being on the southwesterly line of North Autumn Street;

Thence along said southwesterly line, South 40°22'50" East, 87.54 feet to the southeasterly line of said Parcel One;


Thence along said southwesterly line and the southwesterly and northwesterly lines of said Parcel One the following four courses:

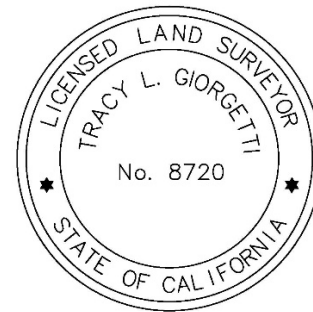
1. Thence South 54°25'13" West, 113.86 feet;
2. Thence South 49°50'18" West, 61.71 feet;
3. Thence North 38°44'42" West, 78.46 feet;
4. Thence North 49°50'18" East, 172.93 feet, to the POINT OF BEGINNING.

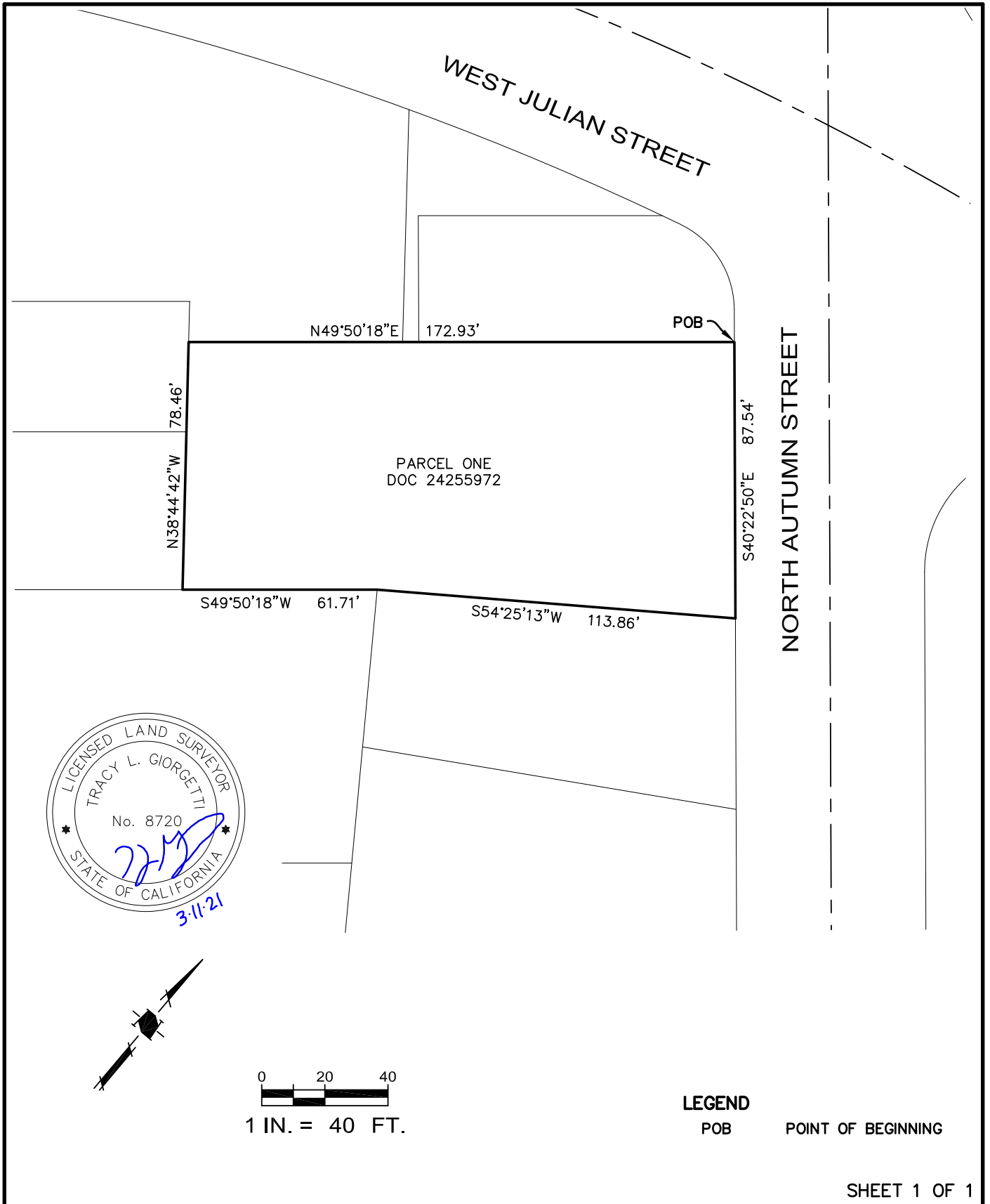
Containing 14,168 square feet or 0.33 acres, more or less.


This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 3-11-21


Tracy L. Giorgetti, LS 8720





Date: 2021-03-11	 1570 Oakland Road San Jose, CA 95131 (408) 487-2200 HMHca.com	PLAT TO ACCOMPANY DESCRIPTION: APN 259-29-020 255 NORTH AUTUMN STREET SAN JOSE CALIFORNIA
Designed: DM		
Drawn: RF		
Checked: TG		
Proj. Engr.: — 571900PL20		



March 11, 2021
HMH 5719.00.270
Page 1 of 1

APN 259-29-103
240 NORTH MONTGOMERY STREET

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of that parcel of land described in the Grant Deed recorded August 15, 2019, in Document No. 24255999 of Official Records, Santa Clara County Records, described as follows:


BEGINNING at the southerly corner of said parcel of land, being on the northeasterly line of North Montgomery Street;
Thence along said northeasterly line, North 40°09'41" West, 86.60 feet, to the northwesterly line of said parcel of land;
Thence along said northwesterly line and the northeasterly and southeasterly lines of said parcel of land the following three courses:

1. Thence North 49°50'18" East, 179.28 feet;
2. Thence South 34°49'59" East, 86.98 feet;
3. Thence South 49°50'18" West, 171.20 feet, to the POINT OF BEGINNING.

Containing 15,177 square feet or 0.35 acres, more or less.

This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 3-11-21


Tracy L. Giorgetti, LS 8720



WEST JULIAN STREET

NORTH MONTGOMERY STREET



N49°50'18"E 179.28'

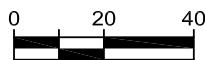
DOC 24255999

N40°09'41"W 86.60'

S34°49'59"E 86.98'

POB

S49°50'18"W 171.20'



1 IN. = 40 FT.

LEGEND

POB

POINT OF BEGINNING

SHEET 1 OF 1

Date: 2021-03-11
Designed: DM
Drawn: RF
Checked: TG
Proj. Engr.: —
571900PL22



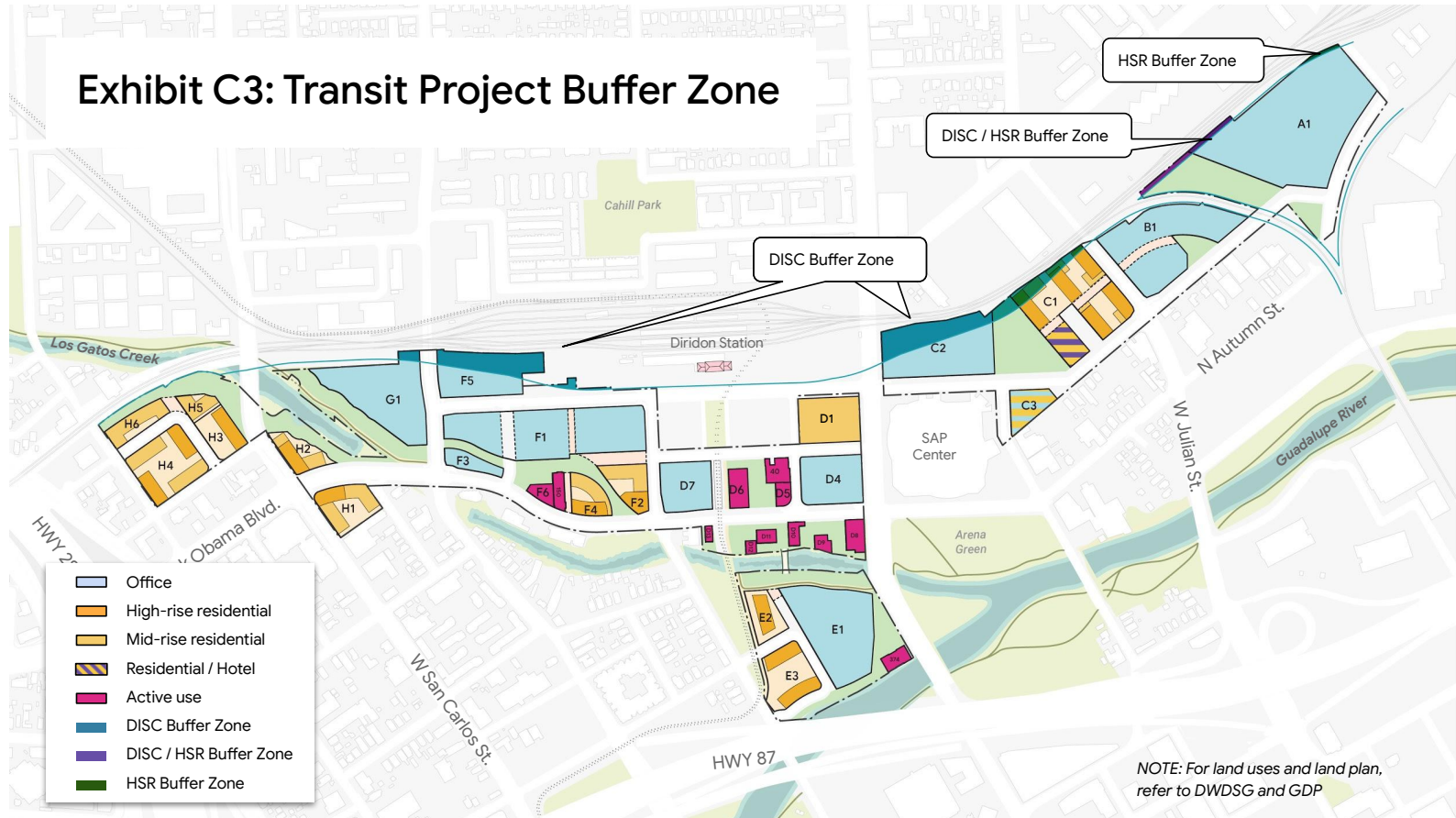
PLAT TO ACCOMPANY DESCRIPTION:
APN 259-29-103
240 NORTH MONTGOMERY STREET

SAN JOSE

CALIFORNIA

Exhibit C3

Exhibit C3: Transit Project Buffer Zone



DRAFT — Subject to City Manager and City Council Review and Approval

Appendix A

Community Benefits Adjustment: Office Parcel Yield

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

Exhibit D

Exhibit D

Affordable Housing Program

I. Intro/Recitals

The Downtown Mixed-Use Plan ("**Project**") provides for the development of a substantial amount of residential units to help address the City's housing crises related to both market rate and affordable housing. This Affordable Housing Program, which assumes 4,000 residential units, furthers Developer's and City's shared goal that development within the Diridon Station Area Plan ("**DSAP**") results in twenty-five percent (25%) of all residential units as affordable housing. Consistent with this goal, in October 2020, the City designated the Diridon Station Area as a prioritized growth area in the City-wide Affordable Housing Investment Plan for the development of affordable housing and use of affordable housing funds to encourage and assist in such development.

This Affordable Housing Program will enable the Project to provide financial and other commitments sufficient to (i) satisfy Developer's obligations under the City's adopted Inclusionary Housing Ordinance ("**IHO**") as set forth in San José Municipal Code Chapter 5.08 in effect on the Effective Date of the Development Agreement, a copy of which is attached hereto as Schedule D5; and (ii) substantially further achievement of the twenty-five percent (25%) affordable housing goal within the DSAP.

This Affordable Housing Program is provided in order to satisfy and exceed the requirements under the IHO. Pursuant to Sections 5.08.570 and Sub-Section F of Section 5.08.610 of the IHO, the City Manager has determined that this Affordable Housing Program represents an acceptable alternative method of meeting the City's inclusionary housing requirements because, based on its terms, it will provide as much or more affordable housing at the same or lower income levels, and of the same or superior quality of design and construction, and will otherwise provide greater public benefit, than compliance with the express requirements of the IHO and any existing or future City guidelines for inclusionary housing. See Schedule D2 for IHO Implementation Guidelines applicable to this Affordable Housing Program for the administrative procedures related to IHO compliance.

As set forth in this Affordable Housing Program, Developer will fulfill its obligations through land dedication, monetary contributions, and production of on-site moderate income (100% of Area Median Income (as such term is defined below)) affordable residential units, and the City will through Good Faith Efforts direct affordable housing funds generated by the Project to affordable housing projects on the land Developer dedicates to the City pursuant to this Affordable Housing Program for that purpose.

Terms that are used but not defined in this Affordable Housing Program shall have the meanings given such terms in Section VI below or in the body of the Development Agreement to which this Affordable Housing Program is attached.

II. Summary of the Affordable Housing Program

This Affordable Housing Program applies to all housing developed pursuant to the Development Agreement (and is based on the assumption that development of 3,400 market rate and 100% AMI units at an average unit size of 637 rentable square feet will occur) and consists of the following elements, which are summarized here and discussed in more detail in Sections III and IV below:

1. Developer's transfer of three parcels of real property, currently identified as Properties H1, H5 and H6, totaling approximately 2.15 acres, to the City (or its Designee) for use in the production of affordable housing. See Schedule D1 for Site Plan.
2. Developer's production of a minimum of one hundred and seventy (170) inclusionary housing units at 100% of AMI, which units must be provided within the market rate buildings at a rate of 5% of the total number of units, consistent with the IHO Mixed Compliance Option.
3. Developer's production of a minimum of an additional thirty (30) inclusionary housing units at 100% of AMI as a community benefit, which units must be provided within the market rate buildings at a rate of 0.88% for the first 3,400 units (which, when added to the inclusionary units described in paragraph II.2 above, results in 5.88% of the first 3,400 residential units being restricted units at 100% of AMI).
4. Developer's payment of IHO in-lieu fees (either \$18.70 per rentable square foot (“rsf”, as defined in the “Applying the In-lieu Fee on a Square Footage Basis” section of the IHO Supplemental Memo to San Jose City Council, dated February 22, 2021 and attached here at Schedule D5) if Developer provides 5% of the residential units as inclusionary units or \$43.00 per rsf if Developer does not provide 5% of the residential units as inclusionary units)(“**IHO Fee**”) for all residential developments in the Project area pursuant to the IHO, subject to credits for the value of the H1, H5 and H6 Properties as listed in the table below that are transferred to the City or an affordable housing developer designated by the City (“**Designee**”) as more specifically set forth below.
5. Developer's payment of fees on the Project's office development pursuant to the City's adopted Commercial Linkage Fee Ordinance set forth in San José Municipal Code Chapter 5.11 et seq.
6. Subject to City Council appropriation of funding, the City's commitment to (i) implement the affordable housing priorities for the DSAP that are set forth in the City's Affordable Housing Investment Plan, which reinforces that the DSAP is a priority area for the City's available affordable housing funds, and (ii) use Good Faith Efforts to direct CLF generated from commercial development within the Project Site to the production of affordable housing on land transferred from Developer to the City for that use, and then to affordable housing production within the DSAP's Boundaries.

7. Developer's performance of the Early H6 Work and the Early H5 Work earlier than Developer would otherwise be obligated to perform such work.

8. Housing contribution of community benefits to the Community Stabilization and Opportunity Pathways Fund, as further described in Section IV B. below.

III. Inclusionary Housing Ordinance Compliance

A. Land Dedication; Early H5 and H6 Work; Availability of District Systems.

Developer shall dedicate Properties H1, H5 and H6, consisting of a total of approximately 2.15 acres of real property to the City (or its Designee) pursuant to separate transfer agreements between the Developer and the City, with respect to each of the properties. If, due solely to Developer's actions, any Property is reduced in size by (i) five percent (5%) or less from its current size as shown on the attached Site Plan (Schedule D1), then the credits associated with such site shall be adjusted pro-rata or (ii) more than five percent (5%), then Developer shall have to right to (a) provide a replacement site to the City, which site shall be acceptable to the City's Director of Housing in his or her sole and absolute discretion or (b) if no such site is available, as reasonably determined by Developer or if the City rejects that site, then Developer shall pay the in-lieu fee of \$43.00 per rsf. The City will use Good Faith Efforts to deliver 600 units in total on the dedicated Properties. The actual number of units to be constructed on the dedicated Properties will be determined through the City's affordable housing development process, including input from potential affordable housing partners.

Concurrently with entering into the Development Agreement, Developer and City shall enter into separate Transfer Agreements for the eventual transfers of the H1, H5 and H6 Properties to City (the "**H1 Transfer Agreement**", "**H5 Transfer Agreement**" and "**H6 Transfer Agreement**", respectively, and collectively, the "**Transfer Agreements**").

H5 & H6 Early Work

In response to the City's desire to cause the dedication of the H6 and H5 Properties to occur earlier than required, Developer is willing to perform certain work with respect to those properties earlier than necessary subject to the terms herein below. The City and Developer agree that the cost of performing the Early H5 Work and Early H6 Work is \$19,300,000 as of the Effective Date of the Development Agreement. Such costs shall be subject to Annual Increases until the date of transfer of the H6 Property and the H5 Property respectively. As such, the City agrees that Developer may utilize a portion, in the amount of \$19,300,000, of the CLF that would be due with respect to the first and any subsequent office buildings in the Project comprising \$10,100,000 to accelerate dedication of the H6 Property ("**H6 Early Work CLF Amount**") and \$9,200,000 to accelerate dedication of the H5 Property ("**H5 Early Work CLF Amount**", and collectively with the H6 Early Work CLF Amount, the "**Early Work CLF Amount**"). As set forth in more detail below, Developer will repay the Early Work CLF Amount as CLF; provided, however, that if Developer has not repaid all of the Early Work CLF on or before the expiration of the time period in which Developer must satisfy the Ten Year Development Obligation, then Developer shall pay the then-remaining balance of the Early Work CLF prior to the expiration of such time period.

The demolition and removal of the existing buildings, rough grading of the H6 Property, street and sidewalk improvements, and other work comprising the early H6 work will be further described in an exhibit to the Transfer Agreement for the H6 Property (“**Early H6 Work**”). Developer’s obligation to perform such work will be triggered by approval of the Vertical Improvement superstructure permit associated with the first office building (“**Permit**”), at which time the H6 Early Work CLF Amount will be credited to Developer against its CLF payment obligation for the first and, if applicable, any subsequent office buildings such that the cash payment of CLF owed at Temporary Certificate of Occupancy of the first and, if applicable, any subsequent office buildings will be reduced by the H6 Early Work CLF Amount. On receipt of the Permit, Developer will begin necessary drawings and permitting work associated with demolition of the buildings included in the Early H6 Work. Developer anticipates that it will take approximately fifteen (15) months (from the date on which Developer’s obligation to perform the Early H6 Work is triggered) to design, permit and complete the Early H6 Work. Once the Early H6 Work is complete, Developer will transfer the H6 Property per the H6 Transfer Agreement but in no event will the Closing Date for the transfer of the H6 Property be later than the date on which the Temporary Certificate of Occupancy is issued for the first Developer-constructed market rate residential building (subject to City-caused delays or if City has requested to defer the closing as more specifically set forth in the Transfer Agreement for H6). Upon (i) the closing of the transfer of the H6 Property to the City or its Designee pursuant to the Transfer Agreement or (ii) the date on which such closing would have occurred but for the City’s request to defer the closing as more specifically set forth in the Transfer Agreement, Developer will (a) receive an IHO credit in the same amount as the H6 Early Work CLF Amount, and (b) be obligated to re-pay the H6 Early Work CLF Amount at Temporary Certificate of Occupancy of the office building that results in delivery of the cumulative amount of 2,500,000 sf of office development completed by Developer.

The demolition and removal of the existing buildings, rough grading of the H5 Property, street and sidewalk improvements, and other work comprising the early H5 work will be further described in an exhibit to the Transfer Agreement for the H5 Property (“**Early H5 Work**”). Developer’s obligation to perform such work will be triggered by the City’s notification to Developer (the “**H5 Notice**”) of the occurrence of either of the following, whichever is earlier, that (i) the H5 affordable housing developer has been selected and a funding commitment for predevelopment has been made, but no earlier than the Commencement of Construction of the affordable housing development on the H6 Property or (ii) it is the City’s reasonable expectation that the Temporary Certificate of Occupancy for the affordable housing development on the H6 Property will be issued approximately twelve (12) months from the date of such notice. The H5 Early Work CLF Amount will be credited to Developer against its CLF payment obligation for the first and, if applicable, any subsequent office buildings such that the cash payment of CLF owed at Temporary Certificate of Occupancy of the first and, if applicable any subsequent office buildings will be reduced by the H5 Early Work CLF Amount. On receipt of the H5 Notice, Developer will begin necessary drawings and permitting work associated with the Early H5 Work. Developer anticipates that it will take approximately twelve (12) months (from the date on which Developer’s obligation to perform the Early H5 Work is triggered) to design, permit and complete the Early H5 Work. Once the Early H5 Work is complete, Developer will transfer the H5 Property per the H5 Transfer Agreement, but in no event will the Closing Date for the transfer of the H5 Property be later than the date on which the Temporary Certificate of Occupancy is issued for the

fourth Developer-constructed market rate residential building (subject to City-caused delays or if City has requested to defer the closing as more specifically set forth in the Transfer Agreement for H5) Upon (i) the closing of the transfer of the H5 Property to the City or its Designee pursuant to the Transfer Agreement or (ii) the date on which such closing would have occurred but for the City's request to defer the closing as more specifically set forth in the Transfer Agreement, Developer will (a) receive an IHO credit in the same amount as the H5 Early Work CLF Amount, and (b) be obligated to re-pay the H5 Early Work CLF Amount at Temporary Certificate of Occupancy of the office building that delivers the cumulative amount of 3,500,000 sf completed by Developer.

District Systems are anticipated to be made available to the H5 and H6 Properties, in which case those Properties would have the right to connect to the District Systems subject to any required regulatory requirements and supply agreements consistent with other residential development being supplied by the District Systems. The timing of delivery and commissioning of the District Systems may not be such that they are available to the H5 and H6 Properties at the time they are being constructed, and Developer makes no representations as to when and if they will be made available in any specific timeframe. In the event they are made available to one or both of the properties, then City may elect to connect at its sole cost and expense.

B. On-Site Inclusionary Units.

Developer shall provide on-site inclusionary units as part of the market rate residential development in the Project in compliance with this Section 3 and the IHO's "Mixed Compliance Option" as described herein and in the following applicable provisions of the IHO attached at Schedule D5: 5.08.525.

1. **Inclusionary Units.** In fulfillment of its IHO obligations, Developer shall produce a minimum of 5% on-site inclusionary units at 100% AMI within the market rate buildings, subject to Developer's right to obtain approval for clustering, as set forth in Section III.B.1(d), below. Assuming a total of 3,400 Developer-constructed residential units across the Project, one hundred seventy (170) on-site inclusionary residential units within the Project Site would be provided as deed-restricted units that are limited to occupancy by households with incomes up to 100% of the AMI, as published annually by the City (hereafter "**Restricted Units**").

a. As a Community Benefit, Developer shall provide, within the first three-thousand four hundred (3,400) Developer-constructed residential units developed, an additional thirty (30) Restricted Units limited to occupancy by households with incomes up to 100% of AMI. The additional 30 units will be provided on a prorata basis with the required 5%, with the result that the market rate buildings are anticipated to contain 5.88% Restricted Units.

b. Each Restricted Unit shall be deed-restricted consistent with the City's standard affordable housing forms for occupancy by income qualified households for the term provided in the Inclusionary Housing Ordinance as of the Effective Date, as such deed- restrictions are set forth in Schedule D3 attached hereto.

c. The Restricted Units shall be integrated into market rate housing, in accordance with the dispersion requirements of Section 5.08.470 of the IHO and this Affordable Housing Program, and shall not be concentrated in a single building, block, or geographic area of the Project. In the case of a project of ten (10) stories or more of mass timber (CLT) or Type 1 (concrete and steel) construction, the Restricted Units, may be dispersed through the lowest 50% of the building as measured by floor (for example: in a 20 story building, the lowest 50% is floors 1-10; for any fraction, the floor count is rounded up, e.g., if the building is 19 stories, then units would be provided in floors 1-10 stories).

d. Notwithstanding the foregoing provisions of this Section III. B.1, the Director of PBCE may approve (i) a market rate building that clusters Restricted Units in a wing of a building or (ii) placing all of the units in another building (on the same parcel or otherwise in the vicinity of the applicable market rate building(s)) if Developer submits a proposal, approved by the City's Director of Housing, with a satisfactory explanation of clustering benefits through the Conformance Review Process.

e. The Restricted Units shall consist of a mix of unit sizes that is substantially the same as the mix of unit sizes in each respective building (i) in which the Restricted Units are integrated or, (ii) in the case of clustering or location of the Restricted Units in a separate building, with respect to which the Restricted Units are built. The Restricted Units shall have a comparable square footage and the same bedroom count and bedroom count ratio as the market rate units. The number of bedrooms in each unit and the average size of the units in each respective building shall be considered in determining whether the mix and size of Restricted Units is substantially the same as the overall mix and size of units in a building. Square footage will be considered comparable if the total average square footage of the Restricted Units is at least 85% of the total average square footage of the market rate units for each unit by bedroom type (for example, the average square footage for 1-bedroom Restricted Units must be at least 85% of the average square footage for 1-bedroom market rate units).

f. The quality of the exterior design of any building consisting entirely of Restricted Units and overall quality of construction of the Restricted Units must be consistent with the exterior design of comparable buildings containing market rate units. Restricted Units may have different interior finishes and features than the market rate units in the market rate building, as long as the finishes and features are functionally equivalent to the market rate units and are durable and of good quality. Functional equivalency includes the architectural style, detailing, and the quality of materials and the size of structures.

g. If Developer pursues and obtains a residential condominium map for any residential building but operates such building's residential units as rental housing, then the rental housing IHO section applies as described in Section III.B.1. At any such time that all or any portion of the mapped rental units become a for-sale unit, then the Restricted Units shall remain restricted, on a for-sale basis, at the same affordability levels. Existing tenants of the Restricted Units shall have first right of refusal to purchase their units and all subsequent sales of the Restricted Unit shall follow the City's IHO for-sale procedures. If the existing tenant does not exercise its first right of refusal, then the Developer shall make necessary relocation accommodations under the applicable relocation provisions of Municipal Code Section 20.170-400 thru 20.170-460 as in

effect on the Effective Date, whereupon the unit may be sold to a qualified buyer at the then-applicable sales price for 100% AMI buyers per the City's IHO for-sale procedures. A Restricted Unit shall remain subject to the applicable regulatory agreement for the full term of the applicable restrictions, and if such form of regulatory agreement changes due to the unit becoming a for-sale unit, then the amount of time as a rental Restricted Unit shall count against the for sale restricted term.

C. IHO Fees

This Affordable Housing Program assumes compliance with the IHO's "Mixed Compliance Fee" provisions, such that so long as Developer restricts not less than 5.00% of the market rate units of a building as 100% AMI Restricted Units then, unless City has previously approved a lower percentage of 100% AMI units per Section III.B.1.(d) above, Developer shall be obligated to pay an IHO in-lieu fee of \$18.70 per rsf of each market rate residential unit and each Restricted Unit. All fees and credits under this Section II.C are in the amounts in effect in 2021 and shall escalate in lockstep based on the City's methodology for escalating the IHO Fee which is based on the change in the Engineering News Record (ENR) Construction Cost Index for the San Francisco Urban area published by McGraw Hill on January 1 of every year, or its successor publication per the Mixed Compliance Option of the IHO code ("**Annual Increases**"). Pursuant to Schedule D-4, IHO Fee Credits (as defined in Schedule D-4) are earned at time of Closing or, if the City exercises its option(s) described in Section 6(a) above to extend the Closing Date, then such credits shall be earned on the date on which the Closing would have occurred but for the City's exercise of its Extension right(s).

1. IHO Fee Rate. The Mixed Compliance Fee provision requires 5% on-site inclusionary units at 100% AMI and payment of the in-lieu fee of \$18.70 per rentable square foot for all units. Therefore, if Developer does not provide such 5% on-site inclusionary units, then the "In-Lieu Fee" option under the IHO applies at the rate of \$43.00 per rentable square foot of residential development in the market rate building, unless City has previously agreed to a lower percentage of 100% AMI units pursuant to clustering (described above in Section III.B.1.(d)) in which case the \$18.70 fee shall apply. See Section B On-site Inclusionary Units for discussion of Community Benefits units at 100% AMI, an additional 0.88% will be provided at that time of the 5% on-site inclusionary (subject to clustering in Section III.B.1(d)). Should the Developer propose a condominium, for-sale project, then the applicable in-lieu fee rate applies which is \$25/rsf, subject to applicable fee increases per IHO Code.

2. Land Dedication (H1 Property) - IHO Fee Credit. Subject to all conditions herein, Developer shall receive IHO Fee credits for the transfer of the H1 Property to the City (or Designee) against any IHO Fees owed or that may come due, which credit shall accrue to Developer's benefit at the earlier of (i) the closing of the transfer of the H1 Property to the City or its Designee pursuant to the Transfer Agreement or (ii) the date on which such closing would have occurred but for the City's request to defer the closing as more specifically set forth in the Transfer Agreement. As of the Effective Date, the value of the credit for the H1 Property is \$22,034,898. The amount of the credit and the amount of the IHO Fee shall be subject to Annual Increases. [Example: \$22,034,898 at \$18.70/rsf equals 1,179,337 sf of credit for residential rsf (including market rate and 100% AMI units).]

3. Land Dedication (H5 Property) - IHO Fee Credit. Subject to all conditions herein, Developer shall receive IHO Fee credits for the transfer of the H5 Property to the City (or Designee) against any IHO Fees owed or that may come due, which credit shall accrue to Developer's benefit at the earlier of (i) the closing of the transfer of the H5 Property to the City or its Designee pursuant to the Transfer Agreement or (ii) the date on which such closing would have occurred but for the City's request to defer the closing as more specifically set forth in the Transfer Agreement. As of the Effective Date, the value of the credit for the H5 Property is \$9,226,561. The amount of the credit and the amount of the IHO Fee shall be subject to Annual Increases. [Example: \$9,226,561 at \$18.70/rsf equals 493,399 sf of credit for residential rentable sf (including market rate and 100% AMI units).]

4. Land Dedication (H6 Property) - IHO Fee Credit. Subject to all conditions herein, Developer shall receive IHO Fee credits for the transfer of the H6 Property to the City (or its Designee) against any IHO Fees owed or that may come due, which credit shall accrue to Developer's benefit at the earlier of (i) the closing of the transfer of the H6 Property to the City or its Designee pursuant to the Transfer Agreement or (ii) the date on which such closing would have occurred but for the City's request to defer the closing as more specifically set forth in the Transfer Agreement. As of the Effective Date, the value of the credit for the H6 Property is \$10,079,062. The amount of the credit and the amount of the IHO Fee shall be subject to Annual Increases. [Example: \$10,079,062 at \$18.70/rsf equals 538,987 sf of credit for residential rentable sf (including market rate and 100% AMI units).]

5. Land Dedication - IHO Fee Credit.

The table below provides an illustrative summary of how the Project proposes to satisfy and exceed the IHO Fee requirements by means of land dedication and payments, as set forth above in this Affordable Housing Program, assuming development of 3,400 residential units.

This table is provided for illustrative purposes only and the dollar amounts included in the table are approximate numbers based on the assumptions described in this Section C.5, all of which may change as development proceeds based on the actual development program.	
Affordable Land Dedication	IHO Credits
H1	\$22M
H5	\$9.2M
H6	\$10.1M
Total Credits	\$41.3M

The table above illustrates the IHO Fee Credits (in 2021 dollars) from land dedication of H1, H5 and H6 Parcels. IHO Fee Credits will convert to residential square footage using the applicable fee. If Developer is developing for-sale units, then the applicable fee is \$25/rsf. For any residential units in excess of 3,400, Developer will satisfy its obligations under the IHO through the Mixed

Compliance Option, whereby 5% of the units are on-site inclusionary affordable units and in-lieu fee payment of \$18.70/rsf is made, including as set forth in Section 6 below. If Developer does not provide such 5% on-site inclusionary units, then the “In-Lieu Fee” option under the IHO applies at the rate of \$43.00 per rentable square foot of residential development in the market rate building, unless City has previously agreed to a lower percentage of 100% AMI units pursuant to clustering (described above in Section III.B.1(d)) in which case the \$18.70 rsf fee shall apply.

6. Unavailability or Insufficient Amount of IHO Fee Credits. If Developer has (i) not accrued any IHO Fee credits or (ii) exhausted all the credit attributable to the dedication of H1, H5 and H6, then Developer shall pay IHO Fees in the amount of (a) \$18.70 per rsf for each residential unit (in addition to providing 5% on-site inclusionary units at 100% AMI) or (b) \$43.00 per rsf if Developer does not provide the 5% on-site inclusionary units.

7. Excess IHO Fee Credits. If there are excess IHO Fee credits at the end of the Term, then Developer would have the right to monetize the excess IHO Fee credits by selling them to other developers needing credits to satisfy their inclusionary housing obligations provided that Developer’s sale(s) of any such excess IHO Fee credits must close and be utilized as part of an approved Affordable Housing Compliance Plan, so long as the City does not unreasonably withhold approval of the Affordable Housing Compliance Plan, within five (5) years after the expiration or termination of the Term.

D. Process; Tracking and Reporting of Developer's Compliance

1. Data Chart with Application. Developer’s obligations in this Affordable Housing Program are subject to Developer proceeding with development, and such obligations shall be satisfied pro-rata on a building-by-building basis, as and when development proceeds, in accordance with this Affordable Housing Program and the other applicable provisions of the Development Agreement. As such, in order to track Developer's compliance with the Affordable Housing Program, Developer shall submit a data chart with each Vertical Conformance Review Application that contains information addressing the following: the total rentable square footage of residential development proposed as part of each Vertical Conformance Review Application, including the number of market rate units and below-market rate units, including applicable AMI percentage; the location of the market rate units and below-market rate units; number of units broken down by unit type (e.g., studio, one bedroom); the leasing and marketing plan for below-market rate units and a description of the access to amenities and the types of fixtures for the market rate units and the below-market rate units, consistent with the Guidelines attached hereto at Schedule D2. The Affordable Housing Program information required to be submitted with each Vertical Conformance Review Application is further described in the Downtown West Conformance Review Implementation Guide.

2. Notices Regarding the H1, H5 and H6 Properties. Developer will provide City with advance notice of the anticipated closing date for dedication of each of the H1, H5 and H6 Properties per the terms of the respective Transfer Agreement. Developer will also include in the Conformance Review checklist a requirement that the Planning Department notify the Housing Department of Developer’s application submittal in order to provide the Housing Department’s production division with notice of the initiation of the Early H6 Work and Early H5 Work, as applicable. Developer will also notify the City after a ground lease with, or

transfer to, Lendlease or a Lendlease Affiliate has been executed/has occurred for the first residential building.

3. Affordability Restrictions. As a condition precedent to the City's issuance of a Building Permit for development of a residential building in which any inclusionary units are to be constructed, Developer shall record the affordability restrictions attached hereto as Schedule D3 (the "**Affordability Restrictions**") against the real property on which any Restricted Unit is to be constructed. The term of the Affordability Restrictions for rental units shall be per the IHO. The Affordability Restrictions shall provide that, upon Developer's or owner's written request at any time following expiration, the City shall provide a release of the Affordability Restrictions in a form reasonably acceptable to the owner within thirty (30) days after such request.

IV. Other Fees and Fee Credits.

A. Commercial Linkage Fee Provisions.

1. Payment of CLF. Subject to Section III.A above regarding the Early H5 Work and the Early H6 Work, Developer shall pay the CLF in accordance with the adopted Commercial Linkage Fee Ordinance in effect on the Effective Date of the Development Agreement (a copy of the CLF is attached to the Development Agreement at Exhibit Q, subject to Annual Increases as described in the Commercial Linkage Fee Ordinance.

2. Allocation of CLF. Subject to annual appropriation and compliance with applicable laws, the City shall make Good Faith Efforts to allocate Developer-paid CLF to support the development of affordable housing on land that Developer dedicates for such purpose. Provided, however, if the City demonstrates the commitment of other funding sources for those dedicated parcels, then Developer-paid CLF shall be used to support affordable housing production within the DSAP's Boundaries. Good Faith Efforts include (i) the City's Housing Department making recommendations to the Mayor and City Council to provide any necessary annual budgetary approvals or authorizations that would allow such allocation of the Developer-paid CLF Fees, and (ii) an agreement to commence pre-development activity with respect to one or more Developer-dedicated properties previously transferred to City or for which Developer has satisfied all conditions precedent to City closing, promptly following Developer's submittal of (x) an office building construction permit application that contains information about the total square footage of such building, and (y) information to the City regarding the expected timing of payment of the CLF for such office building (Final Certificate of Occupancy of office building). Such pre-development activity would include identifying potential qualified, experienced affordable housing developers for the Developer-dedicated affordable housing site or sites and identifying a pre-development loan with anticipation of CLF funding for the additional gap loan required. The City's agreement to allocate CLF generated from development within the Project Site to the Developer-dedicated properties shall not constitute use of City's funds to assist Developer since such funds will be used to accelerate production of affordable housing on the Developer-dedicated properties following their transfer to the City. Nothing in this program shall preclude the City from providing financial assistance for additional affordable housing units beyond those required by this Agreement. If no sites have been provided by Developer, or all the sites provided to date

have been developed and/or have begun construction, and/or the City has achieved the 25% affordable housing goal in DSAP, then City shall prioritize the use of any CLF generated from development in the Project Site to affordable projects Citywide.

B. Community Stabilization Fund. Office Development in the Project Site will result in contributions to the Fund that the City can then make available to housing stabilization efforts, all as more specifically described in Exhibit H (Community Stabilization and Opportunity Pathways Fund) to the Development Agreement.

V. DISC Adjustments

This Affordable Housing Program shall be subject to modification pursuant to the Development Agreement's provisions regarding acquisition by DISC Agencies or Other Transit Agencies, as applicable.

VI. Definitions

1. "Area Median Income" or "AMI" means the annual median income for Santa Clara County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the City of San José in the event that such median income figures are no longer published periodically in the California Code of Regulations.

2. "CLF Resolution" means the City of San José Resolution No. 79705, adopted September 1, 2020, Establishing the Amounts of Commercial Linkage Fee in Accordance with Chapter 5.11 of Title 5 of the San Jose Municipal Code, a copy of which is attached to the Development Agreement at Exhibit Q.

3. "Commercial Linkage Fee" or "CLF" means the commercial linkage fee adopted by the City Council as set forth in Chapter 5.11 of Title 5 of the San José Municipal Code in effect on the Effective Date of this Development Agreement, and as further set forth in the CLF Resolution.

4. "Fund" means the Community Stabilization and Opportunity Pathways Fund described in Exhibit H to the Development Agreement.

5. "H1 Property" means that property as generally shown on Schedule D1 attached to this Affordable Housing Plan.

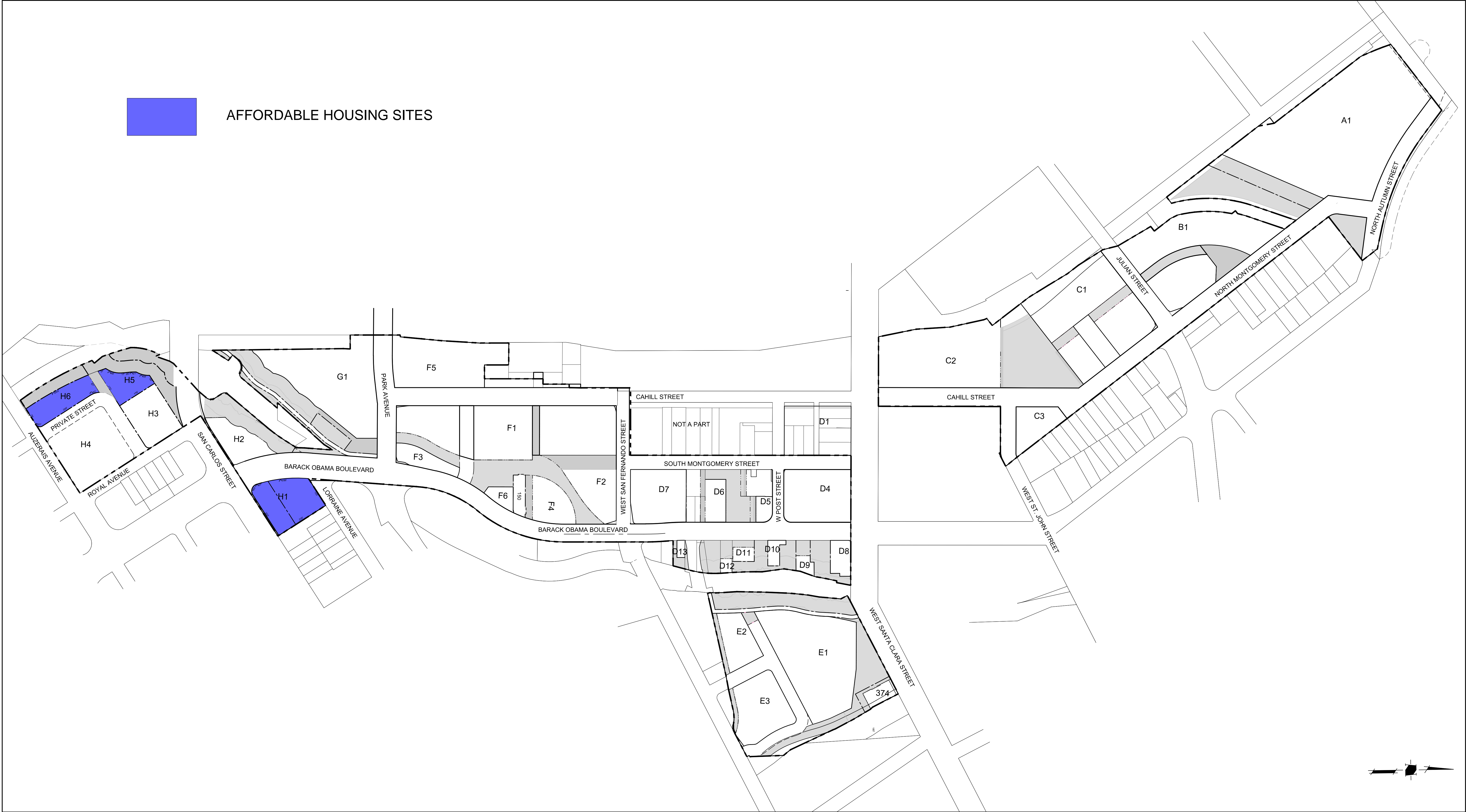
6. "H5 Property" means that property as generally shown on Schedule D1 attached to this Affordable Housing Plan.

7. "H6 Property" means that property as generally shown on Schedule D1 attached to this Affordable Housing Plan.

8. **"Inclusionary Housing Ordinance"** or **"IHO"** means the City of San José Inclusionary Housing Ordinance as set forth in Chapter 5.08 of Title 5 of the San José Municipal Code, adopted by Ordinance No. 30538, dated March 9 2021, related Resolutions No. ____ and ____, and Supplemental Memo to San Jose City Council, dated February 22, 2021, copies of which are attached hereto at Schedule D5.

Schedule D1

 AFFORDABLE HOUSING SITES



PROJECT SITE PLAN GENERALLY DEPICTING LOCATION OF H1, H5, and H6 PROPERTIES

Scale: 1" = 180'

Drawn: DM| Reviewed: DM
HMH#5719.00 | 02/11/21

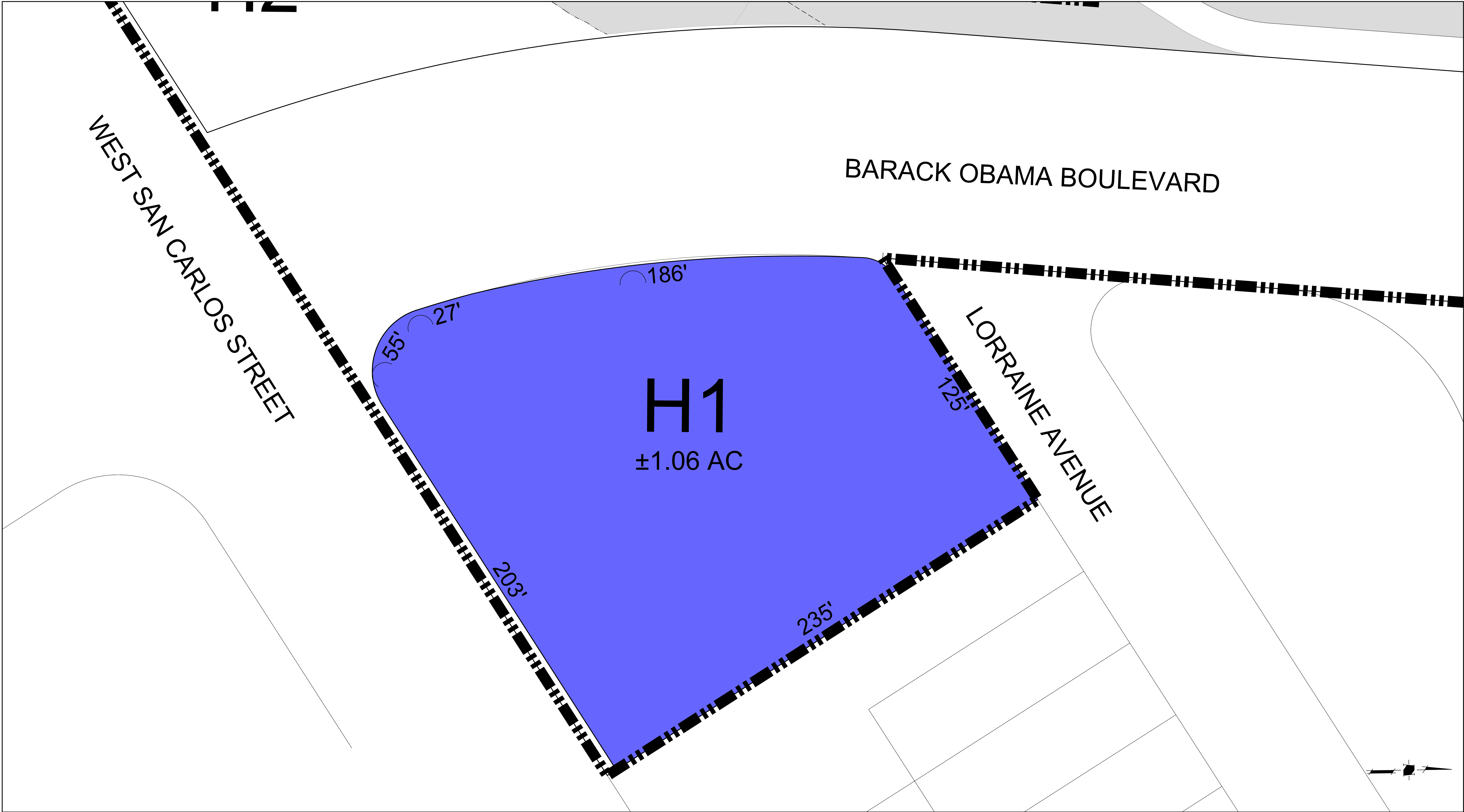


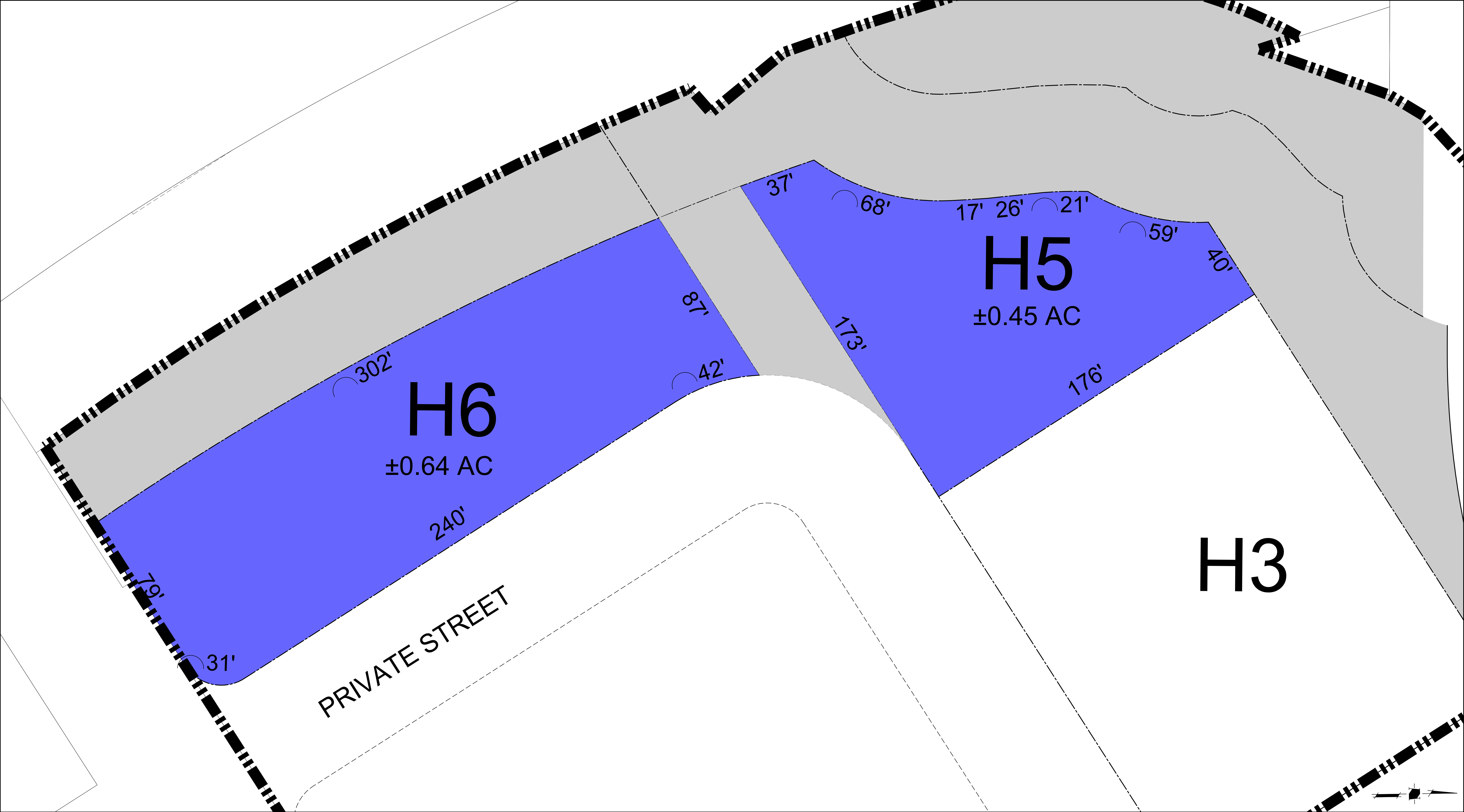
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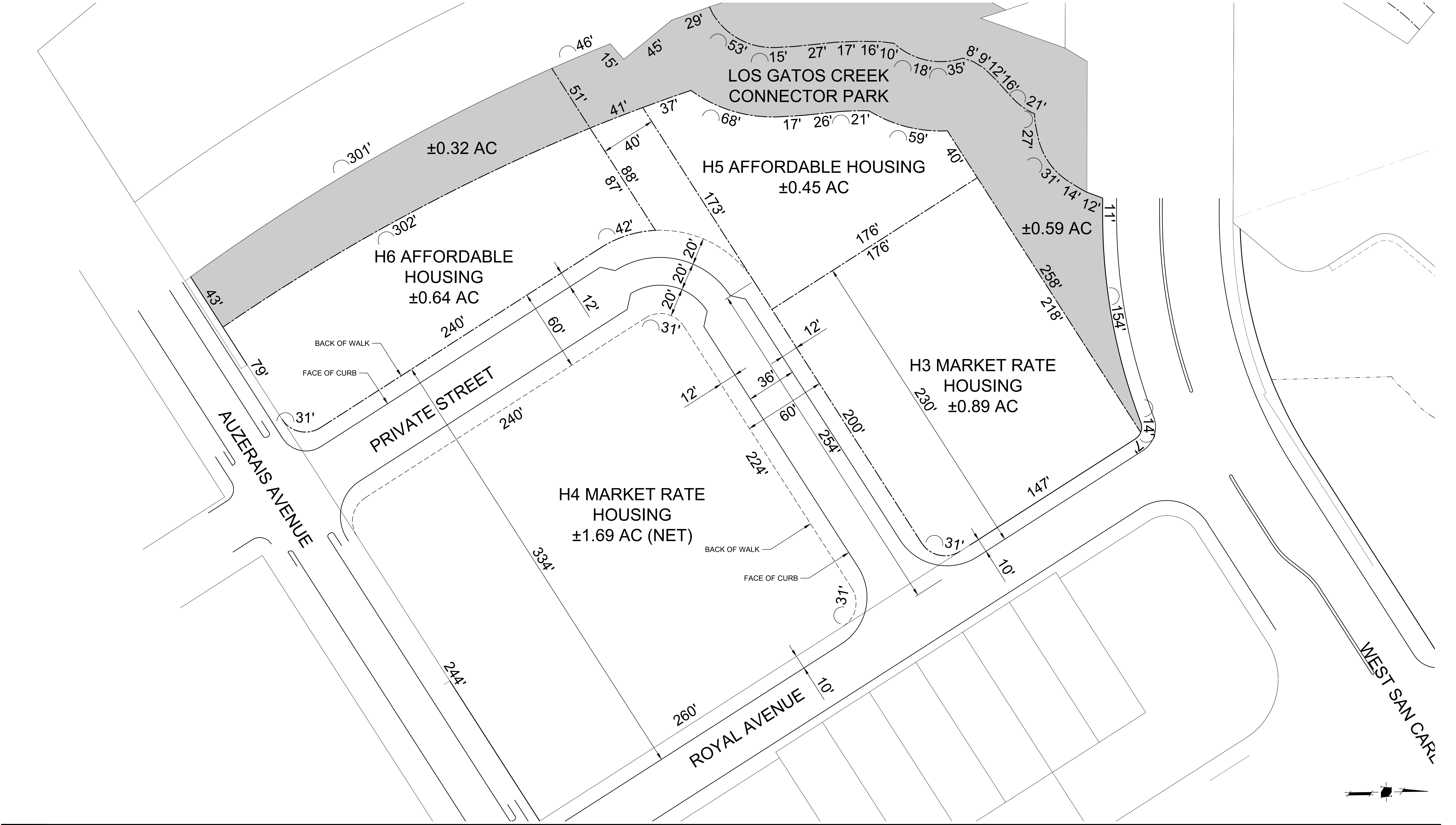
(408) 487-2200
HMHca.com

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DRAFT — Subject to City Manager and City Council Review and Approval







Schedule D2

Schedule D3

Schedule D4

Schedule D4 to Affordable Housing Program

Terms for Transfer of Parcels H1, H5 and H6 Pursuant to Transfer Agreements between Developer and City or City's Designated Affordable Housing Developer

Land Dedication – Key Terms of Transfer Agreements for Parcels H1, H5 and H6

A. **Land Dedication.**

Developer shall dedicate the H1, H5 and H6 Properties, consisting of a total of approximately 2.15 acres of real property, to the City or the City's designated affordable housing developer ("Designee") pursuant to separate Transfer Agreements between Developer and the City. Below are the key terms to be included in the respective Transfer Agreements.

B. **H1 Property.**

1. **Transfer Agreement:** Concurrently with entering into the Development Agreement, Developer and City shall enter into a separate Transfer Agreement for the transfer of the H1 Property to City in accordance with the terms and conditions set forth below and the terms and conditions of **Attachment A** attached hereto and incorporated herein (the "**H1 Transfer Agreement**"). The H1 Transfer Agreement will not be attached to the Development Agreement as an Exhibit. Any initially capitalized term used but not defined herein shall have the meaning given it in **Attachment A**.

2. **Legal Description of H1:** The indicative site plan of the property to be transferred shall be set forth in the H1 Transfer Agreement, and legal description to be provided prior to the Closing Date (as defined below) in accordance with Developer's Final Map or after the Closing Date, if mutually agreed upon with the City.

3. **Leases:** It shall be a condition to the closing under the H1 Transfer Agreement, for City's benefit, that Developer shall transfer the H1 Property unencumbered by and free of any leases, unless City otherwise waives such condition in writing.

a. **Ongoing Property Condition:** During the escrow period, Developer may record documents in connection with the Approvals. Following the closing, City or its Designee shall be responsible to keep the H1 Property in good, clean and safe condition. In connection therewith, City or Designees, as applicable, shall be responsible to maintain attractive fencing, and to provide for adequate lighting and security prior to and during development and construction of the H1 Property. This requirement shall also be set forth as a restriction in the Grant Deed for the H1 Property, which deed restriction shall run with the land of the H1 Property.

b. **Construction Right of Entry:** Effective as of the closing, City shall grant Developer such construction right of entry as may be reasonably necessary for the construction of Developer's overall project, provided that such rights of entry do not materially interfere with City's development and use of the H1 Property.

c. Remediation Easement: Effective as of the closing, City shall grant Developer such remediation easements, licenses or access agreements as are necessary for Developer to implement any Groundwater Work as provided in **Attachment A**, subject to the terms and limitations set forth in **Attachment A** provided the work does not prevent the City from building a building from property line to property line and that the access does not interfere with the VIMS system.

4. Closing Date: The closing under the H1 Transfer Agreement shall occur on a date selected by Developer on at least sixty (60) days' prior written notice to City ("**Closing Date**"). Subject to satisfaction of the closing conditions, the H1 Closing Date is anticipated to occur after the H5 Property and the H6 Property have been transferred to the City and on or before issuance of a Temporary Certificate of Occupancy for the seventh Developer-constructed market rate residential building (subject to City-caused delays or if City has requested to defer the closing as more specifically set forth in Section B.6.a below) after all existing IHO Fee Credits have been exhausted.

5. Due Diligence:

a. Access: City shall be entitled to the right of access to the H1 Property to conduct its due diligence on the terms and conditions set forth in the H1 Transfer Agreement. City shall complete its due diligence within ninety (90) days after execution of the Transfer Agreement ("**Diligence Period**"). Subject to the terms and conditions of the H1 Transfer Agreement (including but not limited to Developer's approval rights and coordination with Developer's contractors, as set forth therein), such due diligence shall include site inspections only, given Developer's obligations as set forth in **Attachment A**.

b. Title: City shall review and approve title to the Property during the Diligence Period. Developer shall provide City with a then current title report for the H1 Property on or before execution of the Transfer Agreement.

6. Conditions to Closing:

a. City Conditions: In addition to the closing conditions specifically set forth in Sections B.3 above and **Attachment A**, the following shall be conditions to the closing under the H1 Transfer Agreement, for City's benefit: (i) the title company shall have committed to issue to City a title insurance policy subject only to the permitted exceptions (to be more particularly defined in the H1 Transfer Agreement but which shall include any exceptions recorded in connection with obtaining the Approvals or required in order to satisfy the Approvals, as well as any exceptions recorded in connection with the development pursuant to the Approvals consistent with the Approvals); and (ii) Developer shall not be in default under the H1 Transfer Agreement beyond any applicable notice and cure period.

The City's ability to secure funds or other commitments to enable the construction of affordable housing on the H1 Property shall not be a condition to closing; provided, however, that the City shall have the right to extend ("**Extension**") the Closing Date two (2) times for periods of one hundred eighty (180) days each (each, an "**Extension Period**", the first such extension of the Closing Date being the "**Extended Closing Date**" and the second such extension

of the Closing being the "**Outside H1 Closing Date**") if the City has not identified the Designee by the scheduled Closing Date or Extended Closing Date, as applicable, by providing Developer with written notice of the exercise of the extension together with a status report of City's efforts to identify the Designee together with documentation evidencing City's Good Faith Efforts to identify and select the Designee. If the City has identified the Designee by the Extended Closing Date, or has extended closing a second time, then by the Outside H1 Closing Date, the Grant Deed shall identify the Designee as the transferee/grantee of the H1 Property. If City has not identified and selected the Designee by the Extended Closing Date or Outside H1 Closing Date, as applicable, then there will be no further extensions of the closing and City shall take title to the H1 Property in City's name or be in default of the H1 Transfer Agreement. In addition, if, as set forth in the H1 Transfer Agreement, City elects to defer the transfer of title of H1 Property to City (or its Designee) to the Extended Closing Period or Outside H1 Closing Date, as applicable, then the City shall reimburse Developer for property taxes payable with respect to such Property during the deferral period and Developer's costs to light, fence, insure, and maintain the property in a clean and safe manner during the deferral period within thirty (30) days after receipt of Developer's request. IHO Fee Credits are earned at time of closing, or, if the City exercises its option(s) described in this section to extend the Closing Date, then such credits shall be earned on the date on which the closing would have occurred but for the City exercise of its Extension right(s). Developer shall provide the City with reasonable documentation of such taxes and costs.

b. Developer Conditions: In addition to the closing conditions specifically set forth in **Attachment A**, the following shall be conditions to the closing under the H1 Transfer Agreement, for Developer's benefit: (i) the City shall not be in default under the H1 Transfer Agreement beyond any applicable notice and cure period, and (ii) Developer is obligated to transfer the H1 Property in order to satisfy its affordable housing requirements equal to the value of the IHO Fee Credit (as defined below) for the H1 Property (i.e., see Section B.8) as a result of the amount of market rate units being developed.

c. Pad-Ready Condition. Provided that the conditions set forth in **Attachment A** are satisfied, Developer shall cause the H1 Property to be delivered at closing in rough-graded, pad-ready condition for City's affordable housing development, based on the scope included as an exhibit to the H1 Transfer Agreement.

d. Assignment: Following the closing, City may assign its rights and obligations under **Attachment A** that expressly survive the closing to a developer of affordable housing.

8. IHO Fee Credits: As of the Effective Date, the amount of the IHO Fee Credit for the H1 Property shall be \$22,034,898 (the "**H1 Transfer IHO Fee Credits**"). \$22,034,898 IHO Fee Credit at \$18.70/rsf equals 1,178,337 sf of credit for market rate rentable sf (including 100% AMI units). IHO Fee Credits are earned at time of closing or, if the City exercises its option(s) described in Section 6(a) above to extend the Closing Date, then such credits shall be earned on the date on which the closing would have occurred but for the City's exercise of its Extension right(s).

9. **No Assignment:** Except as set forth in Section B.7(d) above, City may not assign its rights or obligations under the H1 Transfer Agreement. As more specifically set forth in Section 6(a), above, the City may identify a Designee to take title to the H1 Property at closing and in such event, Developer shall provide for the H1 Property to be deeded to the Designee at closing.

10. **Purchase Price:** The purchase price for the H1 Property shall be \$1.00. Closing costs shall be split per local custom. If there are any closing costs charged as a result of the H1 Property being transferred directly to the Designee (e.g., documentary transfer tax or recording fees, where there would otherwise be none if the H1 Property was deeded directly to City), then City or the Designee shall be responsible for such closing costs. Additionally, in such event, such closing costs shall be determined based on the market rate for the H1 Property (to be mutually agreed upon in the H1 Transfer Agreement), notwithstanding that the purchase price for the H1 Property is \$1.00.

11. **AS IS Sale:** Except for the environmental obligations as set forth in **Attachment A** that expressly survive the closing, at the closing, Developer shall transfer the H1 Property to City or Designee, as applicable, in its AS IS, WHERE IS condition and City and Designee shall waive and release all claims against Developer related to the physical and environmental condition of the H1 Property. City shall bear all construction costs related to the affordable housing project on the H1 Property.

12. **Default:**

a. **Default by City:** If City defaults under the H1 Transfer Agreement and fails to close, Developer shall have the right to terminate the H1 Transfer Agreement, and in such event, City shall continue to recognize the H1 Transfer IHO Fee Credits that Developer would have received if the H1 Agreement not been terminated due to City's default.

b. **Default by Developer:** If Developer defaults under the H1 Transfer Agreement and fails to perform the obligations thereunder, City's sole and exclusive remedy shall be to terminate the H1 Transfer Agreement, and Developer shall reimburse City for City's reasonable out-of-pocket costs and expenses in connection with its due diligence in which case Developer would not receive any H1 Transfer IHO Fee Credits and Developer shall satisfy its IHO obligations by identifying a site or sites in the DSAP which can accommodate at least 300 affordable units as anticipated on the H1 Property, or Developer pays 150% of the IHO Fees due or at mutual agreement of the Developer and City, Developer works with the City to maintain yield by condominium-izing a portion of a high rise residential project for affordable housing.

C. **H5 and H6 Properties.** The H5 and H6 Properties will be transferred separately to the City. Developer anticipates that it will transfer the H6 Property first. Prior to such transfers, Developer will perform the Early H5 and H6 Work, as more specifically described in Section III.A of Exhibit D to the Development Agreement (the “**Early H5 and H6 Work**”), in order to help accelerate the development of affordable housing on the H5 and H6 Properties. Developer will retain ownership of the mid-block crossing between the H5 and H6 Properties and shall provide to City a construction easement over the mid-block crossing for the time period covering construction on the H5 Property, H6 Property, or combination thereof, plus an additional six (6) months after

the issuance of the last Temporary Certificate of Occupancy for a building on the H5 and H6 Properties.

1. Transfer Agreement: Concurrently with entering into the Development Agreement, Developer and City shall enter into separate Transfer Agreements for the transfer of the H5 Property and the H6 Property, respectively, to City in accordance with the terms and conditions set forth below and the terms and conditions of the Early H5 and H6 Work (individually the "**H5 Transfer Agreement**" and the "**H6 Transfer Agreement**" and sometimes collectively the "**H5 and H6 Transfer Agreements**"). The H5 Transfer Agreement and the H6 Transfer Agreement will not be attached to the Development Agreement as Exhibit(s).

2. Legal Description of H5 and H6: An indicative site plan of the H5 Property and the H6 Property (collectively, the "**H5 and H6 Properties**") will be attached to the H5 and H6 Transfer Agreements, with legal descriptions to be provided prior to the Closing Date. As set forth in Section C.2.a below, the legal descriptions may be modified prior to the Closing Date for each property in accordance with Developer's Final Map or after the Closing Date, if mutually agreed upon with the City.

a. Parcelization Condition: City acknowledges that the H5 and H6 Properties are not legal parcels as of the Effective Date. It shall be an unwaivable condition to the closing, for Developer's and City's benefit, that the H5 and H6 Properties shall be legal parcels for conveyance prior to the closing which legal separation shall be accomplished at Developer's cost.

b. Early H5 and H6 Work: Developer shall perform the Early H5 and H6 Work using the Early Work CLF Amount (as such term is defined in Section III.A. of Exhibit D to the Development Agreement) prior to the respective closings of the transfers of the H6 Property and the H5 Property. The description of the Early H5 and H6 Work, will be included as an exhibit to the H5 and H6 Transfer Agreements, respectively.

c. Construction of Private Street. Developer shall construct a private street serving the H block parcels, including the H5 and H6 Properties as part of the Early H5 Work. The City shall give notice to the Developer not later than twelve (12) months prior to the City's anticipated date of receiving a temporary certificate of occupancy ("**TCO**") for the H6 Property (the "**TCO Notice**"). City or its Designee will coordinate in a timely manner with Developer for noticing, access and other construction coordination necessary for Developer to construct and complete the private road. Details on this work will be included as an exhibit to each of the H5 and H6 Transfer Agreements.

3. Leases: It shall be a condition to the closing under each of the H5 and H6 Transfer Agreements, for City's benefit, that Developer shall transfer the H5 and H6 Properties unencumbered by and free of any leases, unless City otherwise waives such condition in writing.

4. Closing Date: The closing under the H6 Transfer Agreement shall occur following Completion of the Early H6 Work, on a date selected by Developer on at least sixty (60) days' prior written notice to City but in no event will the Closing Date for the transfer of the H6 Property be later than the date on which the Temporary Certificate of Occupancy is issued for the first

Developer-constructed market rate residential building (subject to City-caused delays or if City has requested to defer the closing as more specifically set forth in Section C.6.a below)(“**H6 Closing Date**”). The closing under the H5 Transfer Agreement shall occur following Completion of the Early H5 Work, on a date selected by Developer on at least sixty (60) days' prior written notice to City but in no event will the Closing Date for the transfer of the H5 Property be later than the date on which the Temporary Certificate of Occupancy is issued for the fourth Developer-constructed market rate residential building (subject to City-caused delays or if City has requested to defer the closing as more specifically set forth in Section C.6.a below) (“**H5 Closing Date**”). As used in this Section 4, “**Completion**” shall mean that the H5 or H6 Early Work, as applicable, has been completed in accordance with the building permit(s) issued with respect to such work and the City Building Division has completed its final inspection of the work.

a. Ongoing Property Condition: During the escrow period, Developer may record documents in connection with the Approvals. Following each closing, City or its Designee shall be responsible to keep the H5 and H6 Properties in good, clean and safe condition. In connection therewith, City or Designee shall be responsible to maintain attractive fencing and to provide for adequate lighting and security prior to and during development and construction of the H5 and H6 Properties. This requirement shall also be set forth as a restriction in the Grant Deed(s) for the H5 and H6 Properties, which deed restriction shall run with the land of each of the H5 and H6 Properties.

b. Construction Right of Entry: Effective as of the closing, City shall grant Developer such construction rights of entry as may be reasonably necessary for the construction of Developer's overall project, provided that such rights of entry do not materially interfere with City's development and use of the H5 and H6 Properties. In addition, the H5 and H6 Transfer Agreements shall contain provisions whereby the City (or its Designee) and the Developer agree to coordinate construction activities and schedules to ensure timely construction of the private road, as more specifically described in Section C.2(c) above required for mutual benefit of the H5 Property, the H6 Property and the other H block market rate residential parcels, and such provisions shall survive the closing or may be in form of an easement or other agreement.

5. Due Diligence:

a. Access: City shall be entitled to the right of access to the H5 and H6 Properties to conduct its due diligence on the terms and conditions set forth in the Access Agreements. City shall complete its due diligence within ninety (90) days after execution of the applicable Transfer Agreement (“**Diligence Period**”). Subject to the terms and conditions of the Transfer Agreements (including but not limited to Developer's approval rights and coordination with Developer's contractors, as set forth therein), such due diligence may include site testing, including but not limited to testing related to environmental conditions and mitigation or remediation requirements for use of the property for residential purposes.

b. Title: City shall review and approve title to the Property during the Diligence Period. Developer shall provide City with a then current title report for the H5 and H6 Properties on or before execution of the Transfer Agreement for each property.

6. Conditions to Closing:

a. City Conditions: In addition to the closing conditions specifically set forth in Sections C.2(a) and C.3(a) above, the following shall be conditions to the closing under the H5 and H6 Transfer Agreements, for City's benefit: (i) the title company shall have committed to issue to City a title insurance policy subject only to the permitted exceptions (to be more particularly defined in the H5 and H6 Transfer Agreements but which shall include any exceptions recorded in connection with obtaining the Approvals or required in order to satisfy the Approvals, as well as any exceptions recorded in connection with the development pursuant to the Approvals and consistent with the Approvals); (ii) Developer shall not be in default under the respective H5 and H6 Transfer Agreements beyond any applicable notice and cure period; (iii) there shall have been no material adverse change in the environmental condition of the H5 Property or the H6 Property since the date of the H5 Transfer Agreement and the H6 Transfer Agreement, respectively; and (iv) all historical restrictions related to the existing building(s) located on the larger parcel of which the H5 Property and H6 Property are currently a part shall be terminated with respect to the H5 Property and the H6 Property.

City shall have no right to terminate the H5 Transfer Agreement or the H6 Transfer Agreement if City is unable to secure funds or other commitments to enable the construction of affordable housing on either or both of the H5 Property or the H6 Property; provided, however, that City shall have the right to extend ("**Extension**") the closing under each of the H5 Transfer Agreement and the H6 Transfer Agreement, respectively, two (2) times for periods of one hundred eighty (180) days each (each, an "**Extension Period**", the first such extension of the Closing Date being the "**Extended Closing Date**" and the second such extension of the Closing Date being the "**Outside H5/H6 Closing Date**") if the City has not identified the City's Designee by the scheduled Closing Date or Extended Closing Date, as applicable, for that property by providing Developer with written notice of the exercise of the extension with the status of City's efforts to identify the Designee together with documentation evidencing City's Good Faith Efforts to identify and select the Designee. If the City has identified the Designee by the Extended Closing Date (or has extended a second time, then by the Outside H5/H6 Closing Date, as applicable) the Grant Deed shall identify the Designee as the transferee/grantee of the H5 Property or H6 Property, as applicable. If City has not identified and selected the Designee by the Extended Closing Date or Outside H5/H6 Closing Date, as applicable, then there will be no further extensions of the closing and City shall take title the H5 Property or the H6 Property, as applicable, in City's name or be in default of the H5 Transfer Agreement or the H6 Transfer Agreement, as applicable. In addition, if, as set forth in the H5 Transfer Agreement or the H6 Transfer Agreement, City elects to defer the transfer of title of the H5 Property or the H6 Property from Developer to City (or its Designee), then the City shall reimburse Developer for property taxes payable with respect to such Property(ies) during the deferral period and Developer's costs to light, fence, insure, and maintain the subject property in a clean and safe manner during the deferral period within thirty (30) days after receipt of Developer's request. Developer shall provide the City with reasonable documentation of such taxes and costs. IHO Fee Credits are earned at time of closing, or, if the City exercises its option(s) in this section to extend the Closing Date, then such credits shall be earned on the date on which the closing would have occurred but for the City exercise of its Extension right(s).

b. Developer Conditions: In addition to the closing condition specifically set forth in Section C.2(a) above, the following shall be a condition to the closing under the H5 and H6 Transfer Agreements, for Developer's benefit: City shall not be in default under the H5 and H6 Transfer Agreements beyond any applicable notice and cure period.

7. Environmental:

a. Environmental Indemnity: If the H5 Property and/or the H6 Property is transferred to the City or Designee, as applicable, Developer shall indemnify, defend, and hold harmless City and City Indemnitees against any and all third party actions or claims for death or personal injury to the extent such actions or claims are caused by exposure to environmental contamination existing at the H5 Property under the H5 Transfer Agreement and the H6 Property under the H6 Transfer Agreement which exposure occurred prior to the closing date of that property and such actions or claims first accrued prior to the Closing Date for that property, which indemnity and defense obligation of Developer shall survive the transfer of the H5 Property or H6 Property to City, as applicable. Notwithstanding the foregoing, in no event shall such indemnity and defense obligation of Developer apply to any actions or claims that arise from the negligence or willful misconduct of City or Designee.

b. Assignment: Following the closing of the H5 Property and/or H6 Property, as applicable, City may assign its rights and obligations under this Section C.7 that expressly survive the closing to a developer of affordable housing.

8. IHO Fee Credits: As of the Effective Date, the amount of the IHO Fee credit for the H5 Property shall be \$9,226,561 (the "**H5 Transfer IHO Fee Credits**"). \$9,226,561 IHO Fee Credit at \$18.70/rsf equals 493,399 sf of credit for market rate rentable sf (if the required 100% AMI units are constructed). As of the Effective Date, the amount of the IHO Fee credit for the H6 Property shall be \$10,079,062 (the "**H6 Transfer IHO Fee Credits**"). \$10,079,062. IHO Fee Credit at \$18.70/rsf equals 538,987 sf of credit for market rate rentable sf (if the required 100% AMI units are constructed). IHO Fee Credits are earned at time of closing, or, if the City exercises its option(s) described in Section C.6.a above to extend the Closing Date, then such credits shall be earned on the date on which the closing would have occurred but for the City exercise of its Extension right(s).

9. No Assignment: Except as set forth in Section C.7(b) above, City may not assign its rights or obligations under the H5 and H6 Transfer Agreements. As more specifically set forth in Section C.6(a), above, the City may identify a Designee to take title to the H5 or H6 Property at closing and in such event, Developer shall provide for the H5 Property or H6 Property, as applicable, to be deeded to the Designee at closing.

10. Purchase Price: The purchase price for the H5 Property and for the H6 Property shall be \$1.00 per property. Closing costs shall be split per local custom. If there are any closing costs charged as a result of the H5 Property and/or H6 Property being transferred directly to the applicable Designee (e.g., documentary transfer tax or recording fees, where there would otherwise

be none if the subject property was deeded directly to City), then City or the applicable Designee shall be responsible for such closing costs. Additionally, in such event, such closing costs shall be determined based on the market rate for the H5 Property or H6 Property, as applicable (to be mutually agreed upon in the H5 Transfer Agreement or the H6 Transfer Agreement, as applicable), notwithstanding that the purchase price for the H5 Property and H6 Property is \$1.00.

11. AS IS Sale: Except for the Developer's obligations as set forth in Section C.2(b) above and C.7(a) above, at the closing of each of the H5 Property and the H6 Property, Developer shall transfer the H5 Property and the H6 Property to City each in its AS IS WHERE IS condition and City shall waive and release all claims against Developer related to the physical and environmental condition of the property so conveyed. City shall bear all construction costs related to the affordable housing project on the H5 Property and the H6 Property.

12. Default:

a. Default by City: If City defaults under either the H5 Transfer Agreement or the H6 Transfer Agreement and fails to close, Developer shall have the right to terminate the H5 Transfer Agreement and/or H6 Transfer Agreement, as applicable, and in such event, City shall continue to recognize the affordable housing credits Developer would have received as a result of the transfer of the H5 Property, the H6 Property or both (as applicable) to City but for the termination of the respective H5 Transfer Agreement, H6 Agreement or both due to City's default.

b. Default by Developer: If Developer defaults under either the H5 Transfer Agreement, the H6 Transfer Agreement or both, as applicable and the transfers to the City of such properties fails to close accordingly, City's sole and exclusive remedy shall be to terminate the respective H5 Transfer Agreement and or H6 Transfer Agreement, as applicable, and Developer shall reimburse City for City's reasonable out-of-pocket costs and expenses in connection with its due diligence, in which case Developer would not receive any IHO Fee Credits with respect to the H5 Property or H6 Property, as applicable, and would therefore satisfy its IHO obligations by identifying a site or sites in the DSAP which can accommodate at least (a) 120 affordable units in the case of H5 Property, and (b) 180 affordable units in the case of the H6 Property, or Developer pays 150% of the IHO Fees due for applicable property, or at mutual agreement of the Developer and City, Developer works with the City to maintain yield by condominium-izing a portion of a high rise residential project for affordable housing.

ATTACHMENT A TO H1 TRANSFER PROVISIONS

The following sets forth the terms regarding the City's acceptance of the H-1 Property:

1. Developer will retain an outside environmental consultant ("**Developer's Environmental Consultant**") with suitable experience in reviewing and overseeing the remediation work to be undertaken on the H1 Property. Developer will contract with this consultant and be solely responsible for the work of this consultant.
2. Developer will seek approval of a new Remedial Action Plan ("**RAP**") from the Department of Environmental Health or other environmental regulatory agency(ies) with jurisdiction that Developer may be referred to by the Department of Environmental Health ("**DEH**") to address the volatile organic compounds ("**VOCs**") and any other contaminants of concern to the DEH ("**COCs**") currently present in soil, soil vapor and groundwater at the H1 Property ("**Environmental Conditions**"), including, but not limited to, those which are the subject of open Geotracker case FORMER TRUE DRIVE-IN CLEANERS (T10000011874).
3. The RAP will be designed to address the Environmental Conditions to allow construction of a concrete foundation structure without an occupiable basement on the entirety of the H1 Property, with a passive vapor intrusion mitigation system integrated into the foundation system which has the capability of being activated, if needed ("**VIMS**") (collectively, the "**Intended Design**") with the ground floor limited to parking and/or commercial uses and/or resident support/offices/community space only and with residential uses allowed only on the second floor and above (the "**Intended Use**"). The H1 Property will be restricted to the Intended Design and Intended Use in the Land Use Covenant and/or Grant Deed to the H1 Property.
4. The RAP will provide that Developer will excavate and dispose of VOCs and COCs impacted soil, to the extent required by DEH for the Intended Design and the Intended Use, at an appropriate disposal facility ("**Soil Removal Work**"). The RAP will also include remedial actions to be implemented by Developer to address DEH requirements for the groundwater ("**Groundwater Work**"). The RAP will be designed to meet all applicable environmental regulatory requirements to allow for the Intended Use in combination with the Intended Design. Any ongoing work of Developer (after the site is transferred to the City) shall not interfere with the City's planned building and shall be accessed from outside the property line and not disturb the vapor barrier or the other elements of the VIMS. The RAP will also provide that the City or its Designee that builds the building on the H1 Property will install, maintain and monitor the passive VIMS (with the ability to convert to an active VIMS through the addition of a fan or motor and shall activate it if and when required by DEH)(collectively, "**VIMS OMM**").

5. Developer will be responsible for implementing at its cost the Soil Removal Work in a commercially reasonable manner and timeframe, subject to the Catastrophic Cost Increase provisions below. If the costs of implementing the Soil Removal Work are equal to or greater than Six Million One Hundred Twenty-Nine Thousand Three Hundred Sixty-Three Dollars (\$6,130,000) (such amount being a “**Catastrophic Cap**” and such event being a “**Catastrophic Cost Increase**”), then, Developer may decide not to transfer the H1 Property to City. If a Catastrophic Cost Increase occurs, then Developer shall not be in default and Developer shall satisfy its IHO obligations by identifying a site or sites in the DSAP which can accommodate at least 300 affordable units as anticipated on the H1 Property, or Developer pays 150% of the IHO Fees due or at mutual agreement of the Developer and City, Developer works with the City to maintain yield by condominium-izing a portion of a high rise residential project for affordable housing. Developer shall be solely responsible for completing the Groundwater Work after transfer of the H1 Property to the City, at Developer’s sole cost and expense, and for obtaining a no further action letter (“**NFA**”) from the DEH, except as to the responsibility of the City or its Designee for the VIMS and the VIMS OMM as set forth herein.
6. As a condition to the City’s acceptance of the H1 Property, Developer’s Environmental Consultant shall have issued a report, which may be relied upon by both Developer and the City, confirming that the Soil Removal Work has been completed as required by the RAP for the Intended Design and Intended Use.
7. Developer shall provide the NFA to the City (or then owner of the building) after receipt, which will occur after the Groundwater Work is complete.
8. The City will pay a maximum of Five Hundred Thousand Dollars (\$500,000) for the VIMS and VIMS OMM (“**Baseline Costs**”). If the costs of the VIMS and VIMS OMM for the Intended Design and Intended Use, any ongoing monitoring, as well as without limitation, DEH oversight and permitting costs, in the approved final RAP (or associated documents) are in excess of Baseline Costs (“**Excess Costs**”), as determined immediately prior to the scheduled H1 Property Closing Date by an independent consultant retained by the Developer and acceptable to the City (“**RAP Consultant**”) then the following provisions shall apply. The RAP Consultant will estimate costs (both operational and installation hard costs) based on unescalated dollars.
 1. If the Excess Costs, plus the costs of (A) the Soil Removal Work costs and (B) the other anticipated Developer clean-up costs ((A) and (B) collectively, “**Developer Remediation Costs**”), are equal to or more than the Catastrophic Cap, then Developer may elect to follow the procedures provided in subsection (e) above for Catastrophic Cost Increases.
 2. If the Excess Costs, plus the Developer Remediation Costs, are less than the Catastrophic Cap, Developer shall fund the Excess Costs to City at the H1 Property Closing and the City shall hold and invest the Excess Costs in trust to pay the Excess Costs as they accrue over time.

9. Developer will keep the City informed of the timing and status throughout the RAP approval process, including providing the City with the draft and final RAP.
10. Following the transfer of the H1 Property to City (or its Designee), Developer will respond at its sole cost and expense to any inquiries, orders or actions from any regulatory agency with respect to the Groundwater Work or the Environmental Conditions other than the "Building Conditions". The term "**Building Conditions**" shall mean the conditions inside of the future building and/or parking area in the building, including, without limitation, indoor air conditions.
11. Developer will pay all agency oversight and permitting costs associated with the RAP and obtaining the NFA.
12. To the fullest extent permitted by law, Developer shall indemnify, defend and hold harmless the City for any and all claims for response costs or response actions or any third party claims associated with the Groundwater Work or the Environmental Conditions but excluding the Building Conditions. Additionally, if the H1 Property is transferred to the City or Designee, Developer shall indemnify, defend, and hold harmless City and City Indemnitees or Designee against any and all third party actions or claims for death or personal injury to the extent such actions or claims are caused by alleged exposure to environmental contamination existing at the H1 Property which exposure occurred prior to the H1 Property Closing Date and such actions or claims first accrued prior to the H1 Property Closing Date. The indemnity and defense obligations of Developer shall survive the transfer of the H1 Property to City or Designee. Notwithstanding the foregoing, in no event shall such indemnity and defense obligation of Developer apply to the extent that any actions or claims arise from the negligence or willful misconduct of City or the Designee.
13. Developer shall have no responsibility or liability for the Building Conditions, VIMS or the VIMS OMM, including, without limitation, its installation, its failure, its maintenance, repair, operation or monitoring and no responsibility for any claims arising out of the Building Conditions, VIMS, the VIMS OMM, soil vapor, indoor air and/or any claims arising from failure of these systems.
14. The City and Developer agree that all cost amounts set forth herein or determined hereafter pursuant to its terms are the cost as of the Effective Date of the Development Agreement and shall be subject to Annual Increases.

Schedule D5



City Clerk

CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
200 East Santa Clara Street
San José, California 95113
Telephone (408) 535-1260
FAX (408) 292-6207

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 30538**", the original copy of which is attached hereto, was passed for publication of title on the **23rd day of February, 2021**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **9th day of March, 2021**, by the following vote:

AYES: ARENAS, CARRASCO, COHEN, DAVIS, ESPARZA, FOLEY, JONES,
JIMENEZ, MAHAN, PERALEZ, LICCARDO.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

VACANT: NONE.

Said Ordinance is effective as of the **9th day of April, 2021**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **10th Day of March, 2021**.

(SEAL)

TONI J. TABER, CMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

ORDINANCE NO. 30538

**AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING CHAPTER 5.08 OF TITLE 5 OF THE SAN
JOSE MUNICIPAL CODE TO UPDATE AND ADD
DEFINITIONS, COMPLIANCE OPTIONS, AND
AFFORDABLE HOUSING REQUIREMENTS FOR THE
CITYWIDE INCLUSIONARY HOUSING PROGRAM**

WHEREAS, on January 12, 2010, the San José City Council adopted a Citywide inclusionary housing program to enhance the public welfare by establishing policies which require the development of housing affordable to households of very low, lower, and moderate incomes, meet the City's regional share of housing needs, and implement the City housing element's goals and objectives; and

WHEREAS, the Citywide inclusionary housing program assists in alleviating the use of available residential land solely for the benefit of households that are able to afford market rate housing because such market-rate development will be required to contribute to the provision of affordable housing for the entire San José community; and

WHEREAS, the Citywide inclusionary housing program also assists in alleviating the demand for housing affordable to extremely low, very low, lower, and moderate income households caused by the service demands of new residents in market-rate residential units; and

WHEREAS, the significant deficits in affordable housing in the City of San José that prompted the original adoption of Citywide inclusionary housing program are still in existence; and

WHEREAS, according to the 2015-2023 regional housing needs allocation ("RHNA") determined by the Association of Bay Area Governments ("ABAG"), the City of San José has a total housing need of 35,080 units through the year 2023, out of which nearly sixty percent (60%) is for housing affordable to Lower- and Moderate-Income

Households (20,849 units). Of those affordable units, 9,233 units are for Very Low Income Households; 5,428 units are for Lower Income Households; and 6,188 units are for Moderate Income Households; and

WHEREAS, according to the Joint Center for Housing Studies of Harvard University publication, America's Rental Housing 2020, San José is the nation's least affordable housing market, requiring an income of \$347,000 to meet the monthly costs of a typical home; and

WHEREAS, the City's current General Plan, Envision 2040 continues to support the provision of housing throughout the City to address the needs of an economically, demographically and culturally diverse population; and

WHEREAS, the City's current General Plan seeks to facilitate the provision of housing sites and structures across location, type, price and status as rental or ownership that respond to the needs of all economic and demographic segments of the community including seniors, families, the homeless and individuals with special needs; and

WHEREAS, the City's current General Plan seeks to facilitate the production of extremely low-, very low-, low-, and moderate-income housing by maximizing use of appropriate policies and financial resources at the federal, state, and local levels; and various other programs; and

WHEREAS, the City's current General Plan seeks to integrate affordable housing in identified growth locations and where other housing opportunities may exist, consistent with the Envision General Plan; and

WHEREAS, the City's current General Plan seeks to facilitate the development of housing to meet San José's fair share of the County's and region's housing needs; and

WHEREAS, the City's current General Plan also states that the City can achieve its goals of providing more affordable housing and achieving an economically balanced community only if part of the new housing built in the City is affordable to households with limited incomes and includes a goal to increase its supply such that 15% or more of the new housing stock developed is affordable; and

WHEREAS, on June 28, 2011, the Governor signed into law Assembly Bill X1 26, as subsequently amended by AB 1484, which provided for the dissolution and winding down of redevelopment agencies throughout the State of California ("Dissolution Legislation"). On January 24, 2012, pursuant to the Dissolution Legislation, the City of San José elected to be the Successor Agency ("Successor Agency") to the Redevelopment Agency of the City of San Jose ("Agency") to administer the dissolution and winding down of the Agency. On February 1, 2012, the Agency was dissolved and, upon dissolution, all assets, properties and contracts of the Agency were transferred, by operation of law, to the Successor Agency pursuant to the terms of the Dissolution Legislation; and

WHEREAS, upon dissolution of the Agency, the City elected to retain the housing assets and affordable housing functions of the Agency. The City now administers the affordable housing functions of the Agency as the housing successor subject to the provisions of the California Redevelopment Law ("CRL") which relate to affordable housing; and

WHEREAS, on October 13, 2013, the Governor signed into law Senate Bill 341 which amends provisions of the CRL relating to certain functions to be performed by housing successors; and

WHEREAS, California Government Code Section 65850 was amended, effective January 1, 2018 to make a change in state law superseding the limitations discussed in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2nd Dist. 2009) 175 Cal.App.4th 1396 and confirming that the legislative body of any county or city may

adopt ordinances to require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code; and

WHEREAS, these amendments are intended to update the Ordinance consistent with the General Plan and the previously adopted purposes and goals as well as to add new provisions to encourage the development of Inclusionary Units in the areas that market rate housing is being developed throughout the City, and to that end, to provide more options for developers of market rate housing to provide Inclusionary Units within and adjacent to market rate developments; and

WHEREAS, the provisions of this Ordinance do not constitute a project, under File No. PP17-008, (General Procedure & Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

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

Chapter 5.08 of Title 5 of the San José Municipal Code is hereby amended to read as follows:

CHAPTER 5.08 INCLUSIONARY HOUSING

Part 1 Purpose and Findings

5.08.010 Findings and Declarations

The City Council finds and declares as follows:

- A. Rental and owner-occupied housing in San José has become steadily more expensive. Although San José has historically provided much of the housing affordable to Santa Clara County's workforce, in recent years housing costs have escalated sharply, increasing faster than incomes for many groups in the community. As a result, there is a severe shortage of adequate, affordable housing for Extremely Low, Very Low, Lower, and Moderate Income Households, as evidenced by the following:
1. The 2000-2007 Regional Housing Needs Plan for Santa Clara County, mandated by California Government Code section 65584 and prepared by the Association of Bay Area Governments, shows that fifty-six percent (56%) of new housing in San José should be affordable to Extremely Low, Very Low, Lower, and Moderate Income Households.
 2. According to the most recent 2007-2014 regional housing needs allocation (RHNA) determined by the Association of Bay Area Governments (ABAG), the City of San José has a total housing need of 34,721 units through the year 2014, out of which nearly sixty percent (60%) is for Lower- and Moderate-Income Households (19,271 units). Of the affordable units: 3,876 units (20%) are for Extremely Low Income Households; 3,875 units (20%) for Very Low Income Households; 5,322 units (28%) for Lower

Income Households; and 6,198 units (32%) for Moderate Income Households. These housing needs represent substantial increases from the previous RHNA. In particular, the Lower Income and Very Low Income housing need increased by forty-five percent (45%) and one hundred twenty-one percent (121%) respectively. Yet, as described below, these goals fall far short of the actual need for households in these income categories.

3. Because of the shortage of affordable housing in San José, many households overpay for their housing. The 2006 American Community Survey found that approximately forty-six percent (46%) of San José households who own their homes pay more than thirty percent (30%) of income for their mortgage, while forty-eight percent (48%) of renter households pay more than thirty percent (30%) of income for housing. These households are overpaying for their housing, according to standards of the United States Department of Housing and Urban Development. Additionally, the 2000 U.S. Census reports that, in San José, nearly 27,000 Extremely Low Income, 23,000 Very Low Income, and 20,000 Lower Income Households experienced a housing problem, which means a household is either spending more than 30% of its household income on housing costs or is living in overcrowded or substandard conditions, or both. Providing decent housing at affordable costs allows households to utilize their resources for other necessary pursuits, such as education, food, investment, and saving for retirement. Providing decent rental housing at affordable costs allows households to save money to purchase a home.

- B. As stated in the City of San José 2020 General Plan (Appendix 3), it is the City's policy to enhance the public welfare by encouraging a variety of housing prices throughout the City to give households of all income levels the opportunity to find suitable housing. It is also the City's policy to identify adequate sites for the City's

existing and projected housing needs (Appendix 3) and to encourage the geographic dispersal of affordable housing throughout the City to enhance the social and economic well-being of all residents (Appendix 3). The City can achieve its goals of providing more affordable housing and achieving an economically balanced community only if part of the new housing built in the City is affordable to households with limited incomes.

- C. In order to meet the needs of San José households, dwelling units will need to house a variety of household types, incomes, and age groups. Pursuant to the San José 2020 General Plan, new homes should be located where adequate transportation, sanitation, water, and other infrastructure is available, and within reasonable proximity of education, recreation, and other amenities.
- D. The San José 2020 General Plan also includes a policy that affordable housing be distributed throughout the City of San José, and not concentrated in any particular area or areas. To further this goal, this Chapter provides incentives for affordable housing to be constructed on the same site as the Market Rate Units in a development project.
- E. The inclusionary ordinance codified in this Chapter will substantially advance the City's legitimate interest in providing additional housing affordable to all income levels and dispersed throughout the City because Inclusionary Units required by the ordinance codified in this Chapter, including both rental and ownership units, must be affordable to either Very Low, Lower, and Moderate Income Households.
- F. The ordinance codified in this Chapter is being adopted pursuant to the City's police power authority to protect the public health, safety, and welfare. Requiring affordable units within each development is consistent with the community's housing element goals of protecting the public welfare by fostering an adequate supply of housing for persons at all economic levels and maintaining both

economic diversity and geographically dispersed affordable housing. Requiring builders of new market rate housing to provide some housing affordable to Very Low, Lower, and Moderate Income Households is also reasonably related to the impacts of their projects, because:

1. Rising land prices have been a key factor in preventing development of new affordable housing. New market-rate housing uses available land and drives up the price of remaining land. New development without affordable units reduces the amount of land development opportunities available for the construction of affordable housing.
2. New residents of market-rate housing place demands on services provided by both public and private sectors, creating a demand for new employees. Some of these public and private sector employees needed to meet the needs of the new residents earn incomes only adequate to pay for affordable housing. Because affordable housing is in short supply in the City, such employees may be forced to live in less than adequate housing within the City, pay a disproportionate share of their incomes to live in adequate housing in the City, or commute ever increasing distances to their jobs from housing located outside the City. These circumstances harm the City's ability to attain employment and housing goals articulated in the City's General Plan and place strains on the City's ability to accept and service new market-rate housing development.

5.08.020 Purpose

The purpose of this Chapter is to enhance the public welfare by establishing policies which require the development of housing affordable to households of Very Low, Lower, and Moderate Incomes, meet the City's regional share of housing needs, and implement the goals and objectives of the General Plan and Housing Element.

The adoption of a Citywide inclusionary housing program will also assist in alleviating the use of available residential land solely for the benefit of households that are able to afford market rate housing because such market-rate development will be required to contribute to the provision of affordable housing for the entire San José community, and will assist in alleviating the impacts of the service needs of households in new market-rate residential development by making additional affordable housing available.

The City Council desires to encourage the development of Inclusionary Units to be located upon the same site as market rate Residential Development to provide for integration of Very Low, Lower, and Moderate Income households with households in market rate neighborhoods and to disperse Inclusionary Units throughout the City where new residential development occurs.

The City Council also desires to provide the residential development community with alternatives to construction of the Inclusionary Units on the same site as the market rate Residential Development. Therefore, Part 5 of this Chapter, entitled Developers' Compliance Options, includes a menu of options from which a Developer may select an alternative to the construction of Inclusionary Units on the same site as the market rate Residential Development as required by Part 4 of this Chapter. Nothing in this Chapter shall deem or be used to deem the compliance options in Part 5, including but not limited to the in lieu fee authorized pursuant to Section 5.08.520, as an *ad hoc* exaction, as a mandated fee required as a condition to developing property, or as a fee subject to the analysis in *Building Industry Association of Central California v. City of Patterson* (5th Dist. 2009) 171 Cal.App.4th 886.

Part 2

Definitions

5.08.100 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter. Words and phrases not defined in this Part 2 shall be interpreted so as to give this Chapter its most reasonable application.

5.08.105 Affordable Housing Cost

“Affordable Housing Cost” means the housing cost for Dwelling Units as defined by California Health & Safety Code section 50052.5 for owner-occupied housing and the affordable rent for rental units as defined by California Health & Safety Code section 50053, as applicable, except that: (a) the affordable rent for Moderate Income Rental Inclusionary Units that are located within the Market Rate Residential Development or provided pursuant to Section 5.08.590 shall be no more than thirty percent (30%) of one hundred percent (100%) of Area Median Income; (b) the affordable rent for Moderate Income Rental Inclusionary Units that are not located upon the same site as the Market Rate Residential Development or Moderate Income Rental Inclusionary Units that are located on the same site but are geographically concentrated shall be no more than thirty percent (30%) of eighty percent (80%) of Area Median Income; and (c) that the affordable rent for Dwelling Units that do not include private cooking and/or bathroom facilities shall be ninety percent (90%) of the otherwise applicable affordable rent for studio (0-bedroom) Dwelling Units.

5.08.107 Affordable Housing Developer

“Affordable Housing Developer” shall mean an experienced developer of affordable housing developments in the City of San José meeting the criteria provided in the Inclusionary Housing guidelines.

5.08.110 Affordable Housing Development

“Affordable Housing Development” means, for a rental Residential Development, a development that has a recorded affordability restriction that: (a) has a term of at least fifty-five (55) years; (b) limits the rental of all dwelling units except the manager’s units, such that the rent of the restricted income units is in not excess of Affordable Housing Cost at thirty percent (30%) of sixty percent (60%) of the Area Median Income or as otherwise restricted at a substantially similar level as allowed under the Inclusionary Housing Guidelines; (c) restricts at least ten percent (10%) of the units to very low income households at incomes up to fifty percent (50%) of Area Median Income; and (d) is made for the benefit of and enforceable by the City, Santa Clara County or a State or Federal Agency. “Affordable Housing Development” means, for a for-sale Residential Development, a development that has a recorded affordability restriction with a term of at least forty-five (45) years that limits the sale of all dwelling units to households with an income not exceeding one hundred ten percent (110%) of the Area Median Income at a price not exceeding Affordable Housing Cost and is made for the benefit of and enforceable by the City, Santa Clara County or a State or Federal Agency.

5.08.115 Affordable Housing Siting Policy

“Affordable Housing Siting Policy” means the collective goals and policies in the General Plan housing element and other policies adopted by the City Council (as may be amended or supplemented from time to time) to encourage the siting of affordable housing throughout all areas of the City of San José in order to provide greater opportunities to lower income households, and encourage racial and economic integration. The Inclusionary Housing Guidelines will provide information on the application of the policy.

5.08.120 Affordable Housing Plan

“Affordable Housing Plan” means a plan containing all of the information specified in and submitted in conformance with Section 5.08.610 of this Chapter specifying the manner in which Inclusionary Units will be provided in conformance with this Chapter and the Inclusionary Housing Guidelines, and consistent with the San José General Plan and Title 20 of the San José Municipal Code.

5.08.125 Applicant

“Applicant” or “Developer” means a person, persons, or entity that applies for a Residential Development and also includes the owner or owners of the property if the Applicant does not own the property on which development is proposed.

5.08.130 Area Median Income

“Area Median Income” or “AMI” means the annual median income for Santa Clara County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the City of San José in the event that such median income figures are no longer published periodically in the California Code of Regulations.

5.08.135 Building Permit

The term “Building Permit” includes full structural building permits as well as partial permits such as foundation-only permits.

5.08.140 City Manager

“City Manager” means the City Manager of the City of San José or his or her designee.

5.08.145 Certificate of Occupancy

“Certificate of Occupancy” is the permit issued by the San José Building Division authorizing the initial occupancy of a residential unit, including a temporary certificate of occupancy.

5.08.150 Common Ownership or Control

“Common Ownership or Control” refers to property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent (10%) or more of the interest in the property.

5.08.155 Construction Phase

“Construction Phase” means either:

- A. The area included within one City approved tentative subdivision map for Residential Development where a single final map implements the entire approved tentative map;
- B. The area included within each separate final map for Residential Development where multiple final maps implement the entire approved tentative map; or
- C. An area designated as a Construction Phase in an approved Affordable Housing Plan.

5.08.160 Contiguous Property

“Contiguous Property” means any parcel of land that is:

- A. Touching another parcel at any point;
- B. Separated from another parcel at any point only by a public right of way, private street or way, or public or private utility, service, or access easement; or
- C. Separated from another parcel only by other real property of the Applicant which is not subject to the requirements of this Chapter at the time of the Planning Permit application by the Applicant.

5.08.165 Deemed Substantially Complete

“Deemed Substantially Complete” is a term that applies to an application for a specific land use entitlement or entitlements that is requested by the Applicant and in accordance with Title 20 (Zoning) and Title 21 (Environmental Clearance) herein, and means that such application:

- A. Accurately includes all data required on the appropriate Planning Permit checklist that is utilized upon the date of receipt of the application;
- B. Is duly executed by the Applicant or the Applicant’s authorized representative;
- C. Includes the full payment of all required fees;
- D. Includes an accurate and complete application for environmental clearance; and
- E. Includes the Affordable Housing Plan required by Section 5.08.610.A.

5.08.170 Density Bonus Units

“Density Bonus Units” means those additional Dwelling Units approved in a Residential Development pursuant to California Government Code section 65915 *et seq.* that are in

excess of the maximum residential density otherwise permitted by the San José General Plan.

5.08.175 Dwelling Unit

“Dwelling Unit” shall have the definition given for dwellings in Section 20.200.320, Section 20.200.330, and Section 20.200.340 of Chapter 20.200 of Title 20 of the San José Municipal Code and shall also include any type of dwelling allowed under Title 20 of the San José Municipal Code, except dwellings expressly excluded under the Inclusionary Housing Guidelines.

5.08.180 Extremely Low Income Household

“Extremely Low Income Household” shall have the definition given in California Health & Safety Code section 50106.

5.08.185 First Approval

“First Approval” means the first of the following approvals to occur with respect to a Residential Development: development agreement, general plan amendment, specific or area plan adoption or amendment, zoning, rezoning, pre-zoning, annexation, planned development permit, tentative map, parcel map, conditional use permit, special use permit, or building permit.

5.08.190 For-Sale

“For-Sale” means and refers to any separately conveyable Dwelling Unit, including a condominium, stock cooperative, community apartment, or attached or detached single family home, for which a parcel or tentative and final map is required for the lawful subdivision of the parcel upon which the Dwelling Unit is located or for the creation of the unit in accordance with the Subdivision Map Act (California Government Code

section 66410 *et seq.*) after compliance with the applicable requirements of the Subdivided Lands Act (California Business and Professions Code section 11000 *et seq.*) listed in the Inclusionary Housing Guidelines or any Residential Development including such For-Sale Dwelling Units.

5.08.192 Inclusionary Fee Fund

“Inclusionary Fee Fund” means a fund or account designated by the City to maintain and account for all monies received pursuant to this Chapter.

5.08.195 Inclusionary Housing Agreement

“Inclusionary Housing Agreement” means an agreement or agreements in conformance with Section 5.08.600 of this Chapter between the City and an Applicant, governing how the Applicant shall comply with this Chapter.

5.08.200 Inclusionary Housing Guidelines

“Inclusionary Housing Guidelines” means the requirements for implementation and administration of this Chapter adopted by the City Manager, pursuant to Section 5.08.730.A of this Chapter.

5.08.205 Inclusionary Unit

“Inclusionary Unit” means a Dwelling Unit required by this Chapter to be affordable to extremely low, very low, lower, or moderate income households.

5.08.210 Lower Income Household

“Lower Income Household” shall have the definition given in California Health & Safety Code section 50079.5.

5.08.212 Market Area

“Market Area” means a specific geographic area designated through the adoption by the City Council of a resolution or policy.

5.08.215 Market Rate Unit

“Market Rate Unit” means a new Dwelling Unit in a Residential Development that is not an Inclusionary Unit as defined by Section 5.08.205.

5.08.220 Moderate Income Household

“Moderate Income Household” shall have the definition given in California Health & Safety Code section 50093(b), except that for the purposes of moderate income rental Inclusionary Units that are located upon the same site as the Market Rate Residential Development rental units, “Moderate Income Household” means a household earning no more than one hundred percent (100%) of Area Median Income and for the purposes of moderate income rental Inclusionary Units that are not located upon the same site as the Market Rate Residential Development rental units or are geographically concentrated except as allowed under Section 5.08.590, Partnership for Clustered Units, “Moderate Income Household” means a household earning no more than eighty percent (80%) of Area Median Income.

5.08.222 Moderate Market Area

“Moderate Market Area” means a Market Area or other geographical area designated by or pursuant to a City Council resolution or policy based on findings, including findings regarding residential building activity levels for market rate housing.

5.08.225 Operative Date

“Operative Date” shall have the definition given in Section 5.08.300.

5.08.227 Opportunity Area

“Opportunity Area” means a geographic area designated by or pursuant to a resolution or policy adopted by the City Council.

5.08.230 Physical Needs Assessment

“Physical Needs Assessment” means a report by a qualified housing professional identifying those items that are necessary repairs, replacements and maintenance at the time of the assessment or that will likely require repair or replacement within three (3) years of the assessment, and the estimated cost of all such items, which repair replacement and maintenance must be completed prior to the approval of the unit as an Inclusionary Unit. For the purposes of this Section, a “qualified housing professional” is a Physical Needs Assessment firm that is approved for that purpose by the California Housing Finance Agency, or as may otherwise be approved as qualified pursuant to criteria in the Inclusionary Housing Guidelines.

5.08.235 Planning Permit

“Planning Permit” means a tentative map, parcel map, conditional use permit, site development permit, planned development permit, development agreement, or special use permit, or any discretionary permit excluding general plan amendments, zoning and rezoning, annexation, specific plans, and area development policies.

5.08.240 Redevelopment Project Area

“Redevelopment Project Area” means any area designated as a Redevelopment Project Area by the Council of the City of José pursuant to the provisions of the Community Redevelopment Law in California Health & Safety Code section 33000 *et seq.*

5.08.245 Rental

“Rental” means and refers to a Dwelling Unit that is not a For-Sale Dwelling Unit, and does not include any Dwelling Unit, whether offered for rental or sale, that may be sold separately from any other Dwelling Unit as a result of the lawful subdivision of the parcel upon which the Dwelling Unit is located or creation of the unit in accordance with the Subdivision Map Act (California Government Code section 66410 *et seq.*), or any Residential Development including such Rental Dwelling Units.

5.08.250 Residential Development

“Residential Development” means any project requiring a Planning Permit for which an application has been submitted to the City, and where the Residential Development:

- A. Would create ten (10) or more new, additional, or modified Dwelling Units by:
 - 1. The construction or alteration of structures,
 - 2. The conversion of a use to residential from any other use, or
 - 3. The conversion of a use to For-Sale residential from Rental residential use.
- B. Is contiguous to property under Common Ownership or Control where the combined residential capacity of all of the Applicant’s property pursuant to the

General Plan designation or zoning at the time of the Planning Permit application for the Residential Development is ten (10) or more residential units.

5.08.253 Strong Market Areas

“Strong Market Area” means a Market Area or other geographical area that designated by or pursuant to a City Council resolution or policy based on findings, including findings regarding residential building activity levels for market rate housing.

5.08.255 Surplus Inclusionary Unit

“Surplus Inclusionary Unit” means any Inclusionary Unit constructed in connection with Residential Development without any City subsidy which exceeds the numerical requirement for Inclusionary Units for that Residential Development pursuant to this Chapter.

5.08.260 Unit Type

“Unit Type” means any form of dwelling described in Section 20.200.320, Section 20.200.330, or Section 20.200.340, or any other section of Chapter 20.200 of Title 20 of the San José Municipal Code or in state law.

5.08.265 Utilities

“Utilities” means garbage collection, sewer, water, electricity, gas and other heating, cooling, cooking and refrigeration fuels.

5.08.270 Very Low Income Household

“Very Low Income Household” means a household earning no more than the amount defined by California Health & Safety Code section 50105.

Part 3
Operative Date and Applicability

5.08.300 Operative Date of Chapter

This Chapter shall be operative:

- A. Six (6) months after the first day of the month following the first twelve (12) month consecutive period prior to January 1, 2013 in which two thousand five hundred (2,500) residential building permits have been issued by the City, with a minimum of one thousand two hundred fifty (1,250) permits issued for Dwelling Units outside of the North San José Development Policy Area; or
- B. January 1, 2013.

5.08.310 Applicability

The provisions of this Chapter shall apply to:

- A. All Residential Development, as defined in Section 5.08.250 of this Chapter, except for any Residential Development determined to be exempt under Section 5.08.320 of this Chapter;
- B. All Residential Development and Contiguous Property that is under Common Ownership or Control.

5.08.320 Exemptions

- A. This Chapter shall not apply to any of the following:

1. Projects that are not Residential Developments as defined in Section 5.08.250 of this Chapter.
2. Residential Developments with a total of less than ten (10) Dwelling Units.
3. Residential Developments which are developed in accordance with the terms of a development agreement adopted by ordinance pursuant to the authority and provisions of California Government Code section 65864 *et seq.* and City Ordinance No. 24297, and that is executed prior to the Operative Date of the ordinance codified in this Chapter, provided that such Residential Developments shall comply with any affordable housing requirements included in the development agreement or any predecessor ordinance in effect on the date the development agreement was executed.
4. Residential Developments which are developed in accordance with the terms of a disposition and development agreement pursuant to the authority and provision of California Health and Safety Code section 33000 *et seq.*, and that is approved by the Board of the San José Redevelopment Agency and is executed prior to the Operative Date of this Chapter, provided that such Residential Development shall comply with any affordable housing requirements included in the disposition and development agreement or any other law or policy in effect at the time of execution of the disposition and development agreement.
5. Residential Developments exempted by California Government Code section 66474.2 or 66498.1, provided that such Residential Developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was Deemed Substantially Complete.

6. Residential Developments for which a Planning Permit has been approved by the City no later than the Operative Date of this Chapter.
 7. Residential Development in a Planned Community, as specified in the San José 2020 General Plan, and:
 - a. The Residential Development is not in the Redevelopment Project Area;
 - b. A Specific Plan was adopted by the City for the Planned Community prior to 1993;
 - c. The Specific Plan and/or a Planning Permit specifies that the Residential Development will occur in phases and authorizes the phased construction of new on-site and off-site infrastructure; and
 - d. One or more phases of the Residential Development, and the required infrastructure improvements related to each of those phases, has been completed in conformance with the Specific Plan and Planning Permits prior to the Operative Date.
- B. Planning Permit Expiration. Upon the expiration of any Planning Permit, any exemptions pursuant to Subsection A terminate for the Residential Development and, unless otherwise exempted, the Residential Development shall be subject to the inclusionary housing requirements of this Chapter, and shall not proceed until such time as a new Affordable Housing Plan is approved in conjunction with any other required Planning Permit or amendment thereto. This provision shall not apply to any discretionary extension of a Planning Permit or Land Use approval beyond its initial term.

- C. Limited Extension of Exemption Due to Delay. The City Manager may grant a request for an extension of the timelines in this Section exempting Residential Development from this Chapter where a change in federal, state or local law would cause the need for a material redesign of the approved Residential Development that would render any of the approved land use entitlements, if implemented as approved, in violation of federal, state, or local law and would require amendment or revision of the Planning Permit.

Part 4

Affordable Housing Requirements

5.08.400 Inclusionary Housing Requirement

All new Residential Developments and Contiguous Property under Common Ownership and Control shall include Inclusionary Units. Calculations of the number of Inclusionary Units required by this Section shall be based on the number of Dwelling Units in the Residential Development, excluding any Density Bonus Units as defined in Section 5.08.170 of this Chapter.

- A. On-Site Inclusionary Requirement. Unless otherwise exempted or excepted from this Chapter, Residential Developments shall include Inclusionary Units upon the same site as the Residential Development as follows:

1. For-Sale Residential Development:
Fifteen percent (15%) of the total Dwelling Units in the Residential Development shall be made available for purchase at an Affordable Housing Cost to those households earning no more than one hundred ten percent (110%) of the Area Median Income. Such units may be sold to households earning no more than one hundred twenty percent (120%) of the Area Median Income.

2. Rental Residential Development:

Either (i) five percent (5%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Moderate Income Households, five percent (5%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Lower Income Households and five percent (5%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Very Low Income Households, or (ii) ten percent (10%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Extremely Low Income Households.

3. Affordable Housing Development:

An Affordable Housing Development that has recorded an unsubordinated City affordability restriction applicable to all non-manager units may be deemed to have complied with this Section consistent with the procedure in the Guidelines, provided however, any use of units in such a Development to meet the obligations of another Development under this Chapter must comply with all applicable requirements of this Ordinance.

- B. Limited Waiver. Excepted from the requirements of this Section is any Dwelling Unit that would otherwise be required to be a Moderate Income Inclusionary Unit for which an application for waiver of the terms of the subordinate shared appreciation documents or other documents implementing for-sale inclusionary provisions required by Section 5.08.600.A herein has been granted by the City Manager. Such an application shall be granted when the Affordable Housing Cost is within five percent (5%) of the appraised unrestricted market value of the unit. The approval of any application pursuant to this Subsection 5.08.400.B

shall terminate upon the earlier of the sale in accordance with Subsections 1 through 3 herein of the Inclusionary Unit for which the limited waiver has been granted pursuant to this Section, or six (6) months following approval of the limited waiver by the City Manager, unless such term is extended by the City Manager because the unit continues to qualify for the waiver in accordance with the requirements of this Section. An Inclusionary Unit that is subject to such approved limited waiver shall:

1. Be sold at or below the Affordable Housing Cost;
2. The Inclusionary Unit shall initially be owner-occupied;
3. No income verification shall be required by the City of the purchaser of such an Inclusionary Unit; and
4. The requirements of the subordinate shared appreciation documents or other documents implementing for-sale inclusionary provisions executed pursuant to Section 5.08.600 of this Chapter shall be waived by the City. The limited waiver in this Subsection B shall be administered in accordance with this Chapter and the Inclusionary Housing Guidelines.

5.08.410 Fractional Units

In computing the total number of Inclusionary Units required in a Residential Development, fractions of one-half (1/2) or greater shall be rounded up to the next highest whole number, and fractions of less than one-half (1/2) shall be rounded down to the next lowest whole number.

5.08.420 Contiguous Property under Common Ownership and Control

An Applicant for a Planning Permit shall not avoid the requirements of this Chapter by submitting piecemeal Planning Permit applications. At the time of the application for

First Approval for the Residential Development, the Applicant shall identify all Contiguous Property under Common Ownership and Control. The Applicant shall not be required to construct dwelling units upon the Contiguous Property at the time of the application for First Approval; however, the Applicant shall be required to include the Contiguous Property under Common Ownership or Control in its Affordable Housing Plan. The Inclusionary Housing Guidelines shall include procedures to facilitate compliance for phased and master planned developments. The Inclusionary Housing Agreement shall be recorded against the Residential Development and the Inclusionary Housing Agreement or a separate implementing covenant with a term of at least twenty (20) years shall be recorded against all Contiguous Property under Common Ownership or Control and such agreements shall require compliance with this Chapter upon development of each Contiguous Property at such time as there are Planning Permit applications that would authorize a total of ten (10) or more residential units for the Residential Development and the Contiguous Property under Common Ownership or Control.

5.08.430 Residential Development with Overlapping Inclusionary Requirements

When overlapping inclusionary housing requirements could be applied to a Residential Development pursuant to this Chapter because the Residential Development is located upon a parcel or parcels subject to more than one of the requirements in this Section, the entire Residential Development shall be subject to the requirement that results in the production of the greatest amount and greatest depth of affordability of Inclusionary Dwelling Units.

5.08.440 Residential Development with Both For-Sale and Rental Units

When a Residential Development includes both For-Sale and Rental Dwelling Units, the provisions of this Chapter that apply to For-Sale Residential Development shall apply to that portion of the development that consists of For-Sale Dwelling Units, while the

provisions of this Chapter that apply to Rental Residential Development shall apply to that portion of the development that consists of Rental Dwelling Units.

5.08.450 On-Site Inclusionary Housing Incentives

- A. The Developer of a Residential Development providing Inclusionary Units upon the same site as the market rate units pursuant to Section 5.08.400 may, at the Developer's sole option, submit a written request for density bonus, waivers or incentives pursuant to California Government Code Section 65915 *et seq.* and Chapter 20.190 of this Code, if the Residential Development includes the provision of affordable Inclusionary Units within the Residential Development that meets the minimum thresholds for density bonus pursuant to California Government Code Section 65915 *et seq.*
- B. Affordable Housing Plan. The incentives requested by the Developer of the Residential Development shall be included in the proposed Affordable Housing Plan submitted at the time of application for the First Approval, and any incentives authorized by the City pursuant to Chapter 20.190 of this Code shall be included in the Affordable Housing Plan, if approved by the City, for the Residential Development.

5.08.460 Timing of Construction of Inclusionary Units

- A. All required Inclusionary Units shall be made available for occupancy concurrently with the Market Rate Units. For the purposes of this subsection, "concurrently" means:
 - 1. When the Inclusionary Units require construction and building permits therefor, for each Building Permit issued for an Inclusionary Unit the City may issue no more than six (6) Building Permits for Market Rate Units, and the City may not approve any final inspections for single-family

detached homes, or any certificates of occupancy for all other residences, unless at least fifteen percent (15%) of all final inspections or certificates of occupancy, as appropriate, in the Residential Development have been approved for Inclusionary Units.

2. When the Inclusionary Units do not require construction and Building Permits therefor, upon authorization for occupancy by the City of each Inclusionary Unit at an Affordable Housing Cost, the City may issue no more than five (5) Building Permits for Market Rate Units, and the City may not approve any final inspections for single-family detached homes, or any certificates of occupancy for all other residences, unless at least twenty percent (20%) of all Inclusionary Units for the Residential Development have been authorized for occupancy at an Affordable Housing Cost by the City.
- B. The City may not issue Building Permits for more than ninety percent (90%) of the Market Rate Units within a Construction Phase in a Residential Development until it has issued Building Permits, or authorized for occupancy at an Affordable Housing Cost as applicable, for all of the Inclusionary Units to be included in that Construction Phase. The City may also not approve final inspections for single-family detached homes, or certificates of occupancy for all other residences, for more than ninety percent (90%) of the Market Rate Units within a Construction Phase until it has approved final inspections or certificates of occupancy, as appropriate, or authorized for occupancy at an Affordable Housing Cost as applicable, for all of the Inclusionary Units within that Construction Phase.
- C. The Applicant may elect to comply with the requirements of this Chapter by utilizing any of the Applicant's options under Part 5 of this Chapter. The phasing requirements of Subsections A and B shall not apply to any in lieu Inclusionary Unit credit pursuant to Sections 5.08.520 (In Lieu Fee), 5.08.530 (Dedication of Land), and 5.08.560 (HUD-Restricted Units).

- D. Subject to the approval of the City Manager, the Applicant may alternatively elect to contract with an affordable housing Developer with experience in obtaining tax-exempt bonds, low income housing tax credit financing, and other competitive sources of financing, that is approved by the City to construct all or part of the Inclusionary Units required by Section 5.08.400. The Inclusionary Housing Agreement required in Section 5.08.600 of this Chapter shall contain specific assurances guaranteeing the timely completion of the required Inclusionary Units, including satisfactory assurances that construction and permanent financing will be secured for the construction of the units within a reasonable time. Such assurances may include a requirement that the Affordable Housing Developer and the Applicant execute an agreement that requires the closing of construction financing for the Inclusionary Units prior to the issuance of the first certificate of occupancy for the Residential Development or that the Applicant shall secure its obligations to the City by a letter of credit or escrow account in the amount of the In Lieu Fee, acceptable to the City in form and substance. The Inclusionary Housing Agreement shall include provisions for the payment of the City's costs of monitoring and administration of compliance with the requirements of this Chapter. After the Inclusionary Housing Agreement is approved by the City, then the phasing requirements of Subsection B apply only to Inclusionary Units not included in the contract with the City-approved affordable housing Developer. Off-site projects by a City-approved affordable housing Developer where all units are affordable to Lower Income Households are exempted from the timing requirements of this Section 5.08.460.

5.08.470 Standards for Inclusionary Units

- A. Single-family detached Inclusionary Units shall be dispersed throughout the Residential Development. Townhouse, row-house, multifamily Inclusionary Units and other unit types shall be located so as not to create a geographic

concentration of Inclusionary Units within the Residential Development, except as provided for Residential Developments under Section 5.08.590.

- B. The quality of exterior design and overall quality of construction of the Inclusionary Units shall be consistent with the exterior design of all Market Rate Units in the Residential Development and meet all site, design, and construction standards included in Title 17 (Buildings and Construction), Title 19 (Subdivisions), and Title 20 (Zoning) of this Code, including but not limited to compliance with all design guidelines included in applicable specific plans or otherwise adopted by the City Council, and the Inclusionary Housing Guidelines. Inclusionary Units shall have functionally equivalent parking when parking is provided to the Market Rate Units.
- C. Inclusionary Units may have different interior finishes and features than Market Rate Units in the same Residential Development, as long as the finishes and features are functionally equivalent to the Market Rate Units and are durable and of good quality and comply with the Inclusionary Housing Guidelines.
- D. The Inclusionary Units shall have the same amenities as the Market Rate Units, including the same access to and enjoyment of common open space and facilities in the Residential Development.
- E. The Inclusionary Units shall have the same proportion of Unit Types as the Market Rate Units in the Residential Development except:
 - 1. Single family detached Residential Projects may include single family attached Inclusionary Units;
 - 2. Single-family detached Inclusionary Units may have smaller lots than single-family detached Market Rate Units in a manner consistent with Title 20 of this Code; and

3. Inclusionary Units made available for rent may consist of any Unit Type selected by the Applicant. Provided, however, Unit Types that do not include a private kitchen and/or bathroom may not be substituted for Unit Types that have a private kitchen and bathroom.
- F. The Inclusionary Units shall have a comparable square footage and the same bedroom count and bedroom count ratio as the Market Rate Units.

5.08.480 Minimum Requirements

The requirements of this Chapter are minimum requirements and shall not preclude a Residential Development from providing additional affordable units or affordable units with lower rents or sales prices than required by this Chapter.

Part 5

Developers' Compliance Options

5.08.500 Developers' Compliance Options

- A. On-Site. A Developer may construct on-site inclusionary rental units where the Developer would otherwise be required by this Chapter to construct on-site inclusionary for-sale units. If a Developer desires to construct on-site inclusionary rental units in lieu of on-site inclusionary for-sale units, the requirement for such on-site rental inclusionary units shall be: (i) Five percent (5%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Moderate Income Households, five percent (5%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Lower Income Households and five percent (5%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable

Housing Cost to Very Low Income Households, or (ii) ten percent (10%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Extremely Low Income Households.

- B. Off-Site. As an alternative to providing Inclusionary Units upon the same site as the Market Rate Residential Development required by Part 4 of this Chapter, the Developer may select any of the compliance options in Sections 5.08.510 through 5.08.590 of this Chapter. If the Developer selects any of the compliance options in *Sections 5.08.510, 5.08.520, and 5.08.530 through 5.08.580* of this Chapter, the basis for the inclusionary housing requirement shall be that no less than twenty percent (20%) of the total of all units in the Residential Development shall be Inclusionary Units, unless otherwise specified.

The off-site Inclusionary Units for the Residential Development shall be located within the same Opportunity Area unless, at the time of submission of the Affordable Housing Plan, the Developer has petitioned and provided credible documentation in writing to the City that there is insufficient available land within the Opportunity Area to construct the off-site Inclusionary Units, in which event such Inclusionary Units shall be constructed upon a site approved by the City. Until such time as the Council designates Opportunity Areas or provides criteria for such designation, the off-site Inclusionary Units shall be located in the same Market Area as the Market Rate Units unless, at the time of submission of the Affordable Housing Plan, the Developer has petitioned and provided credible documentation in writing to the City that there is insufficient available land within the same Market Area to construct the off-site Inclusionary Units, in which event such Inclusionary Units shall be constructed upon a site approved by the City.

5.08.510 Off-Site Construction

The inclusionary housing requirement in Section 5.08.400 may be satisfied by the construction of affordable housing on a site different from the site of the Residential

Development in lieu of constructing the affordable units within the Residential Development as follows:

A. For-Sale Residential Development:

1. Off-site for-sale inclusionary units numbering no less than twenty percent (20%) of the total dwelling units in the Residential Development shall be made available for purchase at an Affordable Housing Cost to those households earning no more than one hundred ten percent (110%) of the Area Median Income; or
2. Off-site rental inclusionary units numbering no less than five percent (5%) of the total dwelling units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Moderate Income Households earning no more than eighty percent (80%) of the Area Median Income, off-site rental inclusionary units numbering no less than five percent (5%) of the total dwelling units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Lower Income Households earning no more than sixty percent (60%) of the Area Median Income, and off-site rental dwelling units numbering no less than ten percent (10%) of the total dwelling units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Very Low Income Households.

- B. Rental Residential Development: Off-site rental inclusionary units numbering no less than five percent (5%) of the total dwelling units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Moderate Income Households earning no more than eighty percent (80%) of the Area Median Income, off-site rental inclusionary units numbering no less than five percent (5%) of the total dwelling units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Lower Income

Households earning no more than sixty percent (60%) of the Area Median Income, and off-site rental inclusionary units numbering no less than ten percent (10%) of the total dwelling units in the Residential Development shall be made available for rent at an Affordable Housing Cost to those Very Low Income Households.

C. Additional Requirements for Off-Site For-Sale and Rental Residential Inclusionary Units. All Inclusionary Units constructed off-site of the Residential Development shall also comply with all of the following criteria:

1. The site of the inclusionary housing conforms to the City's Affordable Housing Siting Policy.
2. The site has a General Plan designation that authorizes residential uses and is zoned for Residential Development at a density to accommodate at least the number of otherwise required Inclusionary Units within the Residential Development.
3. The site is suitable for development of the Inclusionary Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria.
4. Environmental review for the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and all such hazards are or shall be mitigated to the satisfaction of the City prior to acceptance of the site by the City.
5. The construction schedule for the off-site Inclusionary Units shall be included in the Affordable Housing Plan and the Inclusionary Housing Agreement.

6. Construction of the off-site Inclusionary Units shall be completed prior to or concurrently with the Market Rate Residential Development pursuant to Section 5.08.460.

5.08.520 In Lieu Fee

- A. The inclusionary housing requirement in Section 5.08.400 may be satisfied by the payment of a fee to the City in lieu of constructing the affordable units within the Residential Development, provided that such fee is received by the City after the issuance of the development permit for the project, but prior to the issuance of the certificate of occupancy for the first Market Rate Unit in the Residential Development.
- B. In lieu fees shall be determined as follows:
 1. For-Sale Residential Development: The in lieu fee for For-Sale Residential Developments shall be established as specified in the Inclusionary Housing Guidelines based on the amount by which the average sales price of an attached Market Rate Unit exceeds the affordable sales price for an average-sized attached unit ("Affordability Gap – For Sale"). The average size, number of bedrooms, and sales price of an attached Market Rate Unit shall be based on units completed in the prior sixty (60) month reporting period and sold within the prior twenty-four (24) month period. The affordable sales prices for an average-sized attached unit shall be determined consistent with this Section and the Inclusionary Housing Guidelines based on the Affordable Housing Cost for a household earning no more than one hundred ten percent (110%) of the Area Median Income. The Affordability Gap - For-Sale shall be multiplied by the percentage of Inclusionary Units required by Section 5.08.510.A. and divided by the average square footage of the Market Rate Units reflected in the sales data to determine the per square foot in lieu fee.

2. Rental Residential Development: The in lieu fee for Rental Residential Developments shall be established based on the difference between market rate rents and affordable rents as described in this Section and the Inclusionary Housing Guidelines. Market rate rents shall be based on rents charged for the most recently built three thousand (3,000) market rate rental units, excluding affordable units and projects for special populations such as seniors. Average affordable rents for each income category (Moderate, Low and Very Low) shall be determined based on the maximum rents allowed pursuant to Section 5.08.510.B, minus an allowance for utilities, weighted to reflect the average number of bedrooms in the three thousand (3,000) market rate rental units used to determine market rate rents. The amount by which the annualized market rate rent exceeds the annualized affordable rent for each income category shall then be capitalized using a current published capitalization rate for Class A urban multifamily housing in San José to obtain the affordability gap for a single unit in that income category ("Affordability Gap - Rental"). The in lieu fee shall then be made applicable on a square footage basis by multiplying the Affordability Gap - Rental for each income category by the percentage of Inclusionary Units required for that income category under Section 5.08.510.B and then dividing the result by the average square footage of the three thousand (3,000) market rate rental units used to determine market rate rents. The total in lieu fee shall be the sum of the fees for each of the individual income categories.
3. Less Than 19 Units. The in lieu fee for Residential Developments with up to nineteen (19) dwelling units that provide ninety percent (90%) or more of maximum residential density permitted for the site by the San José General Plan shall be half of the amount otherwise due under this Section.

- C. The in lieu fee for each For-Sale Residential Development shall be determined based on the net square footage of the For-Sale Residential Development as calculated by the City. The in lieu fee for each Rental Residential Development shall be determined based on the rentable square footage of the Rental Residential Development as calculated by the City. To account for inflation in affordable housing development costs the in lieu fee shall be increased on July 1 of each year by the Engineering News Record ("ENR") Construction Cost Index for the San Francisco area published by McGraw Hill on January 1 of every year, or its successor publication, for the preceding twelve (12) months until such time that a new in lieu fee is determined pursuant to this Section.
- D. The Council may by resolution based on findings, designate defined Market areas or other geographical areas as Strong Market Areas or Moderate Market Areas, and specify different in lieu fees which apply in those defined geographical areas which do not exceed the fees that do not exceed the fees which otherwise apply pursuant to this Section.
- E. The amount of in lieu fees shall be established in accordance with the provisions of this Section 5.08.520 by the City Council's annual resolution establishing the Schedule of Fees and Charges, or as established otherwise by resolution of the City Council, and may include in the fee the actual estimated costs of administration and the estimated cost of increases in the price of housing and construction from the time of payment of the in lieu fee to the estimated time of provision of the affordable units by the City. The amount of the in lieu fee shall be updated periodically, as required.
- F. The in lieu fee pursuant to this Section 5.08.520 may be reduced for Residential Development of ten (10) or more floors or stories in height not including any non-residential uses where the highest occupied floor has a floor level elevation is at least one hundred fifty (150) feet above street level (High Rise Residential Development) in any specified area of the City by City Council resolution or

policy providing incentives for the provision of high rise Residential Development. The reduction of in lieu fees pursuant to this Subsection 5.08.520.F shall only apply through the adoption by the City Council of a resolution or policy for all such development and shall not apply to individual High Rise Residential Development projects.

- G. No certificate of occupancy shall be issued by the City for any Market Rate Unit in the Residential Development prior to the payment in full of all in lieu fees to the City. The Developer shall provide both notice by recorded document against the Residential Development and, additionally, for each For-Sale Dwelling Unit therein, the Developer shall provide specific written notice to any purchaser of any Dwelling Unit prior to the acceptance of any offer to purchase, and shall obtain executed acknowledgement of the receipt of such notice, that purchaser shall not have any right to occupy the Dwelling Unit until such time as all in lieu fees owing for the Residential Development are paid to the City.
- H. All in lieu fees collected under this Section shall be deposited in the Inclusionary Fee Fund established pursuant to this Chapter.
- I. An updated determination of the in lieu fees for this option shall be commenced no later than five (5) years after the prior determination was adopted in the City Council's resolution establishing the Schedule of Fees and Charges. The Council may adopt in lieu fee amounts that are less than those determined under this Section.

5.08.525 Mixed Compliance with Rental Inclusionary Units On-Site

- A. The inclusionary housing requirement for Rental Residential Developments in Section 5.08.400 may be satisfied by the providing of at least five percent (5%) of the total Dwelling Units in the Residential Development as on-site Inclusionary Units in at least one income category in Section 5.08.400 together with the

payment of an adjusted in lieu fee reduced for the Inclusionary Units provided consistent with this Section and the Inclusionary Housing Guidelines.

- B. An updated determination of the adjusted in lieu fees for this option shall be commenced no later than five (5) years after the prior determination was adopted in the City Council's resolution establishing the Schedule of Fees and Charges. The determination shall be updated as follows: the adjusted in lieu fee applicable to this Section 5.08.525 will be determined consistent with the procedures provided in Section 5.08.520.B.2 and Section 5.08.520.D, however the income categories, the percentages and rents applicable under Section 5.08.400.A.2(i) shall be used, rather than those provided under Section 5.08.510.B. The Affordability Gap will be calculated and made applicable on a square footage basis for each such income category consistent with the procedures provided in Section 5.08.520.B.2. A further reduction for on-site compliance shall be determined for each category and Market Area pursuant to the Inclusionary Housing Guidelines based on a review of factors including the rate of utilization of this Section to produce on-site Inclusionary Units and the affordability of the Inclusionary Units provided (the "On-Site Adjuster").
- C. When the Applicant restricts five percent (5%) or ten percent (10%) of the total Dwelling Units in the Rental Residential Development so that they are made available for rent at an Affordable Housing Cost to one or two of the following income categories: Moderate Income Households, Low Income Households, or Very Low Income Households consistent with Section 5.08.400.A.2(i), the in lieu fee amount determined under this Section for the Rental Residential Development shall be reduced based on the amount of the adjusted in lieu fee otherwise applicable to the Rental Residential Development based on the on-site Inclusionary Units in the income category provided and then by the applicable On-Site Adjuster.

- D. The provisions of Subsections C through F of Section 5.08.520 applicable to rental in lieu fees shall also apply to the adjusted in lieu fees established under this Section.

5.08.530 Dedication of Land In Lieu of Construction of Inclusionary Units

- A. The inclusionary housing requirement in Section 5.08.400 may be satisfied by the dedication of land in lieu of constructing Inclusionary Units within the Residential Development if the City Manager determines that all of the following criteria, as implemented by in the Inclusionary Housing Guidelines, have been met:
1. Marketable title to the site is transferred to the City, or an affordable housing Developer approved by the City, prior to the commencement of construction of the Residential Development pursuant to an agreement between the Developer and the City and such agreement is in the best interest of the City.
 2. The site has a General Plan designation that authorizes residential uses and is zoned for Residential Development at a density to accommodate at least the number of otherwise required Inclusionary Units within the Residential Development, and conforms to City development standards.
 3. The site is suitable for development of the Inclusionary Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site.
 4. Infrastructure to serve the dedicated site, including but not limited to streets and public utilities, must be available at the property line and have

adequate capacity to serve the maximum allowable residential development pursuant to zoning regulations.

5. Environmental review of the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and all such hazards are or will be mitigated to the satisfaction of the City prior to acceptance of the site by the City.
 6. The value of the site upon the date of dedication is equal to or greater than the in lieu fee in effect at the date of dedication multiplied by the number of otherwise required Inclusionary Units within the Residential Development.
 7. The dedicated site complies with the City's Affordable Housing Siting Policy, or meets other City General Plan policies such as being located near transit.
- B. With respect to sites dedicated pursuant to Subsection A, the City shall not be required to construct restricted income units on the site dedicated to the City, but may sell, transfer, lease, or otherwise dispose of the dedicated site. Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the City shall be deposited into the City of San José Inclusionary Fee Fund and used in accordance with the provisions of Section 5.08.700.
- C. The inclusionary housing requirement in Section 5.08.400 may also be satisfied by the dedication of land in lieu of constructing Inclusionary Units within the Residential Development if the City Manager determines that all of the following criteria, as implemented by the Inclusionary Housing Guidelines, have been met:
1. The land to be dedicated (the "site") is in located within the City of San Jose and the land meets all of the criteria required under Government

Code section 65913.4 for SB 35 permit streamlining and Government
Code section 65913.4 is still in effect.

2. The requirements listed in Subsections A(1) and A(3)-(7) are met for the site.
- D. With respect to sites dedicated pursuant to Subsection C., the City shall solicit proposals from Affordable Housing Developers to construct restricted income units on the site dedicated to the City, but if the City is unable to obtain a qualified affordable housing developer to construct a viable leasehold affordable housing development on the property within two years of its solicitation or to commence construction within five years, the City may sell, transfer, lease, or otherwise dispose of the dedicated site for any purpose. Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the City shall be deposited into the Inclusionary Fee Fund and used in accordance with the provisions of Section 5.08.700.

5.08.540 Credits and Transfers

The inclusionary housing requirement in Section 5.08.400 may be satisfied by the purchase of credits for Inclusionary Units from a Developer of inclusionary housing in lieu of constructing Inclusionary Units within the Residential Development if the City Manager determines that all of the following criteria are met:

- A. A Developer who constructs a Surplus Inclusionary Unit may utilize such Surplus Inclusionary Unit to satisfy the inclusionary housing requirement for future Residential Development for a period of no more than five (5) years after issuance of the certificate of occupancy for the Surplus Inclusionary Unit.

- B. A Developer who constructs a Surplus Inclusionary Unit may sell or otherwise transfer the Surplus Inclusionary credit to another Developer in order to satisfy, or partially satisfy, the transferee Developer's inclusionary housing requirement.
- C. The inclusionary housing restrictions shall be recorded against the market rate Residential Development and the Inclusionary Unit pursuant to this Chapter and the Inclusionary Housing Guidelines. The restrictions on the Inclusionary Unit shall commence upon the initial sale or rental of the Inclusionary Unit at the Affordable Housing Cost occurring subsequently to the approval of the Affordable Housing Plan in which the Inclusionary Unit is offered to satisfy the requirements of this Chapter.
- D. The transferee Developer who utilizes any Surplus Inclusionary Housing credit shall comply with the timing requirements for Inclusionary Units to be made available for occupancy concurrently with the Market Rate Units in the Residential Development pursuant to Section 5.08.460.

5.08.550 Acquisition and Rehabilitation of Existing Units

The inclusionary housing requirement in Section 5.08.400 may be satisfied by the acquisition and rehabilitation of existing Market Rate Units for conversion to units affordable to Lower or Very Low Income Households only, in lieu of constructing Inclusionary Units within the Residential Development, if the City Manager determines that all of the following criteria are met:

- A. The value of the rehabilitation work is twenty five percent (25%) or more than the value of the Dwelling Unit prior to rehabilitation, inclusive of land value. The Inclusionary Housing Guidelines shall include criteria for the determination of value.

- B. Two (2) Dwelling Units shall be rehabilitated in lieu of each single Inclusionary Unit required pursuant to this Part 5.
- C. The Developer is providing all costs of notice to and relocation of existing residents in the residential units to be rehabilitated, and as further required by the Inclusionary Housing Guidelines.
- D. The site has a General Plan designation that authorizes residential uses and is zoned for Residential Development at a density to accommodate at least the number of rehabilitated units.
- E. The use of the site of the Dwelling Units to be rehabilitated shall not constitute a nonconforming use.
- F. The rehabilitated Dwelling Units shall comply with all current applicable Building and Housing Codes.
- G. A Physical Needs Assessment to the satisfaction of the City shall be performed on each Dwelling Unit to be acquired and rehabilitated, the property upon which it is located, and any associated common area, and all items identified in the Physical Needs Assessment needing repair, replacement and maintenance at the time of the Assessment or that will likely require repair or replacement within three (3) years of the Assessment shall be completed prior to the approval of the Dwelling Unit as an Inclusionary Unit. The Developer shall include in the Affordable Housing Plan the method by which a capital reserve for repair, replacement and maintenance shall be maintained for the term of the affordability restriction, with provision for sufficient initial capitalization and periodic contributions to the capital reserve.

- H. Environmental review of the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and is clear of all such hazards to the satisfaction of the City.
- I. The construction schedule for the units to be rehabilitated in lieu of providing Inclusionary Units shall be included in the Affordable Housing Plan.
- J. The rehabilitation of the Dwelling Units shall be completed prior to or concurrently with the Market Rate Residential Development pursuant to Section 5.08.460.
- K. The inclusionary housing restrictions shall be recorded against the Market Rate Residential Development and the rehabilitated Dwelling Units pursuant to this Chapter and the Inclusionary Housing Guidelines. The restrictions on the rehabilitated Dwelling Units shall commence upon the initial sale or rental of the rehabilitated Dwelling Unit at the Affordable Housing Cost occurring subsequent to the approval of the Affordable Housing Plan in which the rehabilitated units are offered to satisfy the requirements of this Chapter.
- L. Rehabilitated Dwelling Units shall be owner-occupied in lieu of the provision of Inclusionary Units for owner-occupied Residential Development; while rehabilitated Dwelling Units shall be rental units in lieu of the provision of Inclusionary Units for rental Residential Development.
- M. The bedroom count of the Dwelling Units to be rehabilitated shall be substantially the same as the Market Rate Residential Development, as set forth in the Inclusionary Housing Guidelines.
- N. The term of affordability of the Inclusionary Units to be provided pursuant to this Section 5.08.550 shall be as set forth in Section 5.08.600.B. and shall commence upon initial occupancy of the Inclusionary Units to the targeted income group at an Affordable Housing Cost.

- O. Inclusionary Units provided pursuant to this Section 5.08.550 shall not be eligible for use for credits and transfers pursuant to Section 5.08.540.

5.08.560 HUD Restricted Units

The inclusionary housing requirement in Section 5.08.400 may be satisfied through the provision of units that are restricted to Affordable Housing Cost for Lower or Very Low Income Households by agreement between the Applicant and the U.S. Department of Housing and Urban Development (HUD) in lieu of constructing Inclusionary Units within the Residential Development, if the City Manager determines that all of the following criteria are met:

- A. The agreement between the Applicant and HUD for the provision at the Affordable Housing Cost of the residential unit to Lower or Very Low Income Households shall expire after the Operative Date of this Chapter.
- B. Two (2) HUD-restricted Dwelling Units shall be provided in lieu of each single Inclusionary Unit required pursuant to this Part 5.
- C. The use of the site of any unit proposed to be provided as an Inclusionary Unit pursuant to this Section 5.08.560 shall not constitute a nonconforming use.
- D. The Dwelling Units shall comply with all current applicable Building and Housing Codes.
- E. The Affordable Housing Plan and Inclusionary Housing Agreement shall include provision for a Physical Needs Assessment to be performed to the satisfaction of the City no more than six (6) months prior to the termination of the agreement between the Applicant and HUD. Such an assessment shall be performed on each Dwelling Unit to be occupied as an Inclusionary Unit, the property upon

which it is located, and any associated common area. All items identified in the Physical Needs Assessment needing repair, replacement and maintenance at the time of the Assessment or that will likely require repair or replacement within three (3) years of the Assessment shall be completed prior to the acceptance of the Dwelling Unit as an Inclusionary Unit. The Developer shall include in the Affordable Housing Plan and the Inclusionary Housing Agreement the method by which a capital reserve for repair, replacement and maintenance shall be maintained for the term of the affordability restriction, with provision for sufficient initial capitalization and periodic contributions to the capital reserve.

- F. Environmental review of the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and is clear of all such hazards to the satisfaction of the City.
- G. The units to be provided as Inclusionary Units shall be included in the Affordable Housing Plan.
- H. The inclusionary housing restrictions shall be recorded against the Market Rate Residential Development and the Inclusionary Units to be provided pursuant to this Section 5.08.560 in accordance with this Chapter and the Inclusionary Housing Guidelines. Unless otherwise specified in this Section 5.08.560, the restrictions on the Inclusionary Units shall be for forty (40) years and shall commence upon the initial sale or rental of the first Market Rate Unit in the Residential Development subsequent to the approval of the Affordable Housing Plan in which the Inclusionary Units are offered to satisfy the requirements of this Chapter.
- I. The restrictions on the Inclusionary Units to be provided pursuant to this Section 5.08.560 shall run concurrently with the agreement between the Applicant and HUD providing the unit at an Affordable Housing Cost to Lower or Very Low Income Household. However, if the agreement between the Applicant and HUD

terminates prior to the forty (40) year term required by Subsection 5.08.560.H, then the Developer shall provide the Inclusionary Units for the balance of the term in accordance with the requirements of this Chapter, unless the agreement between the Applicant and HUD terminates because federal funding for the program is no longer available in which event the Developer shall provide the Inclusionary Units for five (5) years after the termination of the HUD agreement.

- J. Inclusionary Units provided pursuant to this Section 5.08.560 shall not be eligible for use for credits and transfers pursuant to Section 5.08.540.

5.08.570 Combination of Methods to Provide Inclusionary Housing

The Developer of a Residential Development may propose any combination of basic inclusionary options pursuant to Section 5.08.400 and/or in lieu options pursuant to Part 5 of this Chapter in order to comply with the provisions of this Chapter. Such proposals shall be made in the Affordable Housing Plan, shall be considered by the City in accordance with this Chapter and the Inclusionary Housing Guidelines, and approved by the City if the combined in lieu methods of compliance provide substantially the same or greater level of affordability and the amount of affordable housing is as required pursuant to Section 5.08.400 where all affordable housing will be provided on-site of the Residential Development or pursuant to Part 5 where the affordable housing will be provided both on-site and off-site or entirely off-site of the Residential Development.

5.08.580 Option to Purchase

The inclusionary housing requirement in Section 5.08.400 may be satisfied by the execution of an option to purchase real property and the recording of a memorandum of option, in lieu of constructing Inclusionary Units within the Residential Development, if the City Manager determines that all of the following criteria, as implemented by the Inclusionary Housing Guidelines, are met:

- A. An option agreement to purchase property within the City of San José (the “site”) for one dollar with a term of at least five (5) years is executed by the City and the Developer along with an attached approved form of purchase and sale agreement or transfer agreement and the City Manager has determined that such agreements are in the best interest of the City. The option or transfer agreement provides that marketable title to the site will transferred to the City, or an Affordable Housing Developer approved by the City prior to the commencement of construction of the Residential Development and requires that the infrastructure to serve the dedicated site, including but not limited to streets and public utilities, must be made available by the Developer at the property line prior to the commencement of construction of the Residential Development and have adequate capacity to serve the maximum allowable residential development pursuant to the zoning regulations. The option agreement and the Affordable Housing Agreement provide that City may terminate the option prior to the commencement of construction of the Residential Development and in that event the Developer shall comply with a specified alternative option under this Part 5.
- B. A memorandum of option is recorded on the property senior to all liens with a power of foreclosure.
- C. Environmental review of the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and is clear of all such hazards (or such hazards have been reviewed and are remediable) to the satisfaction of the City and do not present undue risk or liability to the City as determined by the City Manager.
- D. The site has a General Plan designation that authorizes residential uses and is zoned for Residential Development at a density to accommodate at least the number of otherwise required Inclusionary Units within the Residential Development, and conforms to City development standards.

- E. The site is suitable for development of the Inclusionary Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site.

5.08.590 Partnership for Clustered Units

The inclusionary housing requirement in Section 5.08.400 may be satisfied by the construction of clustered rental affordable housing on the site of the Residential Development in lieu of constructing the affordable units within the Residential Development, if the City Manager determines that all of the following criteria, as implemented by in the Inclusionary Housing Guidelines, are met:

- A. Location and Proximity. The clustered Inclusionary Units shall be located in close proximity to the Residential Development building envelope, either on the same site or a contiguous site. If the Inclusionary Units are separated from the Residential Development by a street or road, the width of the road shall not exceed sixty (60) feet and shall include a crosswalk to facilitate pedestrian travel between the Residential Development and the Inclusionary Units.
- B. The clustered Inclusionary Units shall be included in an Affordable Housing Development with financing that requires that they be located on a separate legal parcel from the Market Rate Units.
- C. Minimum Contribution Agreement. If the Applicant is not an Affordable Housing Developer, the Applicant shall enter into an agreement with an Affordable Housing Developer and City, consistent with the Inclusionary Housing Guidelines which provides for a minimum contribution by the Applicant not less than seventy-five percent (75%) of the Residential Development's projected in lieu fee amount and a timeline for obtaining and closing construction financing and

commencing construction prior to the earlier of the issuance of the first Certificate of Occupancy for the Residential Development or five (5) years.

- D. Collateralized In Lieu Fee Security. In the event that the Affordable Housing Developer and the Applicant wish to execute an agreement that allows for the closing of construction financing and commencing of construction after the time periods in Subsection C or such that timeline is not met, the Applicant shall secure its obligations to the City by means of a letter of credit or escrow account in the amount of the in lieu fee, acceptable to the City in form and substance.
- E. Standards. The clustered Inclusionary Units shall comply with standards of Section 5.08.470, except the standard prohibiting geographical concentration. If the clustered Inclusionary Units are provided on contiguous property, they may be provided with equivalent amenities and open space in lieu of access to the amenities and open space in the Residential Development required by Section 5.08.470.
- F. Percentage of Inclusionary Units and Affordability. Either (i) Five percent (5%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Moderate Income Households earning up to one hundred percent (100%) of Area Median Income, five percent (5%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Lower Income Households and five percent (5%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Very Low Income Households or (ii) ten percent (10%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Extremely Low Income Households.

Part 6
Continuing Affordability

5.08.600 Continuing Affordability and Initial Occupancy

- A. The Inclusionary Housing Guidelines shall include standard documents, in a form approved by the City Attorney, to ensure the continued affordability of the Inclusionary Units approved for each Residential Development. The documents may include, but are not limited to, Inclusionary Housing Agreements, regulatory agreements, promissory notes, deeds of trust, resale restrictions, rights of first refusal, options to purchase, and/or other documents, and shall be recorded against the Residential Development, all Inclusionary Units, and any site subject to the provisions of this Chapter. Affordability documents for For-Sale owner-occupied Inclusionary Units shall also include subordinate shared appreciation documents permitting the City to capture at resales (the difference between the market rate value of the Inclusionary Unit and the Affordable Housing Cost) in such amounts as deemed necessary by the City to replace the Inclusionary Unit.
- B. Unless otherwise specified by the Chapter, all Inclusionary Units shall remain affordable to the targeted income group for no less than ninety-nine (99) years or as prescribed in the Inclusionary Housing Guidelines. In no event may the period of affordability be less than the applicable period set forth in California Health and Safety Code sections 33413(c)(1) and (2). The Inclusionary Housing Guidelines shall provide procedures for the termination of the Affordable Housing Agreement in the event of the involuntary demolition or destruction of the Residential Development, and for termination in connection with the voluntary demolition or destruction of the Residential Development once the affordability has been provided for the minimum period hereunder after relocation benefits are provided for the occupants of the Inclusionary Units.

- C. Unless otherwise required by law, all promissory note repayments, shared appreciation payments, or other payments collected under this Section shall be deposited in the City of San José Inclusionary Fee Fund established pursuant to Section 5.08.700 of this Chapter.
- D. Any household that occupies an Inclusionary Unit must occupy that unit as its principal residence, unless otherwise approved in writing by the City Manager for rental to a third party for a limited period of time due to household hardship, as specified in the Inclusionary Housing Guidelines.
- E. Nonprofit affordable housing providers and government agencies may apply to the City for purchase of Inclusionary Housing Units for the purpose of sale or rental to eligible households so long as all of the terms of the Inclusionary Housing Agreement apply.
- F. No household may begin occupancy of an Inclusionary Unit until the household has been determined to be eligible to occupy that unit. Rental inclusionary units shall continue to be rented to income eligible households at an Affordable Housing Cost for the entire term of the inclusionary housing restriction. The Inclusionary Housing Guidelines shall establish standards for determining household income, maximum occupancy, Affordable Housing Cost, provisions for continued monitoring of tenant eligibility, and other eligibility criteria.
- G. Officials, employees, or consultants of the City and members of Boards and Commissions thereof, shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an Inclusionary Unit. The Inclusionary Housing Guidelines may include conflict of interest provisions relating to the administration of this Chapter and the eligibility of persons to occupy Inclusionary Units pursuant to this Chapter.

5.08.610 Affordable Housing Plan Submittal and Inclusionary Housing Agreement

- A. An Affordable Housing Plan shall be submitted as part of the application for First Approval of any Residential Development. No application for a First Approval for a Residential Development may be deemed complete unless an Affordable Housing Plan is submitted in conformance with the provisions of this Chapter.
- B. For each Construction Phase, the Affordable Housing Plan shall specify, at the same level of detail as the application for the Residential Development, all of the following information including, but not limited to:
 - 1. Whether the development is for sale or rental;
 - 2. How the inclusionary housing requirement will be satisfied pursuant to this Chapter;
 - 3. The number, Unit Type, tenure, number of bedrooms and baths, approximate location, size and design, construction and completion schedule of all Inclusionary Units;
 - 4. Phasing of Inclusionary Units in relation to Market Rate Units including the specific timing required by Section 5.08.460;
 - 5. Marketing plan, including (i) the manner in which Inclusionary Units will be offered to the public in a nondiscriminatory and equitable manner, or (ii) the manner in which Inclusionary Units will be offered in a nondiscriminatory manner intended to further the City's fair housing goals and accompanied by an anti-displacement policy applicable to the Inclusionary Units;

6. Specific methods to be used to verify tenant incomes, when applicable, and to maintain the affordability of the Inclusionary Units;
 7. A reliable financing mechanism for the ongoing administration and monitoring of rental Inclusionary Units;
 8. The Physical Needs Assessment where applicable, the manner in which repairs shall be made in compliance with this Chapter, and the manner by which a capital reserve for repair, replacement and maintenance shall be maintained for the term of the affordability restriction, with provision for sufficient initial capitalization and periodic contributions to the capital reserve; and
 9. Any other information that is reasonably necessary to evaluate the compliance of the Affordable Housing Plan with the requirements of this Chapter and the Inclusionary Housing Guidelines.
- C. Upon submittal, the City Manager shall determine if the Affordable Housing Plan is complete and conforms to the provisions of this Chapter and the Inclusionary Housing Guidelines. The decision of the City Manager may be appealed to the City Council in accordance with procedures for notice and hearing contained in Title 20 of the San José Municipal Code.
- D. The Affordable Housing Plan shall be reviewed as part of the First Approval of any Residential Development. The Affordable Housing Plan shall be approved if it conforms to the provisions of this Chapter and the Inclusionary Housing Guidelines. A condition shall be attached to the First Approval of any Residential Development to require recordation of the Inclusionary Housing Agreement described in Subsection G of this Section prior to the approval of any final or parcel map or building permit for the Residential Development.

- E. A request for a minor modification of an approved Affordable Housing Plan may be granted by the City Manager if the modification is substantially in compliance with the original Affordable Housing Plan and conditions of approval. Other modifications to the Affordable Housing Plan shall be processed in the same manner as the original plan.

- F. An Applicant may propose an alternative method of meeting inclusionary housing requirements that does not strictly comply with the requirements of this Chapter. The City Manager may approve such an alternative if he or she determines, based on substantial evidence, and which determination shall be specified in the Affordable Housing Plan, that the alternative will provide as much or more affordable housing at the same or lower income levels, and of the same or superior quality of design and construction, and will otherwise provide greater public benefit, than compliance with the express requirements of this Chapter and the Inclusionary Housing Guidelines.

- G. Following the First Approval of a Residential Development, the City shall prepare an Inclusionary Housing Agreement providing for implementation of the Affordable Housing Plan and consistent with the Inclusionary Housing Guidelines. Prior to the approval of any final or parcel map or issuance of any building permit for a Residential Development subject to this Chapter, the Inclusionary Housing Agreement shall be executed by the City and the Applicant and recorded against the entire Residential Development property and any other property used for the purposes of providing Inclusionary Housing pursuant to this Chapter to ensure that the agreement will be enforceable upon any successor in interest. The Inclusionary Housing Agreement shall not be amended without the prior written consent of the City and shall also not be amended prior to any necessary amendments to applicable Planning Permits.

- H. The City Council, by resolution, may establish fees for the ongoing administration and monitoring of the Inclusionary Units, which fees may be updated periodically, as required.

5.08.620 Inclusionary Housing Agreements for Affordable Housing Developments

- A. An Applicant with an Affordable Housing Development that is intending to provide units on-site pursuant to Section 5.08.400 may request to have the provisions required under this Chapter incorporated into any density bonus agreement required pursuant to San Jose Municipal Code Chapter 20.190 or for affordable housing streamlining pursuant to state law in accordance with procedures in the Inclusionary Housing Guidelines.
- B. Affordable Housing Developments may request a term of affordability of less than ninety-nine (99) years, but not less than fifty-five (55) years in accordance with procedures in the Inclusionary Housing Guidelines.

Part 7

Implementation, Waiver, and Enforcement

5.08.700 Inclusionary Fee Fund

- A. Unless otherwise required by law, all in lieu fees, fees, promissory note repayments, shared appreciation payments, or other funds collected under this Chapter shall be deposited into a separate account to be designated as the City of San José Inclusionary Fee Fund.
- B. The moneys in the Inclusionary Fee Fund and all earnings from investment of the moneys in the Inclusionary Fee Fund shall be expended to provide housing affordable to Extremely Low Income, Very Low Income, Lower Income, and Moderate Income Households in the City of San José ongoing administrative

costs including housing production, program management and inclusionary compliance monitoring.

5.08.710 Monitoring of Compliance

The Inclusionary Housing Guidelines and each Inclusionary Housing Agreement shall include provisions for the monitoring by the City of each Residential Development and each Inclusionary Unit for compliance with the terms of this Chapter, the Inclusionary Housing Guidelines, the applicable Inclusionary Housing Agreement, and, for Residential Development within a Redevelopment Project Area, the City shall also monitor and submit compliance reports to governmental agencies as required by law. Such provisions shall require compliance reports to be submitted to the City by the owner on at least a biennial basis and the City shall conduct periodic on-site audits to insure compliance with all applicable laws, policies, and agreements. The Council may adopt fees for the costs of monitoring and compliance by the City, which shall be deposited into the Inclusionary Fee Fund for that purpose.

5.08.720 Waiver

- A. Notwithstanding any other provision of this Chapter, the requirements of this Chapter may be waived, adjusted, or reduced if an Applicant shows, based on substantial evidence, that there is no reasonable relationship between the impact of a proposed Residential Development and the requirements of this Chapter, or that applying the requirements of this Chapter would take property in violation of the United States or California Constitutions.
- B. Any request for a waiver, adjustment, or reduction under this Section shall be submitted to the City concurrently with the Affordable Housing Plan required by Section 5.08.610 of this Chapter. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.

- C. The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the Affordable Housing Plan, and is subject to the appeal process for Affordable Housing Plans in Section 5.08.610.C.
- D. In making a determination on an application for waiver, adjustment, or reduction, the Applicant shall bear the burden of presenting substantial evidence to support the claim. The City may assume each of the following when applicable:
 - 1. That the Applicant will provide the most economical Inclusionary Units feasible, meeting the requirements of this Chapter and the Inclusionary Housing Guidelines.
 - 2. That the Applicant is likely to obtain housing subsidies when such funds are reasonably available.
- E. The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this Section.

5.08.730 Implementation and Enforcement

- A. The City Manager shall adopt guidelines to assist in the implementation and administration of all aspects of this Chapter.
- B. The City shall evaluate the effectiveness of the ordinance codified in this Chapter, for review by the City Council, five (5) years after the Operative Date of this Chapter.

- C. The City Attorney shall be authorized to enforce the provisions of this Chapter and all Inclusionary Housing Agreements, regulatory agreements, covenants, resale restrictions, promissory notes, deed of trust, and other requirements placed on Inclusionary Units by civil action and any other proceeding or method permitted by law. The City may, at its discretion, take such enforcement action as is authorized under this Code and/or any other action authorized by law or by any regulatory document, restriction, or agreement executed under this Chapter.
- D. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any Applicant or owner from the requirements of this Chapter. No permit, license, map, or other approval or entitlement for a Residential Development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this Chapter have been satisfied.
- E. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

5.08.740 Transition Period Procedures and Fees

- A. In Lieu Fees. In connection with the amendments to this Chapter adopted in 2021 by Ordinance No. 30538, in lieu fees that were applicable to Residential Developments with unexpired Planning Permit approvals (or otherwise deemed final pursuant to State law) prior to May 1, 2021 shall remain at the rates provided in the City's Schedule of Fees and Charges provided that such fees shall be increased pursuant to the Schedule of Fees and Charges on July 1 of each year by the Engineering News Record ("ENR") Construction Cost Index for the San Francisco Urban area published by McGraw Hill on January 1 of every year, or its successor publication, for the preceding twelve (12) months.

- B. Election to Comply with the Amended Ordinance. Residential Developments subject to this Chapter with unexpired Planning Permit approvals (or otherwise deemed final pursuant to State law) prior to May 1, 2021 that have not paid the In Lieu Fee, recorded an Inclusionary Housing Agreement or been issued a building permit, may elect to comply with the amendments to this Chapter adopted in 2021 by Ordinance No. 30538 by completion of a replacement Affordable Housing Plan and Acknowledgement, provision of all required submittals consistent with this Chapter as amended and the Inclusionary Housing Guidelines, and the approval of the replacement Affordable Housing Plan.
- C. Operative Date for the Amendments. The amendments to this Chapter adopted in 2021 by Ordinance No. 30538 are intended to be operative on May 1, 2021.

PASSED FOR PUBLICATION of title this 23rd day of February, 2021, by the following vote:


AYES: ARENAS, CARRASCO, COHEN, DAVIS, FOLEY, JONES, JIMENEZ, MAHAN, PERALEZ, LICCARDO.

NOES: NONE.


ABSENT: ESPARZA.

DISQUALIFIED: NONE.

ATTEST



TONI J. TABER, CMC
City Clerk



SAM LICCARDO
Mayor

Exhibit E

RECORDING REQUESTED
BY CITY OF SAN JOSE:

When Recorded, Return To:
City of San José
200 East Santa Clara Street
San José, CA 95113
Attn: City Clerk, 2nd Floor West Wing

**PARKLAND AGREEMENT
FOR
TENTATIVE MAP NO. [REDACTED].
BETWEEN
CITY OF SAN JOSE
AND
GOOGLE LLC AND
RESTRICTIONS AND COVENANTS RELATING TO
PRIVATE RECREATIONAL IMPROVEMENTS**

This Agreement (“Agreement”) is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (“City”), and GOOGLE LLC, a Delaware limited liability company (“Developer”) as of the date of City's execution (“Effective Date”). Each of City and Developer are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

RECITALS

A. In connection with its Downtown West Mixed-Use Plan (herein, the "Project"), City and Developer have entered into a Development Agreement (the "Development Agreement"), adopted by the City Council on _____, 2021, by Ordinance No. _____, approving the Development Agreement and authorizing the City Manager to execute the Development Agreement on behalf of the City (the "Enacting Ordinance"). The Enacting Ordinance took effect on _____, 2021.

B. In connection with the Project, Developer has filed Vesting Tentative Map Number [REDACTED] (the “Tentative Map”) with the City’s Planning Department for the subdivision of the

Project site, as defined in the Development Agreement, and has obtained Planned Development Permit No. PD19-029 (“PD Permit”) for the Project.

C. Under the provisions of Chapter 19.38 of the San José Municipal Code (“Parkland Dedication Ordinance”), developers of residential subdivisions are required to dedicate property for neighborhood and community parks, construct park or recreational improvements, and/or pay in-lieu fees (“Parkland Dedication Obligation”).

D. In order for Developer to satisfy Developer’s Parkland Dedication Obligation for the residential units identified on the Tentative Map, Developer and City desire to enter into this Agreement pursuant to which Developer shall satisfy its Parkland Dedication Obligation for development of four thousand (4,000) residential units as follows: (i) Developer shall dedicate a minimum of four and eight-tenths (4.8) acres of real property for public parks and trail to the City of San José; and (ii) Developer shall construct turnkey improvements, enhanced landscaping, and new plantings to these dedicated parks and trail, providing design and programming that would meet or exceed the requirements of the City's Parkland Dedication Ordinance (collectively, the “Park Improvements”, and individually a “Park Improvement”); and (iii) for development of residential units in excess of four thousand (4,000), payment of in-lieu fees (“Parkland Fees”) or use of credits as set forth in this Agreement. Park Improvements are to have an average value of One hundred Ninety Five Dollars (\$195) per square foot (in 2021 dollars, escalating by the California Construction Cost Index, which is a subset of the Engineering News Record Construction Cost Index), as specified in Table 1 of Exhibit E1 hereto (“Park Improvements Value”). The Park Improvements Value includes, but is not limited to, the City’s Review Fees as defined in Section 3(I), and all fees and costs for design and construction materials and labor incurred by Developer in connection with the Park Improvements, including direct costs, soft costs, and contingency as reflected in Table 2 of Exhibit E1. Costs associated with any remediation, removal, disposal, or any combination thereof, of contaminated materials to meet applicable regulatory requirements for public park and trails uses shall not be included in the Park Improvements Value or otherwise applied to satisfy the Parkland Dedication Obligation.

E. Developer may also propose certain Private Recreation Improvements as defined in City Resolution No. 73587, dated January 9, 2007 (“Private Recreation Improvements”) within the Project in accordance with the requirements of the PD Permit and for which Developer is also eligible to receive credit against its Parkland Dedication Obligation as set forth in the Parkland Dedication Ordinance and this Agreement.

F. City’s Director of Parks, Recreation and Neighborhood Services ("PRNS") (“PRNS Director”) is charged with the administration of this Agreement in conjunction with the Director of Public Works (“Director of PW”). The Director of PW in coordination with the PRNS Director is responsible for the review, inspection, approval, and acceptance of the proposed City-owned Park Improvements. As described in the Downtown West Planned Development Zoning and General Development Plan for the Plan Area, the Director of PBCE is the decisionmaker for Open Space Conformance Review, following consultation with PRNS Director.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. REPRESENTATIONS AND WARRANTIES OF DEVELOPER.

Developer represents and warrants to City that the following facts are true and correct:

A. The statements and certificates made on the Tentative Map and documents filed in conjunction with the Tentative Map remain true and correct.

B. Any and all documents provided to City pursuant to the terms of this Agreement, or in connection with the execution of this Agreement, are now in full force and effect and contain no inaccuracies or misstatements of fact. Developer covenants that at such time City notifies Developer of City's intention to accept any Park Improvements, if any of these documents contain inaccuracies, misstatements, or have become obsolete, Developer shall notify City and provide City with the information required to render the documents accurate, complete, and current.

C. Developer has the legal ability to enter into this Agreement and Developer's signatory(ies) to this Agreement is (are) duly authorized to sign this Agreement on its behalf. In the event the Developer is not the legal owner of the real property identified in the Development or on the Tentative Map and on which any Park Improvements are to be constructed, then the legal owner shall also be required to execute this Agreement and shall be subject to all terms, conditions, and obligations of this Agreement.

SECTION 2. COLLABORATION AND OBLIGATIONS REGARDING DISC AND CITY-DEDICATED OPEN SPACE.

A. In furtherance of the collaborative efforts described in Section 3.6 of the Development Agreement, as well as the collective goals of Developer, City, and the other DISC Partner Agencies (California High-Speed Rail Authority; Valley Transportation Authority; Caltrain; Metropolitan Transportation Commission (MTC)) to effectively deliver both the Project and DISC, this section describes the understandings of City and Developer relative to DISC and the City-Dedicated Open Space:

a. The Project proposes to dedicate and improve the following City-Dedicated Open Spaces adjacent to the existing and potential future rail alignment: Northend Park, St. John Triangle, and Los Gatos Creek Connector.

b. DISC Partner Agencies have indicated an intention to elevate the rail tracks and rail structure as part of DISC, providing new opportunities to connect to these concurrently planned parks to uses located to the west of the current rail alignment.

c. Timing and phasing of DISC and other potential rail or transit projects (including California High Speed Rail) in the vicinity of the Project have not been finalized; and as of the Effective Date of this Agreement a Concept Layout for the Diridon Integrated Station Concept has been approved by the City (February 2020).

d. In order to maximize parks and open space, as well as transit and connectivity in the near- and long-term, Developer and City shall proceed in the manner described in Section 2(B) of this Agreement with respect to any acquisition by a DISC Partner Agency(ies); and with

respect to any potential DISC construction needs that may affect a City-Dedicated Open Space, including any temporary construction easement(s) (TCE), Developer and City shall proceed in accordance with Section 2(C) of this Agreement. Such Sections include consultation and meet and confer processes between City and Developer, in addition to the City's and Developer's collaborative efforts with the DISC Agency(ies) described in Section 3.6 of the Development Agreement. Any changes to the design of a City-Dedicated Open Space resulting from City and/or Developer collaboration and discussions with a DISC Partner Agency(ies) shall be a subject for any meet and confer process(es) between City and Developer, and City and Developer shall proceed as otherwise described in this Agreement.

e. To maximize functional park space, the Los Gatos Creek Connector has been designed to eventually extend underneath an elevated rail structure, which may require an easement or other ownership structure to be agreed upon by City and other DISC Partner Agency(ies). During construction, City and Developer anticipate that the DISC Partner Agency(ies) would require a TCE within the Los Gatos Creek Connector.

f. New park spaces at St. John Triangle and the Northend Park have been planned to be outside of the established Transit Project Buffer Zone, as defined in the Development Agreement. City and Developer anticipate that a TCE may be required by a DISC Partner Agency(ies) for California High Speed Rail or other transit projects, at the western edge of the Northend Park.

g. Compensation for any TCE required by a DISC Partner Agency(ies)– including any impact to the City-Dedicated or Privately-Owned Publicly Accessible Open Spaces, or any other private property – would be required consistent with law. In the event of any permanent acquisition by a DISC Partner Agency(ies), Developer or City as landowner, as applicable at the time of acquisition, would proceed in accordance with law and established practices for eminent domain proceedings.

B. City and Developer acknowledge and understand that the Project and the Parkland Dedication Obligation described herein may be subject to subsequent proceedings initiated by any of the DISC Partner Agencies to acquire one or more portions of the Plan Area, potentially

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including one or more portions of the proposed City-Dedicated Open Space proximate to an existing rail line. If any DISC Partner Agency(ies) initiates proceedings to acquire any portion of the Plan Area for an approved alignment and expansion of the high speed rail right-of-way or other rail right-of-way, Developer may be unable to proceed in the manner described in this Agreement. In the event that a DISC Partner Agency(ies) initiates acquisition of one or more portions of the proposed City-Dedicated Open Space, City and Developer shall proceed in the following manner.

a. If a DISC Partner Agency initiates acquisition of all or a portion of a City-Dedicated Open Space prior to Developer's initiation of design for that City-Dedicated Open Space as described in Section 5(B), the Parties understand that 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 may be amended from time to time. In the event of such an acquisition, and that acquisition results in a reduction in the size of a City-Dedicated Open Space as reflected in Exhibit E2, Developer shall pay to the City an amount equal to the fair market value received for the acquired land from the DISC Partner Agency(ies) promptly after such value is received by Developer, and that value shall then be available for use as credit toward the Project's Parkland Obligation for residential units constructed, or otherwise utilized as set forth in Section 3(B) upon termination or expiration of the Development Agreement. Any amounts paid to the City in the manner described in this paragraph shall not be subject to the limitations described in Section 4(F) regarding payment of Parkland Fees and use of Private Recreation Improvements credits, and the amount of the acquired acreage shall be counted toward Developer's acreage obligations set forth in Sections 3(O), 4(G)(b) and 4(G)(d) upon payment to the City of the fair market value received for the land. Upon payment by Developer as described in this paragraph, any security(ies) provided by Developer for the acquired land shall be released. For the portion of the City-Dedicated Open Space that is not acquired by the DISC Partner Agency(ies), Developer shall construct Park Improvements and dedicate that remaining portion in accordance with this Agreement. In addition to the fair market land value pass-through payment described above, any required payment of Parkland Fees for the Park Improvements Value associated with the acquired portion of the City-Dedicated Open

Space shall be paid to City prior to issuance of a building permit for the Building associated with the subject City-Dedicated Open Space in Exhibit E3.1, and such Parkland Fees shall be calculated based on the amount of acquired, or lost acreage, multiplied by one hundred ninety-five dollars (\$195), subject to escalation based on the California Construction Cost Index.

b. At least six (6) months prior to initiating design of a City-Dedicated Open Space, Developer shall consult with Department of Parks, Recreation and Neighborhood Services staff and Department of Transportation staff regarding the status of the DISC. At the time Developer initiates design of a City-Dedicated Open Space as described in Section 5(B), or any time thereafter but prior to City's issuance of a Notice of Acceptance and recordation of the grant deed for that City-Dedicated Open Space, if Developer and/or City reasonably determines that any portion of the Open Space is reasonably likely to be acquired by a DISC Partner Agency(ies), City and Developer shall meet and confer to reach agreement regarding the manner in which Developer is to satisfy its Parkland Obligation with respect to the subject City-Dedicated Open Space. Such agreement shall be consistent with the intent of this Parkland Agreement, and with the following principles.

1. Developer and City shall remain in a financially neutral position, meaning that Developer shall not be required to incur higher costs or expenses than it otherwise would incur under this Agreement, or to pay amounts in excess of its Parkland Obligation; and Developer shall not be relieved of satisfying the Parkland Dedication Obligation for residential units constructed as part of the Project;

2. Both the Project and DISC are to be effectively delivered and accommodated to the extent feasible; and

3. The Parties intend to minimize impacts of DISC project construction activity on existing and future development within the Project Site boundary.

c. If a DISC Partner Agency initiates acquisition of all or a portion of a City-Dedicated Open Space after City's Acceptance of that City-Dedicated Open Space, Developer shall have no obligation to provide replacement open space area or to pay additional Parkland Fees, and the

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amounts received by City for the fair market value of the acquired land and for the value of any Park Improvements thereon shall be retained by PRNS.

C. Prior to commencement of construction of a City-Dedicated Open Space, Developer shall again consult with City Parks, Recreation and Neighborhood Services Department and City Department of Transportation staff regarding the status of the DISC. If Developer and City determine that any portion of the Open Space is reasonably likely to require use by a DISC Agency(ies) for construction staging or similar disruptive construction activity, Developer shall remain obligated to dedicate the land to City, and City shall accept such land, in accordance with the terms of this Agreement, including Exhibit E5 hereto; provided, however, that City and Developer shall meet and confer to mutually determine whether Developer shall delay commencement of construction of the Park Improvements, including demolition and grading activity, until the DISC Agency activity within the Open Space has ceased, or whether Developer shall instead provide the Park Improvements Value to the City so that the City may itself complete the Park Improvements. If the Parties determine that Developer shall delay commencement of construction and Completion of the Park Improvements, Developer's obligation to construct the Park Improvements within the affected portion of the City-Dedicated Open Space shall survive the termination or expiration of the Development Agreement. If City and Developer reasonably determine that use of all or a portion of a City-Dedicated Open Space by a DISC Agency(ies) would delay Completion of construction of the Park Improvements thereon by more than one year beyond the date on which the Development Agreement has terminated or expired, notwithstanding Section 4(F) of this Agreement, at its option Developer shall be permitted to provide the City with the remaining Park Improvements Value for the affected City-Dedicated Open Space, escalated in accordance with the California Construction Cost Index, and the City shall Accept the offer of dedication for the subject City-Dedicated Open Space, or portion thereof, and use the Park Improvements Value to construct the Park Improvements. If this occurs, the City shall release any security associated with such Park Improvements upon receipt of the funds and dedication of the land for City-Dedicated Open Space.

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SECTION 3. DEDICATION OF PARKS; DESIGN AND DEVELOPMENT OF PARK IMPROVEMENTS; CREDIT FOR PRIVATE RECREATIONAL IMPROVEMENTS.

A. Subject to Section 2(B), in satisfaction of its Parkland Dedication Obligation for development of four thousand (4,000) residential units Developer affirms its commitment to dedicate to City a minimum of four and eight-tenths (4.8) acres of real property located on Lots A, B, E, F, H, I, P, Q, R, and airspace parcel of Lot 20 (“City-Dedicated Open Space”) as identified on the Tentative Map for the Project, and as described in the Downtown West Design Standards and Guidelines. An offer of dedication for each City-Dedicated Open Space shall be made concurrent with the final map that contains the subject City-Dedicated Open Space, and shall be recorded immediately following approval of the final map that contains the Building or development parcel that corresponds with the trigger for that City-Dedicated Open Space as reflected in Exhibits E3.1 and E3.2. The offers for dedication shall be substantially in the form as set forth in Exhibit E4, and shall be recorded in the Official Records, as defined in the Development Agreement. City shall accept an offer of dedication by grant deed only after issuance of a Notice of Acceptance of the Park Improvements thereon and in accordance with the timing requirements, and in the delivery condition set forth in Exhibit E5. Subject to Developer’s rights under the Existing Agreements, Developer shall be responsible for all costs incurred in the conveyance of the City-Dedicated Open Space to City in accordance with the requirements and specifications set forth in this Agreement and the Development Agreement. If the construction and Completion of the City-Dedicated Open Space is not triggered pursuant to Exhibits E3.1 and E3.2 prior to the expiration or termination of the Development Agreement, and Developer has not otherwise Completed the City-Dedicated Open Space such that credits would be provided and administered as set forth in Section 3(B), upon the termination or expiration of the Development Agreement the offer of dedication for such City-Dedicated Open Space shall also terminate and be void, and City shall promptly execute and record a notice terminating or vacating the offer of dedication. All City-Dedicated Open Space shall meet the requirements and standards set forth in Exhibit E5.

B. In the event Developer Completes and dedicates a City-Dedicated Open Space, and the credit value for the improved City-Dedicated Open Space exceeds the Parkland Dedication

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Obligation for the Project upon the termination or expiration of the Development Agreement, Developer shall receive credit for the City Dedicated-Open Space, including the Park Improvements Value, and such credits shall be applied toward the Project's Parkland Dedication Obligation as residential units are constructed. Upon the termination or expiration of the Development Agreement, if any credits for land dedication and/or Park Improvements Value remain available and are not utilized to satisfy the Project's Parkland Dedication Obligation, such credits may be used by Developer, or by another developer(s) if transferred by Developer to that other developer(s), to satisfy the obligations under the City's Parkland Dedication Ordinance for new residential development within the Downtown West Planned Development District, with such credits provided at a ratio of one-to-one unit basis.

C. Reconfiguration and/or Project redesign of a City-Dedicated Open Space may be necessary in the event Developer is prohibited from building to the maximum heights reflected in the DWDSG as a result of adoption of a construction tower crane policy that prohibits or impacts Developer's ability to construct to such maximum heights. Any reconfiguration or redesign would have a negative impact on Developer's master planning efforts, lessening the amount of square footage for both commercial and residential uses, and potentially reducing the number of residential units that may be developed within the Plan Area. Subject to the requirements of Sections 4(F), 4(G), and 4(J) of this Agreement, such reconfiguration and/or reduction in residential development may result in less parkland being constructed either as a result of a trigger building not being built or as a result of fewer residential units being constructed.

D. As reflected in Exhibits E3.1 and E3.2, the land for Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2 is to be dedicated by grant deed to the City prior to construction and dedication to the City of the Park Improvements thereon. The dedication of Los Gatos Creek Trail Connector 1 and Los Gatos Creek Trail Connector 2 shall be accepted by the City in conjunction with a fully executed leaseback agreement. The intent of the leaseback agreement is to enable Developer to Complete the required Park Improvements; allow non-income producing interim uses by Developer, such as landscaping and/or construction staging; require the same insurance and indemnification as set forth in this Agreement; and to require Developer to maintain and manage the property, including any necessary security and fencing, until such time

as the Park Improvements are accepted by the City in accordance with the terms of this Agreement. Additionally, the parties have mutually agreed that the agreement between the Parties is for a gross leaseback to Developer for a cost of one dollar (\$1.00) per year. To enable Developer's timely construction and Completion of the Park Improvements on Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2 as set forth in Exhibit E3.1, City shall provide written notice to Developer within ninety (90) days of City's issuance of a building permit for construction of, and also at issuance of a Certificate of Occupancy for, affordable housing developments on Block H5 and on Block H6.

E. The Park Improvements to be installed on a City-Dedicated Open Space shall be Completed in accordance with the City-Dedicated Open Space Dedication and Improvements Schedule and Park Dedication/Delivery Triggers Figure set forth in Exhibits E3.1 and E3.2. For clarity, except as otherwise set forth herein, Developer shall not be obligated to install Park Improvements on any City-Dedicated Open Space unless and until Developer undertakes the actions or development set forth in Exhibit E3.1 that corresponds to any such Park Improvements. Subject to approval by the Directors of PRNS and PW, City may elect to extend the Delivery trigger reflected in Exhibit E3.1 by twelve (12) months to allow Developer to complete installation of art, or kiosks/pavilions or other optional structures, that are not essential to the intended use of the park by the public ("Park Art and Optional Structures"). Alternatively, subject to approval of the Directors of PRNS and PW, Completion of Park Improvements upon any City-Dedicated Open Space for purposes of determining compliance with Exhibit E3.1, and issuance of a Notice of Acceptance for such Park Improvements by Director of PW as outlined in Exhibit E5 of this Agreement shall be permitted to occur without first requiring the completed installation of Park Art and Optional Structures, so long as (i) final installation of such Park Art and Optional Structures will not interfere with the safe use of the park by the public, and (ii) Developer provides the Park Art and Optional Structures Security as described in this Agreement so that the City may utilize the Security to complete the installation or construction of the Park Art and Optional Structures following City's acceptance of the Park Improvements, which City shall complete within twelve (12) months of Developer providing the Security; provided however, that City shall release all other bonds and securities as indicated in Exhibit E5 and in

accordance with this Agreement. Separately, Completion also does not include or require relinquishment and improvement of any Park Construction Right of Entry, which Right of Entry areas are depicted in Exhibit E6 (referred to therein as “Temporary Construction Easement (TCE)”), so long as (i) Developer provides the Park Construction Right of Entry Security as described in this Agreement, and (ii) the Park Construction Right of Entry is relinquished and improved within six (6) months of issuance of the temporary certificate of occupancy for the fronting building; provided however, that City shall release all other bonds and securities as indicated in Exhibit E5 and in accordance with this Agreement, except the Park Construction Right of Entry Security as described in Section 6(A)(6) of this Agreement which shall be released as specified in Section 6(C)(6).

F. As more particularly described in Exhibit E5, Developer shall be responsible for the development of Park Improvements Plans for, and the construction of the Park Improvements on the City-Dedicated Open Space, consistent with the Park Improvements Plans, and as otherwise described in this Agreement and the Development Agreement. Developer shall construct the Park Improvements in conformance with the Park Improvements Plans and Downtown West Design Standards and Guidelines, and all applicable standards and specifications in effect on the Effective Date of this Agreement, except as otherwise set forth herein.

G. Developer has no obligation to construct other improvements on the City-Dedicated Open Space beyond the Park Improvements.

H. The Parties acknowledge that the exact size, dimensions, and other particular characteristics of the Park Improvements have not been determined as of the Effective Date of this Agreement. The Parties, however, agree that the Park Improvements shall consist of the Park Improvements as conceptually depicted and described in the Downtown West Design Standards and Guidelines, with a minimum cumulative acreage of 4.8 acres for the development of 4,000 units, as reflected on the Tentative Map for the Project and based on the unit equivalent values reflected in Table 1 of Exhibit E1. As described in Section 4(B), any future adjustments to the conceptual City-Dedicated Open Space sizes, as permitted by the General Development Plan, shall be identified and finally approved at the Conformance Review stage or the processing of a

final map that includes the subject City-Dedicated Open Space, whichever occurs first, and shall be tracked using Exhibit E7, which Exhibit shall ensure compliance with the requirements of this Agreement.

I. Developer shall be responsible for all costs incurred for planning, design, construction, and supervision of the construction of all Park Improvements, including without limitation, the Review Fees. All such costs are included in, and are part of the Park Improvements Value. For clarity, the Park Improvements Value includes, but is not limited to, the City's Review Fees and all fees and costs for design and construction materials and labor incurred by Developer in connection with the Park Improvements, including direct costs, soft costs, and contingency as reflected in Table 2 of Exhibit E1. Costs associated with any remediation, removal, disposal, or any combination thereof, of contaminated materials to meet applicable regulatory requirements for public park and trails uses shall not be included in the Park Improvements Value or otherwise applied to satisfy the Parkland Dedication Obligation. Developer and City agree that the Park Improvements Value shall not be less than the values set forth in Table 1 of Exhibit E1. The Review Fees shall be in an amount equal to seventeen and one-half percent (17.5%) of the direct costs, which Review Fees are reflected in Table 2 of Exhibit E1, and which direct costs and Review Fee shall both escalate by the California Construction Cost Index. Twenty percent (20%) of the Review Fees for each City-Dedicated Open Space shall be paid upon submittal of the Vertical Conformance Review application for the Building associated the subject City-Dedicated Open Space in Exhibit E3.1; and the remaining eighty percent (80%) of the Review Fees for each City-Dedicated Open Space shall be paid upon submittal of the Open Space Conformance Review application for the subject City-Dedicated Open Space. Developer shall cause all labor and material incorporated in the Park Improvements to be furnished in accordance with the requirements and specifications set forth in this Agreement.

J. As described and depicted in the Downtown West Design Standards and Guidelines, kiosks and/or pavilions are included as optional features in some of the City-Dedicated Open Spaces. The improvement value of such kiosks and/or pavilions is not included in the Park Improvements Value and, therefore, it is understood that the improvement value of any kiosk or pavilion constructed within a City-Dedicated Open Space may exceed the Park Improvements

Value. In its sole discretion, the City may elect to approve Park Improvements Plans for a City-Dedicated Open Space during Conformance Review with a kiosk and/or pavilion. If the City elects to include a kiosk/pavilion in a City-Dedicated Open Space, the improvement value of such kiosk/pavilion shall be permitted to be used to satisfy any outstanding Parkland Dedication Obligation associated with the development of four thousand (4,000) residential units. In the event the improvement value of such kiosk/pavilion exceeds the value of any remaining Parkland Dedication Obligation, Developer may use such value to satisfy any Parkland Dedication Obligation associated with the development of more than four thousand (4,000) residential units. If Developer does not develop more than four thousand (4,000) residential units, Developer's shall receive credits for the excess improvement value of a kiosk or pavilion, which shall be available for use consistent with Section 3(B).

K. Each individual Park Improvement shall be deemed Completed and accepted by City upon recordation of the Notice of Acceptance by Director of PW as outlined in Exhibit E5 of this Agreement. Upon Developer's request, the PRNS Director, in consultation with the Director of PW, may, at the their discretion, grant extensions of one or more of the Completion requirements specified in this subsection.

L. With respect to any Park Improvements which are owed but which have not been Completed as specified in Exhibit E3.1 to the Development Agreement, the credits for the incomplete improvements shall be disallowed and Developer and City shall proceed in accordance with Section 7.

M. Subject to Section 3(O), the Project is eligible to receive credit for Private Recreation Improvements pursuant to the Parkland Dedication Ordinance. The description of the Private Recreation Improvements that may be included in the Project by Developer and that, if included, shall receive credit pursuant to Chapter 19.38 as set forth in City Council Resolution No. 73587 dated January 9, 2007. Developer may request Private Recreation Improvements credit for qualifying Private Recreation Improvements in a residential building at the time of Conformance Review for that building by submitting for review by the PRNS Director documentation including, but not limited to: (i) a written summary of all qualifying on-site Private Recreation

Improvements, (ii) a table itemizing all proposed Private Recreation Improvements by net square footage, (iii) the location, (iv) classification type (active classification or non-active elements classification), (v) dimensioned and labeled floor plans showing all private recreational amenities, and (vi) photo simulations or other illustrative examples of proposed recreational accessories. The PRNS Director will review the Private Recreation Improvements credit documentation and, if in conformance with the criteria in Resolution No. 73587, tentatively approve the recreation credit. Credits shall be finally approved upon Completion of the Private Recreation Improvements consistent with the Private Recreation Improvements credit documentation and this Agreement, but shall only be available for Developer's use pursuant to the provisions of Section 3(O) below. Developer shall complete the installation of the Private Recreation Improvements described in Resolution No. 73587 prior to the issuance of a Final Certificate of Occupancy for the residential building(s) in which the Private Recreation Improvements are located or to which the Private Recreation Improvements are tied.

With respect to any Private Recreation Improvements that have not been Completed prior to the issuance of a Final Certificate of Occupancy for the residential building of which the improvements are a part, the credits for the incomplete improvements shall be disallowed and Developer shall be required to pay Parkland Fees, if any such fee is owed, together with additional charges as set forth in the Parkland Dedication Ordinance.

N. Developer acknowledges and agrees that Developer shall not receive any credit for eligible Private Recreation Improvements pursuant to the Parkland Dedication Ordinance unless (i) constructed in full compliance with this Agreement, or as otherwise creditable to the satisfaction of PRNS Director; and (ii) subject to a restrictive covenant as set forth below in Section 3(P).

O. Credit for Private Recreation Improvements constructed in accordance with the requirements of this Agreement and the Exhibits hereto shall not be credited against the Parkland Dedication Obligation unless and until (i) at least two and four tenths (2.4) acres of City-Dedicated Open Space have been dedicated and Park Improvements associated with such acreage have been Completed and Accepted by the City, (ii) at least four (4) acres of Privately-

Owned Publicly Accessible Open Space have been Completed and Delivered and a restrictive covenant(s) as described in Section 4.1.3 of the Development Agreement has (have) been recorded to maintain public access, and (iii) either (x) the Development Agreement has expired or terminated, or (y) Developer has satisfied its Parkland Dedication Obligation for the development of four thousand (4,000) residential units and thereafter constructs residential units in excess of those four thousand units. With respect to any Private Recreation Improvements that have not been Completed as specified in this Agreement, the credits for the incomplete improvements shall be disallowed.

P. Prior to receipt of credit for any Private Recreation Improvements, Developer acknowledges and agrees that use of the Private Recreation Improvements shall be restricted for recreation purposes by a recorded covenant which runs with the land for the life of the subject residential building, and which expressly cannot be defeated or eliminated without the written consent of the City as described in the Parkland Dedication Ordinance. For clarity, Private Recreation Improvements for which Developer does not receive credit toward its Parkland Dedication Obligation are not subject to this, or any other requirements of this Agreement.

Q. Developer acknowledges that pursuant to the covenants set forth in Section 3(P) above, the Developer or Owner shall henceforth be required to maintain all such Private Recreation Improvements in safe working order and provide access for regular inspections at the City's request. After any such inspection and pursuant to written request by the City, the Developer or Owner shall promptly provide for any remedial actions, replacement, and/or repair work as may be necessary to ensure that the improvements remain in safe working order for recreational use.

R. In the event that the project contains Private Recreational Improvements designated in this Agreement or associated exhibits as 'publicly accessible,' the Developer or Owner agrees to maintain public access to these amenities for a minimum of 360 days per year. The Developer may however, post reasonable Rules and Regulations for respectful use and maintenance of Private Recreational Improvements and areas as well as conduct occasional extended closures, subject to approval by PRNS Director. This Section shall apply in addition to any Easements or Restrictions which may be in place providing for public access and/or appurtenant uses.

SECTION 4. COMPLIANCE WITH THE PARKLAND DEDICATION ORDINANCE AND SATISFACTION OF PARKLAND OBLIGATION.

A. Subject to Section 2(B), the Parties acknowledge and agree that the calculation of the Developer's Parkland Dedication Obligation for development of four thousand (4,000) residential units is set forth in Exhibit E8, including the calculation of Parkland Fees. As reflected in Exhibit E8, the total Parkland Dedication Obligation, based on the number of type of units to be provided – such as mid-rise, high-rise, market-rate, and affordable – shall be blended across the Project, regardless of unit type, and administered uniformly based on the number of residential units produced, as shown in Table 2 in that Exhibit. The Park Improvements Value is set forth in Table 1 of Exhibit E1. Credits for Private Recreational Improvements, if any, are described in City Council Resolution No. 73587.

B. The final acreage of each City-Dedicated Open Space shall be verified at the Conformance Review stage or the processing of a final map that includes the subject open space, whichever occurs first. If the size of a City-Dedicated Open Space is different from the acreage set forth in this Agreement and Exhibit E2 hereto, which may occur due to final roadway or parcel alignments, among other reasons, that acreage will be reflected and tracked in Exhibit E7. If the size of a City-Dedicated Open Space is increased or decreased, subject to Section 2(B), Developer shall adjust other City-Dedicated Open Spaces so that the total acreage of City-Dedicated Open Space provided for the development of 4,000 residential units is at least 4.8 acres. Such reallocation shall not require amendment to this Agreement or to the Development Agreement. At the termination or expiration of the Development Agreement, City and Developer shall verify the total City-Dedicated Open Space acreage provided by the Project and calculate any remaining Parkland Dedication Obligation that is owed. Any remaining Parkland Dedication Obligation shall be satisfied in accordance with Section 4(L).

C. Except as otherwise provided herein and in the Development Agreement, provided that Developer is not in material default hereunder, and provided further that Developer satisfies all other terms, conditions, and requirements associated with issuance of a building permit(s), City shall issue all building permits necessary for the residential units identified on the Tentative Map.

Ex. E-17

D. City acknowledges and agrees that Developer's performance of this Agreement shall fully satisfy Developer's Parkland Dedication Obligation under the City's Parkland Dedication Ordinance for development of four thousand (4,000) residential units in the Plan Area. The Parties further acknowledge and agree that the Parkland Dedication Obligation set forth in Exhibit E8 for development of four thousand (4,000) residential units is based on and assumes the development of six hundred (600) of the 4,000 residential units as affordable housing units on the affordable housing sites H1, H5, and H6 that Developer will dedicate to the City. In the event the City and/or an affordable housing developer causes more than 600 affordable housing units to be developed on the affordable housing sites, any parkland dedication obligation applicable to such additional affordable housing units shall be the responsibility of, and attributed to the developer of those additional units; and Developer's Parkland Dedication Obligation shall not be decreased or increased or otherwise affected as a result of such additional affordable housing development on the affordable housing sites, nor shall such additional units be counted toward or otherwise affect any milestones or triggers set forth in this Agreement, including, but not limited to, the requirements contained in Section 4(H) and in Exhibit E8 hereto.

E. Pursuant to the terms of the Development Agreement, the Parkland Fee in effect upon the Effective Date of the Development Agreement, which Fee is reflected in Exhibit E8, is vested for the term of the Development Agreement, subject to escalation based on the California Construction Cost Index. Upon such escalation of the Parkland Fee, the land value of any City-Dedicated Open Space dedicated thereafter, and the Park Improvements Value for any Park Improvements constructed thereafter shall escalate by a commensurate amount using the California Construction Cost Index. Further, the following underlying assumptions upon which the Parkland Dedication Obligation is based, and which are set forth in Exhibit A to Resolution Number 73587 and Section 1 of Exhibit A of Resolution No. 75346 as amended by Resolution _____ **[ADD FINAL RESOLUTION NUMBER]**, shall be fixed and vested for the term of the Development Agreement: (i) mid-rise residential units have an occupancy rate of two and thirty-four hundredths (2.34) persons per unit; (ii) high-rise residential units have an occupancy rate of one and fifty-one hundredths (1.51) persons per unit; (iii) the Parkland Fees charged for each

deed restricted, low income residential unit shall be set at fifty percent (50%) of the otherwise applicable Parkland Fees for each such unit; and (iv) the Parkland Fees charged for each deed restricted, moderate income residential unit shall be set at fifty percent (50%) of the otherwise applicable Parkland Fees for each such unit.

F. Regardless of any land acquisition or condemnation that may occur as a result of the actions described in Section 2(B) of this Agreement and which affects a portion(s) of the Plan Area anticipated for development of City-Dedicated Open Space, in no event shall Developer be permitted to satisfy more than fifty percent (50%) of its Parkland Dedication Obligation through the combination of (a) payment of Parkland Fees, and (b) Private Recreation Improvements credit. Further, City and Developer acknowledge and agree that, following dedication and acceptance by the City of a City-Dedicated Open Space, the amount of credits received by Developer for such land and any Park Improvements thereon shall be unaffected by any future actions by any DISC Partner Agency that may affect such land.

G. Developer acknowledges that of the 4,000 housing units covered in this Agreement, approximately 2,900 units are proposed south of Santa Clara Street and approximately 1,100 units are proposed north of Santa Clara Street. While Developer is committed to providing Privately-Owned Publicly Accessible Open Space in addition to its commitments set forth in this Parkland Agreement, as described in Section 4.1.3(a) of the Development Agreement, the Privately-Owned Publicly Accessible Open Space is not counted toward satisfaction of Developer's Parkland Obligation. As a result, the Parkland Dedication Obligation for units developed south of Santa Clara Street above the 2,000th residential unit cannot be fully met through the proposed City-Dedicated Open Space located south of Santa Clara Street. The following provisions address how the Parkland Dedication Obligation may be met while addressing this imbalance.

a. **At the end of the Term of this Agreement, if fewer than two thousand (2,000) residential units are constructed south of Santa Clara Street,** the Developer shall dedicate City-Dedicated Open Space and construct Park Improvements thereon sufficient to meet the minimum Parkland Dedication Obligation for the number of residential units constructed no later

than thirty (30) years after the Effective Date of the Development Agreement, which Parkland Dedication Obligation for fewer than 2,000 residential units cannot be met by payment of Parkland Fees, use of credits for Private Recreation Improvements, or provision of Privately-Owned Publicly Accessible Open Space; provided, however, if satisfaction of this requirement would obligate Developer to dedicate and/or Complete only a portion of a proposed City-Dedicated Open Space, City and Developer shall cooperate in Good Faith to (i) redesign proposed Park Improvements to Los Gatos Creek Connector 1 and/or Los Gatos Creek Connector 2 so that the land value plus the Park Improvements Value does not exceed, and is equivalent to the remaining Parkland Dedication Obligation, in which case the applicable Park Improvements Value reflected in Table 1 of Exhibit E1 would not apply and certain requirements of the DWDSG may need to be waived as permitted by the DWDSG and/or the General Development Plan; (ii) increase the size of a City-Dedicated Open Space(s), or add a City-Dedicated Open Space adjacent to a residential building, in an amount equal to the remaining Parkland Dedication Obligation, provided the location and size of such space is approved by the Director of PRNS; (iii) dedicate and improve a portion of a Privately-Owned Publicly Accessible Open Space that is equivalent to the remaining Parkland Dedication Obligation, converting that portion to a City-Dedicated Open Space; and/or (iv) pay Parkland Fees to satisfy the remaining obligation. The obligations under this Section 4(G)(a) apply even if the buildings that would otherwise trigger the Parkland Dedication Obligation as set forth in Exhibits E3.1 and E3.2 have not been constructed during the 30-year period after the Effective Date of the Development Agreement.

b. **At the end of the Term of this Agreement, if two thousand (2,000) or more residential units are constructed south of Santa Clara Street and Developer does not develop North of Santa Clara Street,** then Developer shall dedicate at least two and four tenths (2.4) acres of City-Dedicated Open Space South of Santa Clara Street and construct Park Improvements thereon to satisfy the Parkland Dedication Obligations for 2,000 residential units, and may improve and dedicate additional parkland, pay Parkland Fees, apply accrued credits for Private Recreation Improvements, or any combination thereof, in order to satisfy the remaining Parkland Dedication Obligation for the residential units constructed in excess of 2,000. The

obligations under this Section 4(G)(b) cannot be met by the provision of Privately-Owned Publicly Accessible Open Space. The obligations under this Section 4(G)(b) apply even if 2.4 acres of City-Dedicated Open Space has not otherwise been triggered as set forth in Exhibits E3.1 and E3.2 because construction on the development parcels that correspond to the City-Dedicated Open Space has not occurred during the 30-year period after the Effective Date of the Development Agreement.

c. **At the end of the Term of this Agreement, if more than 2,000 residential units are constructed south of Santa Clara Street and Developer develops any additional buildings North of Santa Clara Street,** then Developer shall have dedicated the City-Dedicated Open Spaces and constructed Park Improvements thereon in accordance with this Agreement, including the delivery and Completion triggers set forth in Exhibits E3.1 and E3.2, subject to Section 2(B), which delivery triggers ensure that 2.4 acres of City-Dedicated Open Space is provided for the development of 2,000 residential units. For example, if 2,000 residential units are constructed and a Temporary Certificate of Occupancy for a Building on Block G is not issued, Los Gatos Creek Park and Los Gatos Creek Trail (Block G), which are triggered by issuance of a Temporary Certificate of Occupancy on Block G, would not be required to be built if development also occurs north of Santa Clara (such as on Block A1, which would trigger construction of Northend Park) because the combined acreage would be equal to or greater than 2.4 acres for the 2,000 residential units. Any outstanding Parkland Obligation shall be satisfied in accordance with Section 4(L).

d. In no event shall the use of Private Recreation Improvements credit be used prior to Developer's Completion of 2.4 acres of City-Dedicated Open Space and construction of Park Improvements thereon, nor shall any combination of Parkland Fees and Private Recreation Improvements credit be applied to satisfy more than fifty percent (50%) of the Project's Parkland Dedication Obligation, consistent with Section 4(F).

The obligations of this Section 4(G) shall survive the termination or expiration of this Agreement and/or the Development Agreement.

H. Upon Developer's dedication of three parcels of real property, currently identified as Properties H1, H5 and H6 (the "City-Dedicated Affordable Housing Sites") to the City (or its designee) for use in the production of affordable housing, the combined six hundred (600) affordable housing units that are assumed for these Sites, as reflected in Exhibit E8, shall be counted toward the 1,250 residential units that would trigger the Design Outside Date referenced in Section 5(B) and set forth in Section 5(C) for the Social Heart open space, and toward the 1,500 residential units and 3,250 residential units, respectively, that would trigger the dedication and Completion for the Social Heart open space and the St. John Triangle open space, which triggers are set forth in Exhibits E3.1 and E3.2. For clarity, upon dedication of each of the three City-Dedicated Affordable Housing Sites, it shall be assumed, for the limited purpose of triggering the Design Outside Date, dedication, and Completion of the Social Heart, and the dedication and Completion of St. John Triangle, that the residential units assumed for that Site have received Temporary Certificates of Occupancy. Therefore, upon dedication of all three of the City-Dedicated Affordable Housing Sites and issuance of Temporary Certificates of Occupancy for the balance of the residential units indicated in Exhibit E3.1—whether issuance of Temporary Certificates of Occupancy for such residential units occurs before or after dedication of the City-Dedicated Affordable Housing Sites, and no matter where such units are located within the Project Site—the Design Outside Date, and the dedication and Completion requirements for the Social Heart, respectively, shall be triggered and the Social Heart shall be delivered within twenty-four (24) months of issuance of a Temporary Certificate of Occupancy for the 1,500th residential unit, unless earlier triggered by the issuance of a Temporary Certificate of Occupancy for development on Block D4; and the dedication and Completion of St. John Triangle shall be triggered and St. John Triangle shall be delivered within 12 months of issuance of a Temporary Certificate of Occupancy for the 3,250th residential unit, unless earlier triggered by issuance of a Temporary Certificate of Occupancy for a Building on Block C2.

I. Notwithstanding the Completion timing requirements set forth in Section 4(H), in Exhibits E3.1 and E3.2, or elsewhere in Development Agreement and other Exhibits thereto, if the Completion requirement for the Social Heart is triggered by issuance of a Temporary Certificate of Occupancy for the 1,500th residential unit developed in the Project (rather than for

issuance of a Temporary Certificate of Occupancy for a Building on Block D4), the Completion date for the Social Heart (inclusive of the subterranean garage) shall be extended to provide Developer twenty-four (24) months to Complete the Social Heart from the date on which that portion of the VTA's BART Silicon Valley Phase II Extension Project located adjacent to the south side of West Santa Clara Street, between Autumn Street and the San José Diridon Caltrain Station ("BART Project") is completed, if due to active or reasonably imminent construction staging or other construction-related activity on or in the vicinity of the Social Heart, the BART Project prevents, delays, or otherwise interferes with Developer's timely construction and Completion of the Social Heart and/or the subterranean garage.

J. In addition to adhering to the schedule set forth in Exhibits E3.1 and E3.2 and the other timing requirements of this Agreement, and the Development Agreement, through Completion and delivery of a combination of (i) City-Dedicated Open Space and (ii) Privately-Owned Publicly Accessible that is subject to recorded restrictive covenant(s) as described in Section 4.1.3 of the Development Agreement and reflected in Exhibit E7 (the "Covenant Privately-Owned Publicly Accessible Open Space"), Developer shall ensure that a cumulative minimum of fifty-two (52) square feet of Completed open space is provided for each residential unit that is constructed. Continued compliance shall be demonstrated and confirmed through the accounting process required as part of the Conformance Review for vertical development. Final acreage of the open spaces shall be verified in the manner set forth in Section 4(B). City shall deny Conformance Review for a subsequent residential building that would cause the cumulative minimum square feet of open space for each residential unit to fall below 52 square feet. Further, pursuant to Section 4.1.3(a)(iii) of the Development Agreement, in the event Developer fails to Complete any Covenant Privately-Owned Publicly Accessible Open Space in accordance with the completion schedule set forth in Section 4.1.3(a)(i) therein, Developer shall be required to pay the Private Open Space Delay Penalty Fee. For clarity, it is understood that Privately-Owned Publicly Accessible Open Space, including Covenant Privately-Owned Publicly Accessible Open Space cannot be used to satisfy Developer's Parkland Dedication Obligation.

K. Certain exceptions from the Parkland Dedication Ordinance (San José Municipal Code Chapter 19.38) are necessary in order to provide the City-Dedicated Open Spaces in the manner

Ex. E-23

set forth in the Development Agreement and this Agreement. The exceptions from certain provisions of the Parkland Dedication Ordinance are listed in Exhibit E9. The City has agreed to grant the waivers or exceptions listed in Exhibit E9. With respect to items (i) and (ii) listed in Paragraph 2 of Exhibit E9, the City has further agreed that such exceptions shall not impact the amount of credit that Developer is eligible to receive for land and Park Improvements impacted by those exceptions, except that credit shall not be granted for above-grade existing and/or proposed building footprints, vehicular access ways and aprons, elevators and associated lobbies, and similar non-open, non-park or non-recreational features located within any City-Dedicated Open Space; and for item (iii) in Paragraph 2, the exception shall not impact the amount of the credit that Developer is eligible to receive for the Park Improvements, and the City agrees that it shall provide seventy-five percent (75%) credit for the land value of the Social Heart park. For clarity, credits shall be available for land underlying park-related and recreational structures, which structures may include but are not limited to kiosks/pavilions or similar structures permitted by the DWDSG, park maintenance facilities, or restrooms.

L. Subject to Section 4(G), upon the termination or expiration of the Development Agreement, any outstanding Parkland Dedication Obligation that has accrued based on the number of residential units constructed as of such termination or expiration shall first be satisfied through any then-available credits from dedicated acreage and/or costs of Park Improvements for the City-Dedicated Open Space in accordance with Exhibit E8 and this Agreement. Thereafter, subject to Sections 3(O), 4(F), and 4(J), any remaining Parkland Dedication Obligation for the number of residential units constructed shall be satisfied with Private Recreation Improvements credits, if any, followed by payment of Parkland Fees. This Section 4(L) shall survive the termination or expiration of the Development Agreement.

M. Subject to the mutual understandings and acknowledgments set forth in Section 4(D) and the other requirements and limitations set forth in this Agreement, in the event Developer intends to develop more than four thousand (4,000) residential units (meaning Developer develops more than 3,400 residential units, subtracting from the 4,000 total units the 600 residential units assumed to be developed on the City-Dedicated Affordable Sites), Developer agrees to immediately notify the PRNS Director. Any additional Parkland Dedication Obligation that may

be required shall first be satisfied by excess credit from dedicated acreage and/or costs of Park Improvements for the City-Dedicated Open Space, if any. Any remaining obligation shall then be satisfied by Private Recreation Improvements credits authorized for the first 4,000 units, if any, followed by payment of Parkland Fees.

N. Because of the benefit to the Development that will result from the Park Improvements and land dedication, Developer agrees to design, develop, and construct the Park Improvements on the City-Dedicated Open Space and to dedicate the City-Dedicated Open Space as specified in this Agreement and the exhibits and attachments hereto, and as provided in the Downtown West Design Standards and Guidelines, without any obligation on the part of City with respect to design, development, or construction except as otherwise provided in this Agreement.

SECTION 5. REVIEW OF CITY-DEDICATED OPEN SPACE DESIGN; OPEN SPACE IMPROVEMENT CONFORMANCE REVIEW

A. Prior to initiating design of any City-Dedicated Open Space, Developer shall meet with PRNS Staff, after which PRNS Staff will support community outreach and engagement for the park design and naming. Developer agrees to hold two community meetings prior to submittal of an application for Open Space Improvement Conformance Review pursuant to the provisions of the Downtown West Planned Development Zoning and General Development Plan. Developer shall consider the input and comments received from the public during the community meetings when finalizing its application for Open Space Conformance Review. Following submittal of Developer's Open Space Conformance Review application, which application shall contain the thirty-five percent (35%) Park Improvements Plans described in Section 5(C), below, the Parks and Recreation Commission shall review the application and 35% Park Improvements Plans at a public hearing, and shall thereafter make a recommendation to the Director of PBCE regarding approval or disapproval of the Open Space Conformance Review. If consistent with all applicable design standards, taking into account input from the public and the Parks and Recreation Commission, the Director of PBCE, in consultation with the Director of PRNS, shall approve the Open Space Conformance Review and 35% Park Improvements Plans contained therein. Technical review of the City-Dedicated Open Space design shall occur in accordance with the provisions of Exhibit E5.

Ex. E-25

B. In accordance with the Design Outside Date Schedule set forth below, as part of its Open Space Improvement Conformance Review application for the Park Improvements, in addition to paying Review Fees in accordance with Section 3(I), Developer shall submit Park Improvements Plans (defined in Exhibit E5) at thirty-five percent (35%) consistent with the Design Submittal Requirements set forth in the City's Turnkey Project Process and Submittal Requirements, dated November 5, 2019, and the Conformance Review Implementation Guide for the Project. Following Conformance Review Approval as described in Section 5(A), Developer shall submit Park Improvements Plans at sixty-five percent (65%) and ninety-five percent (95%), consistent with the Design Submittal Requirements set forth in the City's Turnkey Project Process and Submittal Requirements, dated November 5, 2019, and the Conformance Review Implementation Guide for the Project, which 65% and 95% Plans and technical specifications shall be reviewed by the Director of PW. The 95% Park Improvements Plans for City-Dedicated Open Space shall be reviewed, approved, and signed by the Director of PW, and approval from the Director of PW and issuance of a Notice to Proceed shall authorize construction.

C. The Design Outside Date Schedule referenced in Section 5(B) sets forth the dates by which the Conformance Review application and 35% Park Improvements Plans for each City-Dedicated Open Space shall be submitted in the manner described in the General Development Plan for the Downtown West Planned Development Zoning District. The Design Outside Date Schedule shall be as follows:

- a. Los Gatos Creek Trail (Block E): within six (6) months of Conformance Determination approval for Block E1;
- b. Los Gatos Creek Trail (Block G): within six (6) months of Conformance Determination approval for block G1;
- c. Los Gatos Creek Park: within six (6) months of Conformance Determination approval for block G1;
- d. Los Gatos Creek Connector 1: within six (6) months of Conformance Determination approval for 1st residential building of H3;

Ex. E-26

- e. Social Heart: within six (6) months of the earlier of Temporary Certificate of Occupancy for the twelve hundred fiftieth (1,250th) unit or Conformance Determination approval for Block D4;
- f. Northend Park: within six (6) months of Conformance Determination Approval for the first building on Block A1;
- g. Los Gatos Creek Connector 2: within six (6) months of Conformance Determination approval for the first (1st) residential building of Block H6;
- h. St. John Triangle: within six (6) months of Conformance Determination approval for the first (1st) building of Block C1 or C2.

SECTION 6. BONDS AND SECURITY.

Developer shall furnish to City the following security separately for each City-Dedicated Open Space, for the purposes, in the amounts, and under the conditions that follow:

A. Type and Amounts.

- 1. Performance Security. To assure the Developer's faithful performance to the City of this Agreement to Complete the Park Improvements in an amount equal to one hundred percent (100%) of the direct costs reflected in Table 2 of Exhibit E1 for the Park Improvements for the City-Dedicated Open Space(s) included in the final map, subject to escalation based on the California Construction Cost Index (hereinafter "Performance Security"), which shall be furnished by Developer to the City prior to approval of the final map and shall be subject to adjustment pursuant to Section 6(B)(2); and
- 2. Payment Security. To secure Developer's payment to any contractor, subcontractor, person renting or supplying equipment, or furnishing labor and materials for completion of the Park Improvements included in the final map, in the additional amount of one hundred percent (100%) of the direct cost reflected in Table 2 of Exhibit E1 for the subject Park Improvements for the subject City-Dedicated Open Space, subject to escalation based on the California

Construction Cost Index (hereinafter “Payment Security”), which shall be furnished by Developer to the City prior approval of the final map; and

3. Warranty Security. To warranty the Developer’s work to the City with respect to Park Improvements included in the final map, for a period of one (1) year following recordation of the Notice of Acceptance against any defective work or labor done or defective materials furnished in the additional amount of twenty-five percent (25%) of the direct costs reflected in Table 2 of Exhibit E1 for the Park Improvements for the subject City-Dedicated Open Space, subject to escalation based on the California Construction Cost Index (hereinafter “Warranty Security”). The Warranty Security shall be furnished by Developer to the City prior to issuance of the Notice of Acceptance.

4. Landscaping Security. To secure Developer’s installation and maintenance of landscaping as may be required by the landscaping specifications in the Park Improvement Plans, at such time as any drought restrictions on landscaping installation have been rescinded (hereinafter “Landscaping Security”). The Parties acknowledge that any City restrictions on the installation of landscaping because of drought conditions may delay Developer's installation of the landscaping contemplated by this Agreement. If, due to drought restrictions, Developer is unable to install the landscaping in time to be inspected by the Director of PW for the purposes of accepting the Completed Park Improvements, Developer shall post a bond or other form of security acceptable to the Director of PW.

5. Park Art and Optional Structures Security. To allow for City to install or construct any remaining Park Art and Optional Structures following Completion of a City-Dedicated Open Space, Developer shall post a bond or other form of security acceptable to the Director of PW, and in an amount equal to the cost at that time of the remaining Park Art and Optional Structures. The Park Art and Optional Structures Security shall be furnished by Developer to the City prior to the final Notice of Acceptance for a Park Improvement within the subject City-Dedicated Open Space.

6. Park Construction Right of Entry Security. To allow for City to Accept a Completed City-Dedicated Open Space within which Developer retains a Park Construction Right of Entry

as described in Section 3(E), Developer shall post a bond or other form of security acceptable to the Director of PW for the portion of the City-Dedicated Open Space subject to the Construction Right of Entry (the “Right of Entry area”), and in an amount equal to one hundred percent (100%) of the direct costs for the Park Improvements Value attributable to the Right of Entry Area. Such amount shall be determined by dividing the direct costs for the Park Improvements Value reflected in Table 2 of Exhibit E1 for the subject City-Dedicated Open Space (which costs are subject to escalation based on the California Construction Cost Index) by the total square footage of that City-Dedicated Open Space, and multiplying that value by the total square footage of the Right of Entry Area ([direct costs/total square footage] * Right of Entry area square footage). The Park Construction Right of Entry Security shall be furnished by Developer to the City prior to the final Notice of Acceptance for a Park Improvement within the subject City-Dedicated Open Space.

B. Conditions.

1. Developer shall provide the required security on forms approved by City and from sureties authorized by the California Insurance Commissioner to transact the business of insurance. Any bonds furnished by Developer to satisfy the security requirements in this Section 6 shall be in the forms attached hereto as Exhibit E10, as may be amended by City from time to time.
2. A condition of the Developer’s security is that any changes in the Park Improvements cost as reflected in the construction contract that do not exceed ten percent (10%) of the original estimated hard cost of the Park Improvements as reflected in Table 2 of Exhibit E1 shall not relieve the security. In the event that the construction contract indicates that the Park Improvements cost is more than ten percent (10%) over the original estimated cost of the Park Improvements, Developer shall provide security as required by Section 6(A) of this Agreement for One Hundred Percent (100%) of the total estimated cost of the Park Improvements as reflected in the construction contract.
3. Developer’s Performance Security pursuant to Section 6(A)(1) shall compensate City for the actual cost of Completing the required Park Improvements in the Event of Default, as defined

in Section 7 below, by Developer in the performance of this Agreement, regardless of whether City's cost of Completion exceeds the Park Improvements Value of the Park Improvements.

4. A condition of Developer's security is that any request by Developer for an extension of time for the commencement or Completion of the work under this Agreement may be granted by City without notice to Developer's surety and such extensions shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement.

5. As a condition of granting any extension for the commencement or Completion of any work under this Agreement, Director of PW may require Developer to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by Director of PW.

6. If Developer seeks to replace any security with another security or securities, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by Developer to Director of PW; and (3) upon its written acceptance by Director of PW, be deemed to be a part of this Agreement. Upon Director of PW's acceptance of a replacement security, the former security may be released by City.

7. Upon a Transfer that includes the Transfer of Developer's obligations with respect to a City-Dedicated Open Space that has not yet been Completed, (i) Transferee shall provide security in accordance with the requirements of this Agreement, or (ii) if Developer has previously provided security in accordance with this Agreement for the subject City-Dedicated Open Space, Transferee shall promptly provide new security, which security shall replace the security provided by Developer for the subject City-Dedicated Open Space. If Transferee provides security as required by (ii), above, upon Director of PW's acceptance of the new security from Transferee, the former security provided by Developer/Transferor shall be released by the City.

C. Release of Securities. City shall release the securities required by this Agreement as follows:

1. Performance Security. City shall release each Performance Security for a Park Improvement upon recordation of the Notice of Acceptance for that Park Improvement, or any portion thereof, or as may otherwise be authorized in accordance with California Government Code Sections 66499.7(a)–(g).
 2. Payment Security. City shall release the Payment Security for a Park Improvement included in a final map in accordance with California Government Code Section 66499.7(h).
 3. Warranty Security. City shall release the Warranty Security for a Park Improvement upon expiration of the warranty period for that Park Improvement and settlement of any claims filed during the warranty period. City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney’s fees, for any claims filed during the warranty period.
 4. Landscaping Security. City shall release the Landscaping Security at such time when the drought restrictions have been rescinded as further described in Section F(3) of Exhibit E5.
 5. Park Art and Optional Structures Security. City shall release the Park Art and Optional Structures Security upon its completed installation or construction of the remaining Park Art and Optional Structures.
 6. Park Construction Right of Entry Security. City shall release the Park Construction Right of Entry Security upon Developer's relinquishment of the Park Construction Right of Entry and Completion of Park Improvements within the Right of Entry area in accordance with this Agreement.
- D. Injury to Park Improvements, Public Property, or Public Utility Facilities. Until recordation of the Notice of Acceptance of the Park Improvements as provided in Exhibit E5, Developer assumes responsibility for the care and maintenance of, and any damage to, the Park Improvements. Developer shall replace or repair all Park Improvements, public utility facilities, and surveying or subdivision monuments and benchmarks that are destroyed or damaged for any reason, regardless of whether resulting from the acts of the Developer, prior to the recordation of

the Notice of Acceptance; provided, however, that if Developer identifies a responsible third party for such damage, Developer may pursue recovery of its repair costs and expenses from such responsible third party at its sole cost and expense. Developer shall bear the entire cost of such replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval of the Director of PW.

Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss, or damage, regardless of cause, occurring to the work or Park Improvements prior to recordation of the Notice of Acceptance of the work or improvements.

SECTION 7. DEFAULT.

A. Developer shall be in default hereunder upon the occurrence of any one or more of the following events (“Event of Default”):

1. Developer’s failure to timely Complete construction of one of more Park Improvements under this Agreement;
2. Developer’s failure to timely cure any defect in any Park Improvement;
3. Developer’s failure to perform construction work for a period of twenty (20) business days after commencement of work;
4. Developer’s insolvency, appointment of receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Developer fails to discharge within sixty (60) days;
5. Developer assigns this Agreement in violation of Section 10; or
6. Developer fails to perform or satisfy any other term, condition, or obligation under this Agreement.

B. If an Event of Default occurs and the Event of Default is not cured by Developer in accordance with Section 7(E) below, City in its sole discretion shall be entitled to terminate Developer’s control over the Park Improvements described herein and hold Developer and its

surety liable for all damages suffered by City as a result of the Event of Default. City shall have the right, at its sole discretion, to draw upon or use the appropriate security to mitigate City's damages in the Event of Default by Developer. City may use the sums provided by the Performance Security in addition to any other remedies available at law or in equity to City for the Completion of the Park Improvements in accordance with the Park Improvements Plans. The Parties acknowledge and agree that the estimated costs and security amounts may not reflect the actual cost of construction of any specific Park Improvement for which the security is provided, and therefore, City's damages in the Event of Default by Developer shall be measured by the actual cost of Completing the required Park Improvements to the satisfaction of City. City may use the sums provided by the securities for the Completion of the Park Improvements for which the security is provided in accordance with the Project Specifications.

C. City may take over the work and Complete the Park Improvements for which the security is provided, by contract or by any other method City deems appropriate, at the sole cost and expense of Developer. In such event, City, without any liability for any work or actions previously performed by Developer with respect to the subject Park Improvements, may Complete the Park Improvements using any of Developer's materials, appliances, plans, or other property located at the Park Site and that are necessary to Complete the Park Improvements. The rights and remedies set forth in this Section 7 shall affect and concern only the specific Park Improvement(s) that are the subject of the specific Event of Default.

D. Unless the PRNS Director determines that the circumstances warrant immediate enforcement of the provisions of this Section 7 in order to preserve the public health, safety, and welfare, the PRNS Director shall give twenty (20) working days' prior written notice of termination to Developer ("Notice Period"), which notice shall state in reasonable detail the nature of Developer's default and the manner in which Developer can cure the default. During the Notice Period, Developer shall have the right to cure any such default; provided, however, if a default is of a nature which cannot reasonably be cured within the Notice Period, Developer shall be deemed to have timely cured such default for purposes of this Section if Developer commences to cure the default within the Notice Period, and prosecutes the same to completion within a reasonable time thereafter.

Ex. E-33

E. If an Event of Default occurs and the Event of Default is not cured by Developer in accordance with Section 7(D) above, City in its sole discretion shall be entitled to terminate Developer's control over the specific Park Improvement(s) that is the subject of the Event of Default and hold Developer and its surety liable for all damages suffered by City as a result of the Event of Default. City shall have the right, at its sole discretion, to draw upon or use the appropriate security to mitigate City's damages in the Event of Default by Developer. City may use the sums provided by the Performance Security for the Completion of the Park Improvements in accordance with the Park Improvements Plans.

Following an Event of Default and Developer's failure to cure, City may take over the work and Complete the Park Improvements, by contract or by any other method City deems appropriate. In such event, City may Complete the Park Improvements using any of Developer's materials and/or plans that are necessary to Complete the Park Improvements.

F. If an Event of Default occurs, Developer agrees to pay any and all costs and expenses incurred by City in securing performance of such terms, conditions, or obligations giving rise to the Event of Default, including but not limited to, fees and charges of architects, engineers, contractors, and other professionals but specifically excluding legal costs and expenses including attorneys' fees and court costs.

G. City's rights and remedies specified in this Section 7 shall be deemed cumulative and in addition to any rights or remedies City may have at law or in equity, including but not limited to withholding the approval of Conformance Review for a subsequent residential building.

SECTION 8. INDEMNITY/HOLD HARMLESS.

City, or any officer, employee, or agent thereof shall not be liable for any loss or injury to persons or property occasioned by reason of the acts or omissions of Developer, its agents, employees, contractors, or subcontractors in the performance of this Agreement. Developer further acknowledges and agrees to protect, indemnify, defend and hold City, its officers, agents and employees harmless from and against any and all liability, loss, cost and obligations on account of or arising out of or resulting from any injury or loss caused directly or indirectly by any cause

whatsoever in connection with or incidental to the activities performed by Developer under this Agreement, except to the extent such injury or harm is caused by the sole active negligence or willful misconduct of City, its officers, agents, or employees. This Section 8 shall survive the recordation of the Notice of Acceptance, acceptance of any Park Improvement as to that Park Improvement, or sooner termination of this Agreement for a period of one (1) year from the date of such acceptance or termination. Recordation of the Notice of Acceptance by City of any Park Improvement shall not constitute an assumption by City of any responsibility or liability for any loss or damages covered by this Section 8.

Developer shall reimburse City for all reasonable costs and expenses, including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs, incurred by City in enforcing this Section 8.

SECTION 9. NOTICES.

Any notice required or permitted to be given under this Agreement shall be in writing and personally served or sent by U.S. mail, postage prepaid, addressed as follows:

To PRNS Director: City of San José
Department of Parks, Recreation and Neighborhood Services
Attn: PRNS Parks Planning Division Manager
200 East Santa Clara Street, Tower-9th Floor
San José, CA 95113

To Director of PW: City of San José
Department of Public Works
Attn: City Facilities Architectural Services Deputy Director
200 East Santa Clara Street, Tower-6th Floor
San José, CA 95113

To Developer: Google LLC
1600 Amphitheatre Parkway
Mountain View, Ca 94043
Attn: REWS Department / Downtown West SJ Project
Executive

with a copy to:

Google LLC
Ex. E-35

1600 Amphitheatre Parkway
Mountain View, Ca 94043
Attn: Legal Department / R/E Matters

Attn: Gregg Miller
Coblentz Patch Duffy & Bass LLP
One Montgomery Street, Suite 3000
San Francisco, CA 94104

Notice shall be deemed given upon receipt. The Parties shall notify each other of changes in either their respective addresses or their representatives subject to notification in accordance with the provisions of this Section.

SECTION 10. TRANSFER AND RELEASE.

This Agreement may not be assigned or transferred in part or in whole by Developer except as allowed by the Development Agreement. Any attempts to assign or transfer any terms, conditions, or obligations under this Agreement without compliance with the requirements set forth in the Development Agreement shall be voidable at City's sole discretion.

SECTION 11. BINDING UPON SUCCESSORS.

Subject to Section 10, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors, assignees, transferees, and legal representatives.

SECTION 12. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with California law.

SECTION 13. ENTIRE AGREEMENT.

The Development Agreement and this Agreement, including the exhibits, attachments and appendices, contain the entire agreement of the Parties with respect to the satisfaction of the requirements of the Parkland Dedication Ordinance for the Project and supersedes all prior understandings or representations of the Parties, whether written or oral. Any subsequent modification of this Agreement must be made in writing and signed by all Parties hereto.

SECTION 14. TIME OF ESSENCE.

Time is of the essence in the performance of this Agreement.

SECTION 15. FORCE MAJEURE.

- A. “Force Majeure” has the meaning as set forth in the Development Agreement.
- B. Should a Force Majeure Event prevent performance of this Agreement, in whole or in part, the Party affected by the Force Majeure Event shall be excused or performance under this Agreement shall be suspended to the extent commensurate with the Force Majeure Event; provided that the Party availing itself of this Section promptly notifies the other Party after learning of the occurrence of a Force Majeure Event that actually causes delay; and provided further that the time of suspension or excuse shall not extend beyond that reasonably necessitated by the Force Majeure Event.
- C. Notwithstanding the foregoing, the following shall not excuse or suspend performance under this Agreement:
 - 1. Performance under this Agreement shall not be suspended or excused for a Force Majeure Event pertaining to the Work if such event is not defined as a Force Majeure Event under the applicable contract for the Work.
 - 2. Negligence or failure of Developer to perform its obligations under a contract for the Work (other than for a Force Majeure Event as defined under the applicable contract) shall not constitute a Force Majeure Event.
 - 3. The inability of Developer for any reason to have access to funds necessary to carry out its obligations under this Agreement or the termination of any contract for the prosecution of the Work for such reason or for Developer's default under such contract shall not constitute a Force Majeure Event.

SECTION 16. BOOKS AND RECORDS.

A. Developer shall be solely responsible to implement internal controls and record keeping procedures in order to comply with this Agreement and all applicable laws. Developer shall maintain any and all ledgers, books of account, invoices, vouchers, bids, cancelled checks, and other records or documents evidencing or relating to the activities performed by Developer under this Agreement, including without limitation those relating to the construction of the Park Improvements, for a minimum period of three (3) years, or for any longer period required by law, from the date of termination of this Agreement or the date of the City's acceptance of the Park Improvements, whichever is longer. Notwithstanding this previous sentence, Developer shall retain such records beyond three (3) years so long as any litigation, audit, dispute, or claim is pending.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Developer's address indicated for receipt of notices in this Agreement.

C. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Developer's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized in writing by Developer, Developer's representatives, or Developer's successor-in-interest.

D. Developer's obligations under this Section shall be in addition to Developer's obligations specified in Exhibit E5.

SECTION 17. MISCELLANEOUS PROVISIONS.

- A. Captions. Captions and Sections of this Agreement are for convenience only and shall not be considered in resolving any questions of interpretation or construction.
- B. Incorporation of Recitals. The Recitals in this Agreement are hereby incorporated into the terms of this Agreement.
- C. Jurisdiction. In the event that suit shall be brought by any of the Parties, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.
- D. Waiver. Developer agrees that waiver by City of any breach or violation or any term, condition, or obligation of this Agreement shall not be deemed to be a waiver of any other term, condition, or obligation contained herein or a waiver of any subsequent breach or violation of the same term, condition, or obligation.
- E. Plurality. As used in this Agreement and when required by the context, each number (singular and plural) shall include all numbers.
- F. Compliance with Laws. Developer, its employees, agents, representatives, contractors, and subcontractors shall comply with all local, state and federal laws in the performance of this Agreement.
- G. Nondiscrimination. Developer, its employees, agents, representatives, contractors, and subcontractors shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or any other recognized or protected class in connection with or related to the performance of this Agreement. Developer shall expressly require compliance with the provisions of this Section 1(G) in all agreements with contractors and subcontractors for the performance of the improvements hereunder.

H. Developer has read each and every part of this Agreement, including without limitation, its exhibits, and Developer freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such Party may have drafted this Agreement or any of its provisions.

I. Whenever in this Agreement words of obligation or duty are used, such words shall have the force and effect of covenants. Any obligation imposed by either Party shall include the imposition on such Party of the obligation to pay all costs and expenses necessary to perform such obligation, except as otherwise provided herein.

J. Severability. If any provisions or portions of this Agreement are held to be invalid by a court of competent jurisdiction, the remaining provisions or portions of this Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the Parties.

K. This Agreement is entered into pursuant to and shall be governed by the Parkland Dedication Ordinance and the Development Agreement. If not otherwise defined in this Agreement or in the Development Agreement, capitalized terms shall have the meanings set forth in Chapter 19.38 of the San José Municipal Code.

SECTION 18. AGREEMENT'S EXHIBITS.

This Agreement includes the following Exhibits:

- E1 Park Improvements Value and Costs
- E2 Public and Private Open Space Approximate Acreage
- E3 Delivery of City-Dedicated Open Space
 - E3.1 City-Dedicated Open Space Dedication and Improvements Schedule
 - E3.2 Park Dedication/Delivery Triggers Figure
- E4 Dedication Form

Ex. E-40

- E5 Design and Construction Requirements
- E6 Diagram of Construction Right of Entry Area
- E7 Park Dedication Tracking and Verification Table
- E8 Parkland Dedication Obligation
- E9 List of Required Exceptions from Parkland Dedication Ordinance
- E10 Bond Forms

WITNESS THE EXECUTION HEREOF the day and year hereinafter written by City.

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By: _____

City Clerk

Date: _____

Johnny V. Phan
Chief Deputy City Attorney

DEVELOPER

GOOGLE LLC, a Delaware limited liability
company

By: _____

Name: _____

Title: _____

- * All Developer's signatures must be accompanied by an attached notary acknowledgement.
- * Proof of authorization for Developer's signatures is required to be submitted concurrently with this Agreement.

STATE OF CALIFORNIA)
) SS
COUNTY OF SANTA CLARA)

On _____ before me _____,
(Name, Title of officer – e.g. Jane Doe, Notary Public)

personally appeared _____ who proved to me on the basis
of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature of Notary) (Seal)

Exhibit E1

Exhibit E1

Park Improvements Value and Costs

Table 1 - Estimated Credits, Park Improvements Value, and Unit Equivalency¹

Parks and Open Space	Acreage Credit	Units Equivalent	Improvement Costs	Units Equivalent	Total Credits	Total Units Equivalent
LGC Connector ²	\$2,936,320	210	\$5,647,039	405	\$8,583,359	615
LGC Park on G	\$1,189,476	85	\$3,669,093	263	\$4,858,569	348
Social Heart	\$1,387,223	99	\$7,221,778	517	\$8,609,000	617
St. John Triangle	\$4,943,422	354	\$14,544,521	1,042	\$19,487,943	1,396
Northend Park	\$2,856,030	205	\$5,225,147	374	\$8,081,177	579
Subtotal Parks OS	\$13,312,471	954	\$36,307,578	2,601	\$49,620,048	3,555
Los Gatos Creek Trail (E)	\$821,178	59	\$1,781,907	128	\$2,603,085	187
Los Gatos Creek Trail (G)	\$890,886	64	\$2,713,981	194	\$3,604,867	258
Subtotal Trails OS	\$1,712,064	123	\$4,495,888	322	\$6,207,952	445
Total OS	\$15,024,535	1,076	\$40,803,466	2,924	\$55,828,000	4,000

¹ The cost of the Park Improvements (the “Park Improvements Value”) reflected in Table 1 includes, but is not limited to, the City’s Review Fees, direct costs, soft costs, and contingency reflected in Table 2 of this Exhibit E1.

² As set forth in Exhibit E3.1, Los Gatos Creek Connector is anticipated to be improved in two parts -- Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2, which each have different Completion triggers. Upon Completion of Park Improvements in accordance with Exhibit E3.1, each of these spaces shall result in a proportional share of the aggregated Improvement Value credits.

Table 2 - Detailed Cost Estimates

City-Dedicated Open Spaces	Baseline Direct	Soft Cost (18%)	Project Contingency (25%)	City Review Fee (17.5%)	Baseline Construction Budget	Cost/Acre	Cost/SF
Los Gatos Creek Connector	\$3,422,448	\$616,041	\$1,009,622	\$598,928	\$5,647,039	\$6,205,475	\$142
Supply & Installation of Hard Landscaping	\$492,034	\$88,566	\$145,150	\$86,106	\$811,856		
Supply & Installation of Semi Permeable	\$730,136	\$131,425	\$215,390	\$127,774	\$1,204,725		
Supply & Installation of Softscape including Trees & Plant	\$1,104,154	\$198,748	\$325,726	\$193,227	\$1,821,855		
Supply & Installation of FF&E	\$1,096,123	\$197,302	\$323,356	\$191,822	\$1,808,603		
Los Gatos Creek Park on G	\$2,223,693	\$400,265	\$655,989	\$389,146	\$3,669,093	\$9,916,591	\$228
Supply & Installation of Hard Landscaping	\$265,481	\$47,787	\$78,317	\$46,459	\$438,044		
Supply & Installation of Semi Permeable	\$123,376	\$22,208	\$36,396	\$21,591	\$203,571		
Supply & Installation of Softscape including Trees & Plant	\$810,600	\$145,908	\$239,127	\$141,855	\$1,337,489		
Supply & Installation of FF&E	\$1,024,236	\$184,362	\$302,150	\$179,241	\$1,689,989		
Social Heart	\$4,376,832	\$787,830	\$1,291,165	\$765,946	\$7,221,773	\$12,669,879	\$291
Supply & Installation of Hard Landscaping	\$1,261,386	\$227,050	\$372,109	\$220,743	\$2,081,288		
Supply & Installation of Semi Permeable	\$59,570	\$10,723	\$17,573	\$10,425	\$98,291		

Ex E1-2

Supply & Installation of Softscape including Trees & Plant	\$704,559	\$126,821	\$207,845	\$123,298	\$1,162,523		
Supply & Installation of FF&E	\$2,351,316	\$423,237	\$693,638	\$411,480	\$3,879,671		
St John Triangle	\$8,814,863	\$1,586,675	\$2,600,384	\$1,542,601	\$14,544,523	\$9,506,196	\$218
Supply & Installation of Hard Landscaping	\$1,844,446	\$332,000	\$544,112	\$322,778	\$3,043,336		
Supply & Installation of Semi Permeable	\$437,400	\$78,732	\$129,033	\$76,545	\$721,710		
Supply & Installation of Softscape including Trees & Plant	\$2,550,958	\$459,172	\$752,533	\$446,418	\$4,209,081		
Supply & Installation of FF&E	\$3,982,059	\$716,771	\$1,174,707	\$696,860	\$6,570,397		
Northend Park	\$3,166,751	\$570,015	\$934,191	\$554,181	\$5,225,139	\$5,871,003	\$135
Supply & Installation of Hard Landscaping	\$249,520	\$44,914	\$73,609	\$43,666	\$411,709		
Supply & Installation of Semi Permeable	\$763,579	\$137,444	\$225,256	\$133,626	\$1,259,906		
Supply & Installation of Softscape including Trees & Plant	\$1,231,738	\$221,713	\$363,363	\$215,554	\$2,032,368		
Supply & Installation of FF&E	\$921,913	\$165,944	\$271,964	\$161,335	\$1,521,156		
Los Gatos Creek Trail on E	\$1,079,944	\$194,390	\$318,584	\$188,990	\$1,781,908	\$7,127,632	\$164
Supply & Installation of Hard Landscaping	\$678,167	\$122,070	\$200,059	\$118,679	\$1,118,975		
Supply & Installation of Softscape including Trees & Plant	\$127,238	\$22,903	\$37,535	\$22,267	\$209,942		

Ex E1-3

Supply & Installation of FF&E	\$274,540	\$49,417	\$80,989	\$48,045	\$452,991		
Los Gatos Creek Trail on G	\$1,644,837	\$296,071	\$485,227	\$287,846	\$2,713,980	\$9,692,787	\$223
Supply & Installation of Hard Landscaping	\$1,033,114	\$185,961	\$304,769	\$180,795	\$1,704,638		
Supply & Installation of Softscape including Trees & Plant	\$193,793	\$34,883	\$57,169	\$33,914	\$319,758		
Supply & Installation of FF&E	\$417,930	\$75,227	\$123,289	\$73,138	\$689,585		
GRAND TOTAL	\$24,729,367	\$4,451,286	\$7,295,163	\$4,327,639	\$40,803,456	\$8,500,728	\$195

Exhibit E2

Exhibit E2

City-Dedicated Open Space and Covenant Privately-Owned Publicly Accessible Open Space Approximate Acreages

Open Space	City-Dedicated Acreage¹ (AC)	Privately-Owned Open Space Acreage Subject to Restrictive Covenant^{1,2} (AC)
Los Gatos Creek Connector	0.91	0.33
Los Gatos Creek Park	0.37	1.58
The Meander	-	0.87
Social Heart	0.57	-
Creekside Walk	-	1.24
Los Gatos Creek East	-	1.09
Gateway Plaza	-	1.01
St. John Triangle	1.53	-
North Montgomery Pocket Park	-	-
Northend Park	0.89	0.88
Los Gatos Creek Trail (E)	0.25	-
Los Gatos Creek Trail (G)	0.28	-
Total	4.80	7.0

¹ Acreages are approximate and will be confirmed pursuant to the verification process described in Section 4(B) and Exhibit E7.

² Acreage for Privately-Owned Publicly Accessible include the following typologies as defined by the DWDSG: Privately-owned Public Park, Los Gatos Creek Riparian Setback, and Los Gatos Creek Riparian Corridor

Exhibit E3

Delivery of City-Dedicated Open Space

Exhibit E3.1

Exhibit E3.1

City-Dedicated Open Space Dedication and Improvement Schedule*

Open Space	Outside Date	EIR Phasing	Dedication and Delivery Trigger (Building Parcels)
Los Gatos Creek Trail (E)	12 months after TCO	1	First TCO for any building in E1
Los Gatos Creek Trail (G)	12 months after TCO	1	First TCO for any building in G1
Los Gatos Creek Park	18 months after TCO	1	First TCO for any building in G1
Los Gatos Creek Connector 1	12 months after TCO	1	Dedication of land with 2nd market-rate residential building within the project; Improvements with first TCO for any building in the later of H3 or H5
Social Heart	24 months after TCO	1	Earlier of TCO for 1,500th Units ¹ , or First TCO for any building in D4
Northend Park	18 months after TCO	2	First TCO for any building in A1
Los Gatos Creek Connector 2	12 months after TCO	2	Dedication of land with 2nd market-rate residential building within the project; Improvements with first TCO for any building in H6
St. John Triangle	12 months after TCO	3	Earlier of first TCO for any building in C2, or 3,250 Units ¹

¹ Trigger by residential unit count is subject to the requirements of Section 4(H).

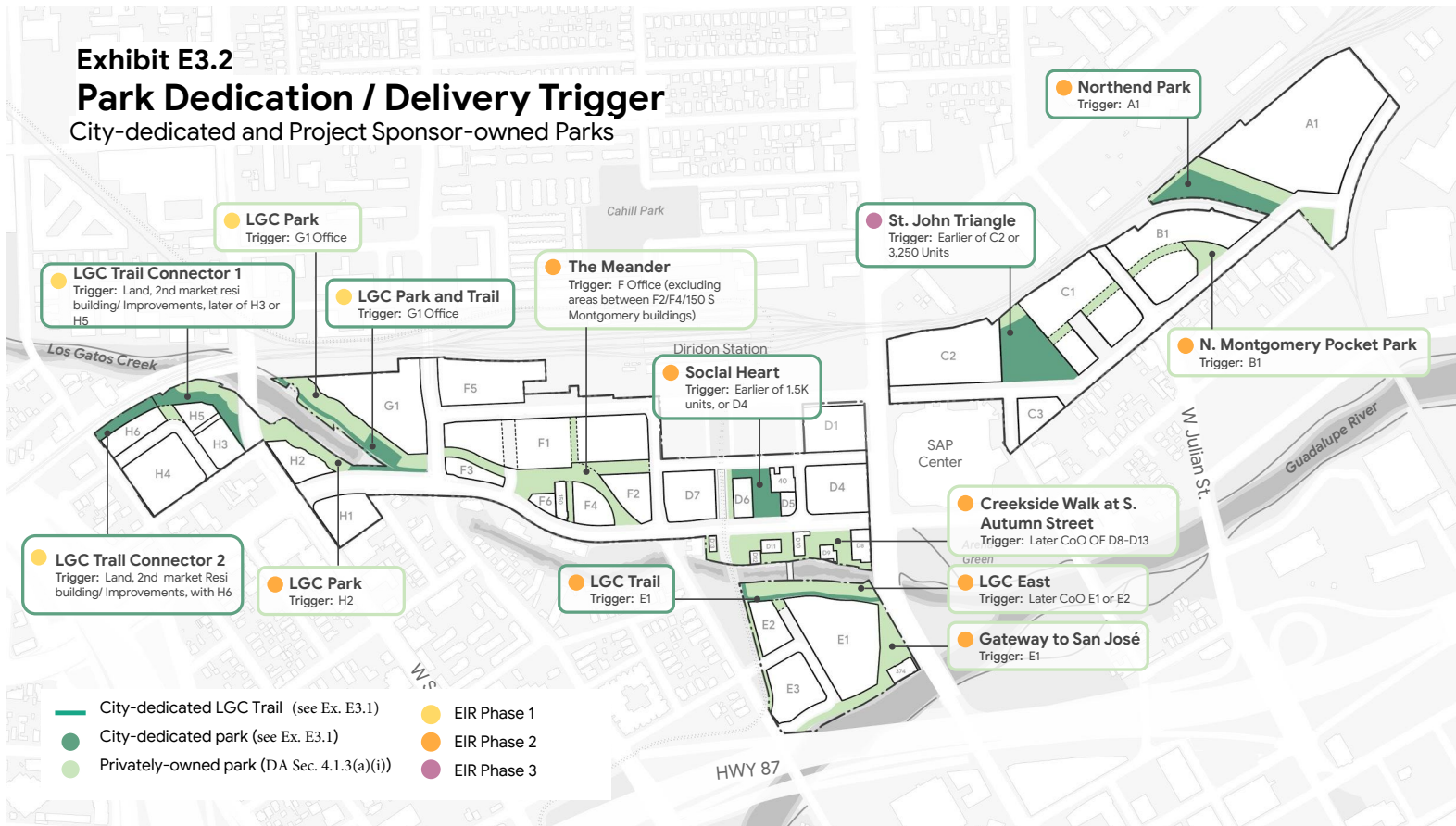
*Except for Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2, offers of dedication shall be made as set forth in Section 3(A) of the Parkland Agreement. The dedication schedule for Los Gatos Creek Connector 1 and Los Gatos Creek Connector 2 is as set forth herein and described in Section 3(D) of the Parkland Agreement.

Exhibit E3.2

Exhibit E3.2

Park Dedication / Delivery Trigger

City-dedicated and Project Sponsor-owned Parks



DRAFT — Subject to City Manager and City Council Review and Approval

Exhibit E4

RECORDED WITHOUT FEE UNDER
SECTION 6103 GOVERNMENT
CODE OF THE STATE OF
CALIFORNIA

**RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO,
AND MAIL TAX/ASSESSMENT
STATEMENTS TO:**

City of San Josè – Public Works
200 East Santa Clara Street, 3rd Floor
San Josè, CA 95113-1905

Deed No: _____
3 Dash No: _____

APN(s): _____

Space above this line for Recorder's use

The Undersigned Grantee(s) Declare(s): DOCUMENTARY TRANSFER TAX **\$0**; CITY TRANSFER TAX **\$0**; Recorded for the benefit of the City of San Jose and is exempt from fee per Government Code Sections 27383 and 6103.

- ☐ computed on the consideration or full value of property conveyed, OR
☐ computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
☐ unincorporated area; ☒ **City of San Josè**, and
☐ _____
Signature of Declarant

OFFER OF DEDICATION

GOOGLE LLC, a Delaware limited liability company (“GRANTOR”) does hereby OFFER TO DEDICATE to the CITY OF SAN JOSÈ, a municipal corporation of the State of California (“CITY”) the real property described in the attached Exhibit “A” for park and open space purposes (the “Park Property”).

Such dedication of the Park Property shall be deemed to have been accepted by CITY upon recordation of a grant deed (“Grant Deed”) in the Santa Clara County, Office of the County-Recorder and the issuance to CITY at GRANTOR’S expense of an owner’s title policy (“Title Policy”) in the amount of the [value of the Property] by [a title company selected by CITY] [_____] [NAME THE TITLE COMPANY WHO WILL HAVE ISSUED THE PTR FROM WHICH THE TITLE EXCEPTIONS ON THE EXHIBIT WILL HAVE BEEN OBTAINED], with the title company’s standard printed title exceptions and the title exceptions described on Exhibit “B” attached hereto, but without any title exceptions that would be omitted based on the title company’s owner’s certificate/affidavit (“Certificate”).

The Certificate and Grant Deed shall be promptly and diligently completed, executed and delivered to the title company by GRANTOR, duly acknowledged, in accordance with Section 3(A) of the Parkland Agreement included as Exhibit E to the Development Agreement between GRANTOR and CITY dated _____, 202__, recorded on _____, 202__ as Document Number Number _____ in the Official Records of Santa Clara County (the “DA”). If necessary for the issuance of the Title Policy, City will provide the title company with a Certificate of Acceptance for the Grant Deed, and GRANTOR shall provide the title company with organizational documents and evidence of duly authorized execution of the Grant Deed and Certificate and any other documents typically required by the title company in order to issue an owner’s title policy.

The Grant Deed shall be recorded in such Official Records, and the Title Policy shall be issued, in accordance with written recording instructions by CITY to the title company, which shall condition the recording upon the commitment of the title company to issue the Title Policy at GRANTOR’s expense, and which may also condition the recording upon the satisfaction of all or any of the conditions described on EXHIBIT “C”.

GRANTOR, with respect to such offer of dedication, retains the right to control the Park Property until this offer of dedication is accepted and the Grant Deed is recorded as described herein. Accordingly, until such Grant Deed is recorded, CITY shall not be responsible for and shall incur no liability with respect to the Park Property, and GRANTOR shall defend, indemnify and hold CITY harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising from or relating to conditions of the Park Property or events occurring on or about the Park Property prior to such recordation (and GRANTOR’s obligations hereunder shall survive the recording and acceptance of the Grant Deed).

In accordance with Section 3(A) of the Parkland Agreement included as Exhibit E to the DA, if prior to the expiration or termination of the DA GRANTOR has not undertaken the specific actions set forth in the Parkland Agreement as conditions precedent to CITY’S acceptance of this Offer of Dedication, upon the termination or expiration of the DA this Offer of Dedication shall also terminate and be void regardless of CITY’S later recordation of a notice terminating or vacating this Offer of Dedication.

The provisions hereof shall inure to the benefit of and be binding upon the heirs, successors, assigns and personal representatives of the respective parties hereto, and shall bind the Park Property, and all successors to any portion of or interest in the Park Property.

_____, 20_____

GOOGLE LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

Address: 1600 Amphitheatre Parkway
Mountain View, CA 94043

Attn: _____

*Proof of authorization for GRANTOR's signature(s) is required to be submitted concurrently with this Agreement.

*All of GRANTOR's signatures must be accompanied by an attached notary acknowledgement.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT “A”
LEGAL DESCRIPTION

EXHIBIT “B”

PERMITTED TITLE EXCEPTIONS

[INSERT LIST OF TITLE EXCEPTIONS FROM A PTR FROM THE TITLE COMPANY THAT HAVE BEEN REVIEWED AND APPROVED BY CITY; TITLE COMPANY WILL NEED LEGAL DESCRIPTION OF PROPERTY IN ORDER TO PREPARE THE PTR]

EXHIBIT “C”

ADDITIONAL CONDITIONS TO RECORDING

[INCLUDE HERE CONFIRMATION BY CITY AFTER FURTHER INSPECTION OF THE PROPERTY THAT THE CONDITION OF PROPERTY: (I) COMPLIES WITH RELEVANT SECTION OF THE DA, AND/OR (II) THAT GRANTOR HAS NOT VIOLATED THE DA SECTION REQUIRING THAT GRANTOR NOT ALTER OR PERMIT ALTERATION OF THE PROPERTY, OR RELEASE HAZMAT OR PERMIT THE RELEASE OF HAZMAT ON THE PROPERTY]

1. _____

Any of the foregoing conditions __,__, or ____ may be waived by the City Manager, provided that the applicable waiver is in writing.

EXHIBIT E5

EXHIBIT E5

DESIGN AND CONSTRUCTION REQUIREMENTS

SECTION 1. DESIGN AND CONSTRUCTION REQUIREMENTS.

A. Plans And Specifications.

The design for the Park Improvements must be consistent with the Park Improvements as described and depicted in the Downtown West Design Standards and Guidelines and as otherwise described in the Parkland Agreement. Further, Developer shall design and construct the Park Improvements in accordance with the following:

1. Downtown West Improvement Standards, dated _____, 20__ (“**DWIS**”), approved by the City Council on _____, 2021.
2. City's Standard Specifications and Standard Details, dated July 1992 (“**City’s Specifications**”), and on file with City's Department of Public Works, Architectural Division. Section 1 and the Technical Provisions of City's Standard Specifications (Section 10 through and including Section 1501) shall be applicable to this Agreement. References in the Standard Specifications to “Developer” shall be deemed to mean “Developer.”
3. City’s Turnkey Park Standards for Park Design & Construction, dated 2001 (“**Turnkey Standards**”), as may be amended from time to time, and on file with City’s Department of Public Works, Architectural Division; provided, however, that with respect to Hazardous Substances, Hazardous Materials and remediation of the City-Dedicated Open Space or Park Improvements, the terms and conditions of this Agreement and related exhibits shall apply in the event of a conflict with the Turnkey Standards, including, without limitation the provisions of Sections 2.2.G and 2.6.C.1 of the Turnkey Standards. Future amendments to the Turnkey Standards shall apply only to plans for Parkland Improvements for which ninety-five percent (95%) plans and specifications that are submitted for City review and approval after eighteen (18) months of the effective date of the amendments of the Turnkey Standards; provided, however, that with respect to Hazardous Substances, Hazardous Materials and remediation of the City-Dedicated Open Space or Park Improvements, the terms and conditions of this Agreement and related exhibits shall apply in the event of a conflict with the Turnkey Standards, including, without limitation the provisions of Sections 2.2.G and 2.6.C.1 of the Turnkey Standards. For clarity, if ninety-five (95%) plans and specifications are submitted seventeen (17) months after the effective date of the amendment or sooner, the amendment would not apply.
4. Public Works Standard Specifications- Section 329100 Planting Preparation. Soil specifications, survey requirements, and resulting soil amendment procedures prescribed in the

above guidelines, as they may be amended from time to time, shall be applicable to this agreement.

5. The Downtown West Planned Development Zoning District and accompanying General Development Plan, dated , 20__, adopted by the City Council on , 2021.

6. The Downtown West Design Standards and Guidelines, dated , 20__, adopted by the City Council on , 2021.

7. City shall review the Park Improvements Plans, including materials, infrastructure, and design elements, for consistency with the conceptual design of Turnkey Park Improvements as described and depicted in the Downtown West Design Standards and Guidelines, to the extent applicable as provided in this Agreement, and the specifications and guidelines outlined above and throughout this Agreement. Pursuant to the Open Space Improvement Conformance Review Process set forth in the General Development Plan for the Downtown West Planned Development Zoning District, the Plans shall be refined to the satisfaction of the Director of Parks, Recreation, and Neighborhood Services (“**Director of PRNS**”) and the Director of Public Works (“**Director of PW**”) as necessary in order to demonstrate consistency; provided, however, that such refinements shall remain consistent with the Park Improvements Value set forth in Exhibit E1.

B. Application Of Plans And Specifications.

1. City’s Specifications, Turnkey Standards, Downtown West Planned Development District, and the Downtown West Design Standards and Guidelines shall be collectively referred to as the “**Park Improvements Specifications**.” The Park Improvements shall be constructed in accordance with the Park Improvements Specifications.

2. In the event of a conflict between the Turnkey Standards and the City’s Specifications, the Turnkey Standards shall prevail, as and to the extent applicable as provided in this Agreement.

3. The provisions of the Development Agreement, including this Agreement, and the Downtown West Planned Development District, Downtown West Design Standards and Guidelines, and Downtown West Improvement Standards supersede anything to the contrary in the City’s Specifications, Public Works Standard Specifications, or the Turnkey Standards (collectively “**City Standards**”), unless the City reasonably determines that a deviation from one or more City Standards will impact public safety or maintenance of the Park Improvement in which case the City Standard or Standards shall apply.

C. Project Plans Approval Process.

1. In accordance with the Design Outside Date Schedule set forth in the Parkland Agreement, Developer shall submit Park Improvements Plans at thirty-five percent (35%) as part of its Open Space Improvement Conformance Review application for the Park Improvements. The submittal of sixty-five percent (65%) and ninety-five percent (95%) Park Improvements Plans shall occur following the Open Space Improvement Conformance Review process set forth in the General Development Plan. The preparation, submittal, and review of the Park Improvements Plans shall be in accordance with this Agreement.
2. The Park Improvements Plans shall be submitted in a timely manner in order to insure that Developer completes the Park Improvements on or before the completion date specified in this Agreement. Developer shall not construct any Park Improvements unless and until the City's Director of PW has approved the Park Improvements Plans and issued a Notice to Proceed in writing. The approval process for the sixty-five percent (65%) and ninety-five (95%) Park Improvements Plans is more particularly set forth in the Turnkey Standards. City's Director of PW shall complete its review of each submittal and provide any comments to Developer within forty-five (45) days of submittal. City's Director of PW shall approve or disapprove Developer's bid submittal within thirty (30) days of a complete submittal.
3. Prior to acceptance of the Park Improvements Plans and/or proceeding with construction of the Park Improvements, the Developer shall provide the City with copies of all soil surveys along with recommended soil amendments. The City may, at its reasonable discretion, require inspection of the City-Dedicated Open Space for construction debris before construction may commence.
4. City's approval of the Park Improvements Plans shall not release Developer of the responsibility for the correction of mistakes, errors, or omissions contained in the Park Improvements Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Park Improvements Plans were developed or approved. If during the course of construction of the Park Improvements, the Director of PW determines in the Director of PW's reasonable discretion that the public safety requires modification of, or the departure from, the Plans, the Director of PW shall have the authority to require such modification or departure and to specify the manner in which the same may be made. The Parties acknowledge that the Park Improvements Plans, once approved by the Director of PW, shall be final and that, except as expressly provided in this subsection or elsewhere in the Parkland Agreement and/or Development Agreement, no revisions to the Park Improvements Plans shall be permitted unless approved by the Director of PW.
5. For reference and public information purposes, Developer will provide the City with a tentative schedule of construction prior to the commencement of development for any of the Park

Improvements. Such schedule may be amended at the Developer's discretion provided that all Improvements are completed by the completion dates specified in this Agreement. At the City's request the Developer shall provide the City with an updated schedule that reflects amended milestones and anticipated completion dates.

SECTION 2. PARTICULAR CONSTRUCTION REQUIREMENTS.

A. Developer Selection.

Developer may hire and contract with one or more contractor or subcontractor, licensed to perform such work in the State of California.

B. Prevailing Wage Requirement.

1. General Requirement. For all construction work on the Park Improvements, Developer agrees to comply with the prevailing wage requirements set forth in Sections 7-1.01A(2) through 7-1.01A(3) of the City of San Jose, Department of Public Works, Standard Specifications, dated July 1992 ("**Prevailing Wage Requirement**"), as may be amended from time to time. The Prevailing Wage Requirement is incorporated into this Agreement by reference as though set forth herein in their entirety. Developer acknowledges that it has reviewed the Prevailing Wage Requirement and is familiar with its requirements.

2. Contractors and Subcontractors. Developer shall expressly require compliance with the Prevailing Wage Requirement in all agreements it enters into with contractors and subcontractors for construction work on the Park Improvements. Developer acknowledges and agrees that it is responsible for compliance by its contractors and subcontractors of the Prevailing Wage Requirement.

3. Reporting Obligations. Notwithstanding anything to the contrary contained herein, Developer is not obligated to submit to City copies of payroll records for construction contractors, subcontractors, or other construction workers, or any other records required to be maintained pursuant to the Prevailing Wage Requirement, until City requests such records as a result of receiving a claim that a violation of the Prevailing Wage Requirement has occurred. Developer shall provide to City, at no cost to City, a copy of any and all such records within thirty (30) calendar days of City's Office of Equality Assurance request for such records. In responding to a request by the Office of Equality Assurance, Developer agrees that it is responsible for submitting the records of any and all of its construction contractors and subcontractors.

4. Indemnity. Developer shall comply with Section 5.10 of the Development Agreement regarding indemnification of City.

C. Remedies for Developer's Breach of Prevailing Wage Requirements.

1. General. Developer acknowledges City has determined that the Prevailing Wage Requirement promotes each of the following (collectively “Goals”):

- a. It protects City job opportunities and stimulates City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to City by fostering high turnover and instability in the workplace.
- c. Pay workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San José because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San José.
- d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. Remedies. City and Developer recognize that Developer's breach of the Prevailing Wage Requirement set forth above will cause damage to the City by undermining City's goals in assuring timely payment of prevailing wages, and will cause City additional expenses in obtaining compliance and conducting audits, and that such damage would not be remedied by Developer's payment of restitution to the worker paid less than the prevailing wage. Developer and City agree that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. City and Developer further recognize the delays, expense and difficulty involved in proving City's actual losses in a legal proceeding, and mutually agree that making a precise determination of the amount of City's damages as a result of Developer's breach of the Wage Provision would be impracticable and/or extremely difficult. Accordingly, City and Developer agree that:

- a. For each day after thirty (30) calendar days that Developer fails to completely respond to a request by City to provide records as required under Section 2(B), of this Exhibit E5, Developer shall pay to City as liquidated damages the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00); and
- b. For each instance where City has determined that the Prevailing Wage Requirements were not met, Developer shall pay to City as liquidated damages the sum of

three (3) times the difference between the actual amount of wages paid and the prevailing wages which should have been paid.

3. Audit Rights. All records or documents required to be kept pursuant to this Agreement to verify compliance with the Prevailing Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Developer's address indicated for receipt of notices in this Agreement.

4. Remedies Cumulative. The remedies set forth in this provision of the Agreement are cumulative and in addition to any other remedies set forth in the Prevailing Wage Requirements or otherwise permitted by law.

Developer Initial: _____

City Initial: _____

D. Conduct Of Work.

1. Appearance. Developer shall maintain a neat and clean appearance to the work at the City-Dedicated Open Space. When practicable, broken concrete and debris developed during clearing and grubbing shall be disposed of concurrently with its removal. If stockpiling of disposable material is necessary, the material shall be retained in an area not readily visible to the public in a manner meeting the reasonable satisfaction of the Director of PW.

2. Condition. Developer shall maintain the City-Dedicated Open Space in a neat, clean, and good condition prior to City's acceptance of the Park Improvements. Developer shall not dispose or cause the disposal of any Hazardous Substances on any of the City-Dedicated Open Space. Additionally, Developer shall take reasonable precautions to prevent the disposal of Hazardous Substances by third parties on any of the Site. The term "Hazardous Substances" is defined in Section 3(A)(2) of this Exhibit.

3. Emergencies. In an emergency affecting the safety of persons or property, Developer shall act reasonably to prevent threatened damage, injury, or loss. Developer shall immediately notify the City by telephone at the telephone number as directed by City's Director of PW and in writing of such actions.

E. Access For Inspection.

1. Access. The Director of PW and the Director of PW's designated representatives, including without limitation, staff from other City departments, shall at all times during the progress of work on the Park Improvements have free access to such improvements for inspection purposes and

shall act in accordance with the site specific safety procedures. If the Director of PW determines that all or any portion of the work done on the Park Improvements is not in compliance with the Plans, the Director of PW shall notify Developer in writing of the same and Developer shall promptly cure such defect to the Director of PW's reasonable satisfaction. Such notifications shall be made to the Developer and his on-site representatives to not unduly interfere with ongoing construction work.

2. **Representatives.**

a. Prior to commencement of work on the Park Improvements, Developer shall designate in writing an authorized representative who shall have the authority to represent and act for Developer. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Director of PW shall be made for any emergency work which may be required. In addition, Developer shall provide Director of PW with the names and telephone numbers of at least two (2) individuals in charge of or responsible for the work who can be reached personally in case of emergency twenty-four (24) hours a day, seven (7) days a week.

b. The Director of PW shall also designate one or more authorized representative who shall have the authority to represent the Director of PW. Developer's authorized representative shall be present at the site of the work at such reasonable times as designated by the Director of PW. Prior to commencement of the work, the Parties shall mutually agree to an inspection schedule, which schedule may be adjusted from time to time by mutual agreement.

c. Whenever the Developer or its authorized representative is not present on any particular part of the work where it becomes necessary to give direction for safety reasons, the Director of PW shall have the right to give such orders which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given. Any order given by the Director of PW will on request of the Developer be given or confirmed by the Director of PW in writing.

d. City's rights under this Agreement shall not make the Developer an agent of the City, and the liability of the Developer for all damages to persons or to public or private property arising from Developer's execution of the work, shall not be lessened because of the exercise by City of its rights.

F. Acceptance of Park Improvements.

The Park Improvements shall be completed in accordance with the provisions of this Agreement to the satisfaction of the Director of PW.

1. City agrees to inspect and prepare a punchlist for the Park Improvements within ten (10) business days of notification by Developer that the Developer considers the construction of the Park Improvements to be substantially complete as defined by City standard specifications. City further agrees to perform its final inspection within ten (10) business days of notification by Developer that all punchlist work has been completed.

2. Developer shall provide a grant deed for the property on which the Park Improvements have been completed to the City and 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; and

b. Developer has performed and satisfied any and all terms, conditions, and obligations required under this Agreement prior to acceptance of the Park Improvements, including but not limited to, the requirements for dedication of the City-Dedicated Open Spaces as outlined in Section 2(G) of this Exhibit; 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), and corresponding copies of any and all operating manuals for equipment installed as part of the Park Improvements. The aforementioned documents shall also be provided by Developer in an appropriate electronic format (.dwg, .pdf, etc.) as requested by the Director of Public Works or Parks, Recreation, and Neighborhood Services.

3. The Parties acknowledge that City's restrictions on the installation of landscaping because of future drought conditions may delay Developer's installation of the landscaping contemplated by this Agreement. If, due to drought restrictions water restrictions are in place, or recycled water also is not available, and Developer, therefore, is unable to install the landscaping in time to be inspected by the Director for the purposes of accepting the completed Park Improvements, Developer shall post a bond or other form of security as set forth in Section 6(A)(4) of this Agreement, and the delay in the installation of such landscaping shall not preclude acceptance of the affected City-Dedicated Open Space and Park Improvements thereon.

4. At the discretion of the Director of PW, City may accept a designated portion of a City-Dedicated Open Space and/or the Park Improvements thereon. Acceptance of a designated portion will be as provided by Section 7-1.166 of the City's Specifications.

a. If a City-Dedicated Open Space is affected by a Park Construction Right of Entry, but Developer has otherwise satisfied all obligations set forth in this Agreement that are required for City's acceptance of that City-Dedicated Open Space and the Park Improvements thereon, the Director of PW shall process a Notice of Acceptance for that portion of the City-Dedicated Open Space and Park Improvements that are outside of the scope or boundaries of the Park Construction Right of Entry.

5. Notwithstanding anything contrary herein, any City-Dedicated Open Space shall meet applicable environmental regulatory requirements for public parks and trails use (based on the approved park design). The only exception to this requirement is Los Gatos Creek Connector where the land will be dedicated to the City early and un-improved, subject to a leaseback agreement, as further described in Section 3.D of this Parkland Agreement. Developer shall subsequently construct the Park Improvements and such that they meet applicable environmental regulatory requirements (based on the approved park design) for public parks and trails use.

G. City-Dedicated Open Space.

1. Developer shall provide each of the following to the Director of PW, subject to the approval of the Director of PW, prior to City's acceptance of the City-Dedicated Open Space and Park Improvements:

a. A preliminary report for the City-Dedicated Open Space by a reputable title company currently doing business for City's Real Estate Division. Developer shall coordinate with City's Real Estate Division and provide a preliminary title report at least ninety (90) days prior to execution of this Agreement and an updated title report at least ninety (90) days prior to the anticipated completion of the Park Improvements.

b. A Grant Deed for the City-Dedicated Open Space containing the legal description of the City-Dedicated Open Space, as approved by City Surveyor, properly executed and acknowledged, subject only to the exceptions to title set forth in Exhibit E9. Title to the City-Dedicated Open Space shall be vested in City free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, and other adverse interests of record or known to Developer, subject only to those exceptions set forth in Exhibit E9 ("**Permitted Exceptions**"), which Permitted Exceptions shall not impact or otherwise count against the credit value of the affected City-Dedicated Open Space except as indicated in Exhibit E9 and the Parkland Agreement. The Grant Deed, subject to approval of City, for the City-Dedicated Open Space shall be delivered to the City's Real Estate Division at least ninety (90) days prior to the anticipated completion of the Park Improvements.

c. Developer shall also cause to be provided to City, concurrently with the conveyance of each City-Dedicated Open Space to City, a C.L.T.A. owner's form policy of title insurance issued for the specific City-Dedicated Open Space by a reputable title company

currently doing business with City, with City named as the insured, in an amount as determined by the City consistent with the terms of the Development Agreement and Parkland Agreement, insuring the title of City to the City-Dedicated Open Space is subject to only the Permitted Exceptions.

d. Any and all reports related to the condition of the City-Dedicated Open Space and the lands adjacent to the City-Dedicated Open Space caused to be performed by the Developer or in the Developer's possession or control. Developer shall also provide to City, at the Developer's sole cost, a report, prepared or updated no earlier than twelve (12) months before the proposed acceptance of the Park Improvements by a qualified consultant analyzing the condition of the City-Dedicated Open Space with respect to the presence of Hazardous Materials on or adjacent to the City-Dedicated Open Space ("**Hazardous Materials Report**"). The definition of Hazardous Materials for purposes of this Agreement is set forth in Section 3(A)(2) of this Exhibit. The scope of the Hazardous Materials Report shall, at minimum, contain the elements set forth below in Section 4. Any Hazardous Materials Reports prepared pursuant to this Agreement shall specify that they may be relied upon by both Developer and City.

e. Subject to Section 3 and the disclosures and obligations set forth therein, in the event that the Hazardous Materials Report(s) disclose(s) the presence of Hazardous Materials on any of the City-Dedicated Open Space (1) in excess of generally accepted environmental screening limits (e.g., San Francisco Regional Water Quality Control Board Environmental Screening Levels or background levels or other then applicable regulatory standards) for the park land and recreational uses as set forth in the Downtown West Design Standards and Guidelines for parklands or (2) in violation of any hazardous materials/waste laws such that park land and recreational uses as set forth in the Downtown West Design Standards and Guidelines would be prohibited, the Director shall have the right to require Developer, as a condition of acceptance, to remediate or mitigate the condition to the extent required for the park to be used as designed and intended in the Downtown West Design Standard and Guidelines for parklands. The type of remediation or mitigation required for the City-Dedicated Open Space pursuant to this Agreement shall be at no cost to the City and be subject to the review and approval of the Director.

f. To the fullest extent permitted by law, Developer shall indemnify, defend and hold the City, its officers, agents and employees harmless for any and all third party claims for liability, loss, cost, expense or obligations arising out of or in any way connected with the presence of Hazardous Substances on or under the City-Dedicated Open Space provided the claim arose prior to the date of City's acceptance of the City-Dedicated Open Space. This provision shall survive expiration or termination of this Agreement. Notwithstanding the foregoing, City shall remain responsible and liable for any Hazardous Substances as set forth in the Existing Agreements (defined in the Development Agreement).

g. The Environmental Warranty specified in Section 3 of this Exhibit.

2. The softscape areas on site, if any, shall be provided to the City free and clear of all construction debris and shall be amended in accordance with recommendations from the soil reports and agricultural soil surveys, or as otherwise reasonably directed by the City's Director or Designees. Additional amendments including, but not limited to, mycorrhizal inoculum or organic fertilizers may be required by the City or provided at the Developer's discretion in consultation with the City.

3. Upon the Director of PW's acceptance of the City-Dedicated Open Space and Park Improvements, Developer shall have no further obligations or liabilities in connection with the City-Dedicated Open Space except for the terms, conditions, or obligations of this Agreement that explicitly survives acceptance or termination.

H. Compliance With Laws/Permits.

1. Developer shall keep fully informed of all existing and future local, state, and federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work on the Park Improvements, or the materials used in the Park Improvements, or which in any way affect the conduct of the work on the Park Improvements, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. In the performance of any work pursuant to this Agreement, Developer shall at all times observe and comply with, and shall cause all Developer's employees, agents, representatives, contractors and subcontractors to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for the work in relation to any such law, ordinance, regulation, order, or decree, Developer shall promptly report the same to the Director.

2. Developer shall, at its sole cost and expense, obtain all governmental reviews and approvals, licenses, and permits which are, or may be, required and necessary to construct and complete the Park Improvements in accordance with the provisions of this Agreement, including, but not limited to, site development reviews, development permits and environmental review. Developer shall comply with all conditions, restrictions or contingencies imposed upon, or attached to, such governmental approvals, licenses, and permits. Consistent with the terms of the Development Agreement, City agrees to cooperate with Developer in its efforts to obtain any such governmental reviews and approvals, licenses, and/or permits. City also shall consider any Subsequent Approvals required for the construction of the Park Improvements in a manner consistent with the Development Agreement. If Developer for any reason fails to comply with any of City's requirements, or any other legal requirement concerning Developer's construction of the Park Improvements, then City shall have the right to require Developer to alter, repair, or

replace any improvements or perform any other action to the satisfaction of the Director as reasonably required to correct any non-compliance of the Park Improvements with legal requirements or this Agreement and at no cost to City. Developer's failure to effect the cure as required by the Director shall constitute an Event of Default in accordance with Section 7 of this Agreement.

SECTION 3. ENVIRONMENTAL CONDITIONS FOR CITY AND DEVELOPER WARRANTIES.

A. As a condition to the City's acceptance of the Park Improvements and dedication of the City-Dedicated Open Space, the following conditions shall be satisfied except that (i) if such condition is disclosed in the Hazardous Materials Report, the Existing Phase I Report, the Phase I ESA Update, the Existing Phase II Report, and/or (ii) if the condition is the responsibility or liability of the City as set forth in the Existing Agreements (e.g., the City is the responsible party for the Hazardous Material condition as agreed upon in the Existing Agreements as of the date of this Agreement), then that particular condition or conditions shall be deemed satisfied and waived by City:

1. Neither the Site nor Developer are in violation of any environmental law and neither the Site nor Developer are subject to any existing, pending, or threatened investigation by any federal, state, or local governmental authority under or in connection with the environmental laws relating to the City-Dedicated Open Space.

2. Neither Developer nor any other person with Developer's permission to be upon the Site shall use, generate, manufacture, produce, or release, on, under, or about the City-Dedicated Open Space, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this Agreement, the term "**Hazardous Substances**" or "**Hazardous Materials**" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.

3. Developer has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance onto the soil of the City-Dedicated Open Space or the property on which the Park Improvements are to be constructed, or the migration of any Hazardous Substance from or to any other property adjacent to, or in the vicinity of, the Park Site, that will preclude its use as a park or open space.

4. Developer's prior and present use of the City-Dedicated Open Space has not resulted in the release of any Hazardous Substance on, under, about, or adjacent to the Park Site.
 5. Neither the City-Dedicated Open Space nor Park Improvements located on the City-Dedicated Open Space shall be subject to any monitoring, reporting, or restrictions relative to its use as a park or open space by any governmental authority with jurisdiction over the City-Dedicated Open Space, including but not limited to, the California Department of Toxic Substances Control and California Regional Water Quality Control Board that are not the responsibility of the City under the Existing Agreements ("**Ongoing Park Requirements**"). If any Ongoing Park Requirements are imposed due to any Hazardous Materials conditions on the City-Dedicated Open Space or Park Improvements located on the City-Dedicated Open Space, then the City may either accept the City-Dedicated Open Space or the Park Improvements with such Ongoing Park Requirements or City may reject the City-Dedicated Open Space or the Park Improvements so subject to the Ongoing Park Requirements in which case Developer may pay the park fees then due in lieu thereof.
 6. Subject to Section 2(G)(1)(b) of this Exhibit, and Exhibit E9 to the Agreement, neither the City-Dedicated Open Space nor Park Improvements located on the City-Dedicated Open Space shall be subject to any burden, easements, covenants or land use restrictions recorded against any part of the Park Improvements or City-Dedicated Open Space that would prohibit the use of the Park Improvements or the City-Dedicated Open Space for their intended use as designed.
- B. By executing this Agreement, Developer represents and warrants that:
1. Developer has not caused the migration of any Hazardous Substance from or to any other property adjacent to, or in the vicinity of, the City-Dedicated Open Space.
 2. Developer's prior and present use of the City-Dedicated Open Space has not resulted in the release of any Hazardous Substance in violation of environmental law on, under, about, or adjacent to the City-Dedicated Open Space.
- C. Developer shall give prompt written notice to City of:
1. Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any Hazardous Substance on the City-Dedicated Open Space or the migration thereof from or to any other property adjacent to, or in the vicinity of, the City-Dedicated Open Space that is not disclosed in the Hazardous Materials Report, the Existing Phase I Report, the Phase I ESA Update, the Existing Phase II Report or any other environmental report obtained by the City; and

2. Any claims made or threatened by any third party against Developer, City or the City-Dedicated Open Space relating to any loss or injury resulting from any Hazardous Substance that is not disclosed in the Hazardous Materials Report, the Existing Phase I Report, the Phase I ESA Update, the Existing Phase II Report or any other environmental report obtained by the City; and

3. Developer's discovery (meaning not disclosed in the Hazardous Materials Report, the Existing Phase I Report, the Phase I ESA Update, the Existing Phase II Report or any other environmental report obtained by the City) of any occurrence or condition on any property adjoining or in the vicinity of the City-Dedicated Open Space that could cause the City-Dedicated Open Space or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

SECTION 4. HAZARDOUS MATERIALS REPORT.

A. Scope of Hazardous Materials Report. The Hazardous Materials Report shall be in two phases, Phase I Environmental Site Assessment ("ESA") and, if necessary, Phase II ESA.

1. Existing Phase I Reports. Several Phase I ESAs have been commissioned by Developer and provided to the City which reports were prepared utilizing standards of All Appropriate Inquiry and ASTM 1527-13 (the "**Existing Phase I Reports**" and individually an "**Existing Phase I Report**"). The Existing Phase I Reports in general provide the information identified below regarding the condition of the City-Dedicated Open Space with respect to the presence or likely presence of any Hazardous Materials on, under, above, or about the City-Dedicated Open Space, including the past, current, or possible release of any Hazardous Materials on, under, above, or about the City-Dedicated Open Space. The City agrees to rely on the Existing Phase I Reports if they meet the time elements of the ASTM 1527-13 standard. The Existing Phase I Reports include the following information:

a. The historical usage of the City-Dedicated Open Space and adjacent parcels dating back to the City-Dedicated Open Space's first developed use (including any agricultural use) or 1940, whichever is earlier.

b. Results of the site visits pertaining to the current condition of the City-Dedicated Open Space, including without limitation, any observed storage, handling, or release of any Hazardous Materials on, under, above, or about the City-Dedicated Open Space, or evidence indicating possible past or current storage, handling, or release of any Hazardous Materials on, under, above, or about the City-Dedicated Open Space.

c. Results of the review of all reasonably available historical documents and records of regulatory agencies concerning the storage, handling, or release of any Hazardous Materials

and/or contamination of any or all of the City-Dedicated Open Space.

2. **Phase I Updates.** For any Existing Phase I Report that is beyond the time elements of the ASTM E1527-13 standard, Developer shall cause to be prepared a Phase I ESA update that meets the ASTM E1527-13 standard (“**Phase I ESA Update**”) and deliver same to the City.

3. **Existing Phase II ESA.** Based on the Existing Phase I Reports, one or more Phase II investigations were undertaken by Developer. The reports of the Phase II investigations include any chemical analysis which have been completed during the survey along with chain of custody documentation and soil borings, if performed (“**Existing Phase II Reports**”). The City agrees to rely on the Existing Phase II Reports.

4. **Phase II ESA (if necessary).** If any Phase I ESA Update recommends Phase II investigations, then Developer shall engage an environmental consultant to undertake those recommended Phase II investigations. The following tasks serve only as preliminary guidelines for potential Phase II investigation that may be recommended by the Phase I ESA Update, the results of which are subject to City's review and approval. It is possible that no Phase II investigation will be necessary for any of the City-Dedicated Property.

a. Soil and Groundwater Sampling and Analysis. Depending on the results of the Phase I ESA Update, it may be necessary to sample and analyze the soil and/or groundwater on-site. If such analysis is necessary, a sampling and analysis plan shall be prepared and approved by City and Developer that shall define a sufficient number of samples to be collected and analyzed to allow for an adequate characterization of the environmental condition of the Site as recommended by the Phase I ESA Update consultant. Soil and/or groundwater samples shall be analyzed for petroleum hydrocarbons, selected metals, and volatile organic compounds, or any other potential contaminant of concern as identified in the Phase I ESA Update.

Soil and/or groundwater samples shall be collected utilizing typical professional protocols and submitted to an EPA certified laboratory for analysis.

b. Report Preparation. A written report shall be prepared presenting the results of the Phase II investigation. The report shall include results from any chemical analysis completed during the investigation, along with chain-of-custody documentation, boring logs of sampling locations or from any monitoring wells completed, and recommendations for any further investigation and remediation/source control necessary on the site.

c. Report on any Remediation Work. A written report shall be prepared presenting the results of any remediation work resulting from a Phase II investigation. The report shall include results from any chemical analysis completed during the survey, along with chain-of-custody documentation, boring logs of sampling locations or from any monitoring wells

completed, and that any recommendations for any further investigation and remediation/source control necessary on the City-Dedicated Open Space have been completed.

SECTION 5. INSURANCE REQUIREMENTS.

Developer and/or its contractors and consultants shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the Development hereunder by the Developer, its agents, representative employees, contractors, or subcontractors.

A. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall also be included for all owned, non-owned and hired autos; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions insurance for all professional services; and
5. Builder's Risk insurance providing coverage for "all risks" of loss; and
6. Pollution Liability insurance, including coverage for all operations, completed operations and professional services (without exclusion for asbestos or lead).

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager in writing.

B. Minimum Limits of Insurance.

Developer shall maintain limits no less than:

1. Commercial General Liability: Five Million Dollars (\$5,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and

2. Automobile Liability: One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of One Million Dollars (\$1,000,000) per accident; coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officers, employees, agents, and contractors; and
4. Professional Liability Errors and Omissions: One Million Dollars (\$1,000,000) per claim/One Million Dollars (\$1,000,000) aggregate limit; and
5. Builders' Risk: Completed value of Project; and
6. Pollution Liability: Two Million Dollars (\$2,000,000) per occurrence/Two Million Dollars (\$2,000,000) aggregate limit.

C. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager in writing. At the option of City, either, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officials, employees, agents, and contractors, or Developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by City.

D. Provisions Of Policies.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Regarding Commercial General Liability, Automobile Liability and Pollution Liability Coverages.
 - a. City, its officials, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of, the Developer; products and completed operations of the Developer; premises owned, leased or used by the Developer; or automobiles owned, leased, hired or borrowed by Developer. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors; and
 - b. The Developer's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officials,

employees, agents and contractors shall be excess of the Developer's insurance and shall not contribute with it; and

- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City and the City, its officials, employees, agents and contractors; and

d. Coverage shall state that Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; and

e. Coverage shall contain a waiver of subrogation in favor of City, its officials, employees, agents and contractors.

- 2. Workers' Compensation and Employers Liability Coverages shall contain a waiver of subrogation in favor of City, its officials, employees, agents, and contractors.

- 3. Builders' Risk policies shall contain the following provisions:

- a. City shall be named as loss payee.
- b. Coverage shall contain a waiver of subrogation in favor of City, its officials, employees, agents and contractors.

- 4. All Coverages.

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City's Risk Manager, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Duration.

- 1. Commercial General Liability (including, without limitation, products and completed operations coverage), Professional Liability and Pollution Liability coverages shall be maintained continuously for a minimum of five (5) years after completion of the work under this Agreement.
- 2. If any of such coverages are written on a claims-made basis, the following requirements apply:
 - a. The policy retroactive date must precede the date the work commenced under this Agreement.

- b. If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, Developer must purchase an extended reporting period equal to or greater than five (5) years after completion of the work under this Agreement.

F. Acceptability of Insurers.

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

G. Verification of Coverages.

Developer shall furnish City (in the manner provided below) with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgt@sanjoseca.gov, or mailed to the following postal address or any subsequent email or postal address as may be directed in writing by the City's Risk Manager:

The City of San Jose – Finance
Risk Management
200 East Santa Clara Street, 13th Floor Tower
San Jose, CA 95113-1905

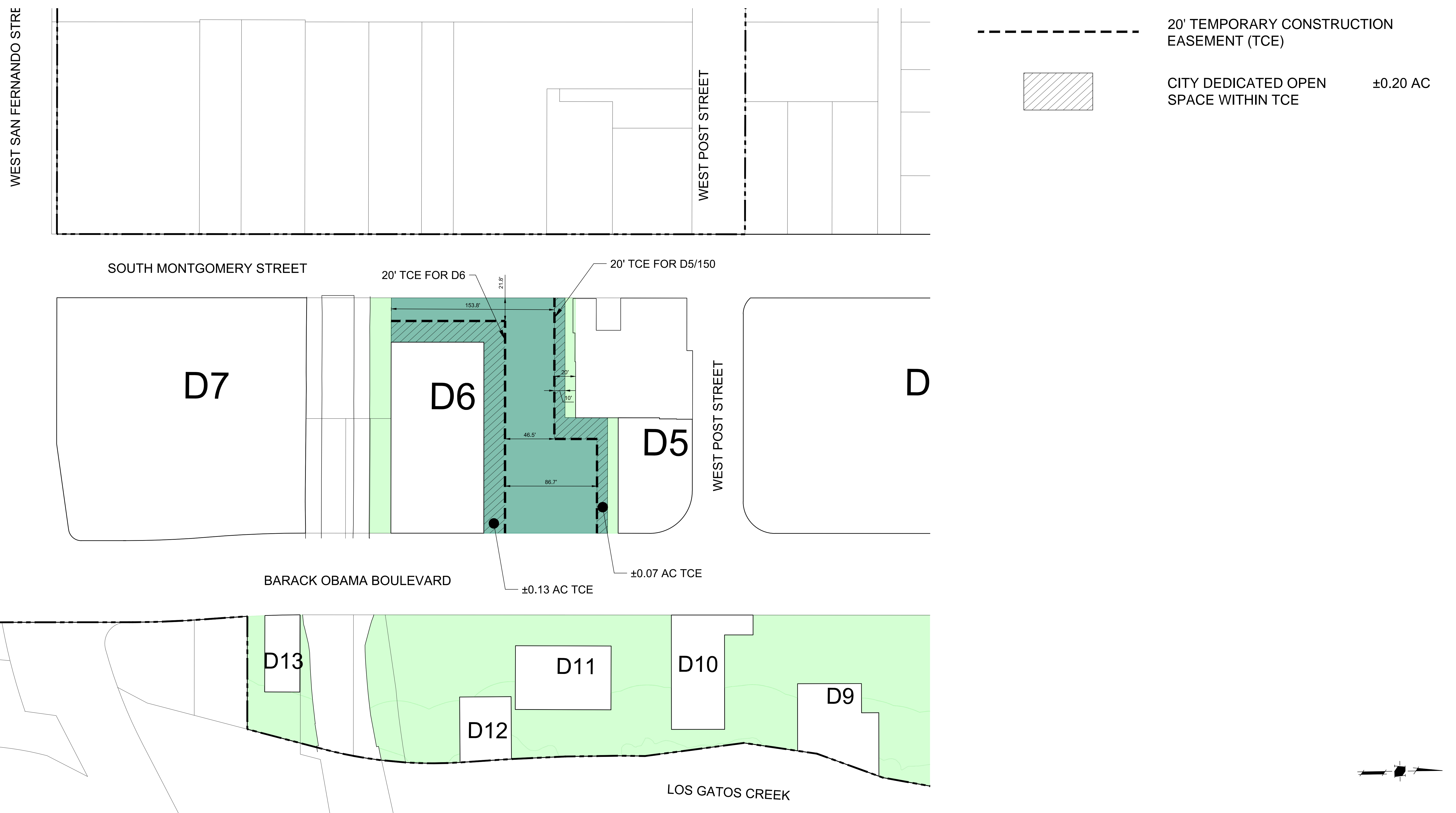
H. Developer or its contractors shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

Exhibit E6

PARK CONSTRUCTION RIGHT OF ENTRY AREA



PARK CONSTRUCTION RIGHT OF ENTRY AREA



PARK CONSTRUCTION RIGHT OF ENTRY AREA

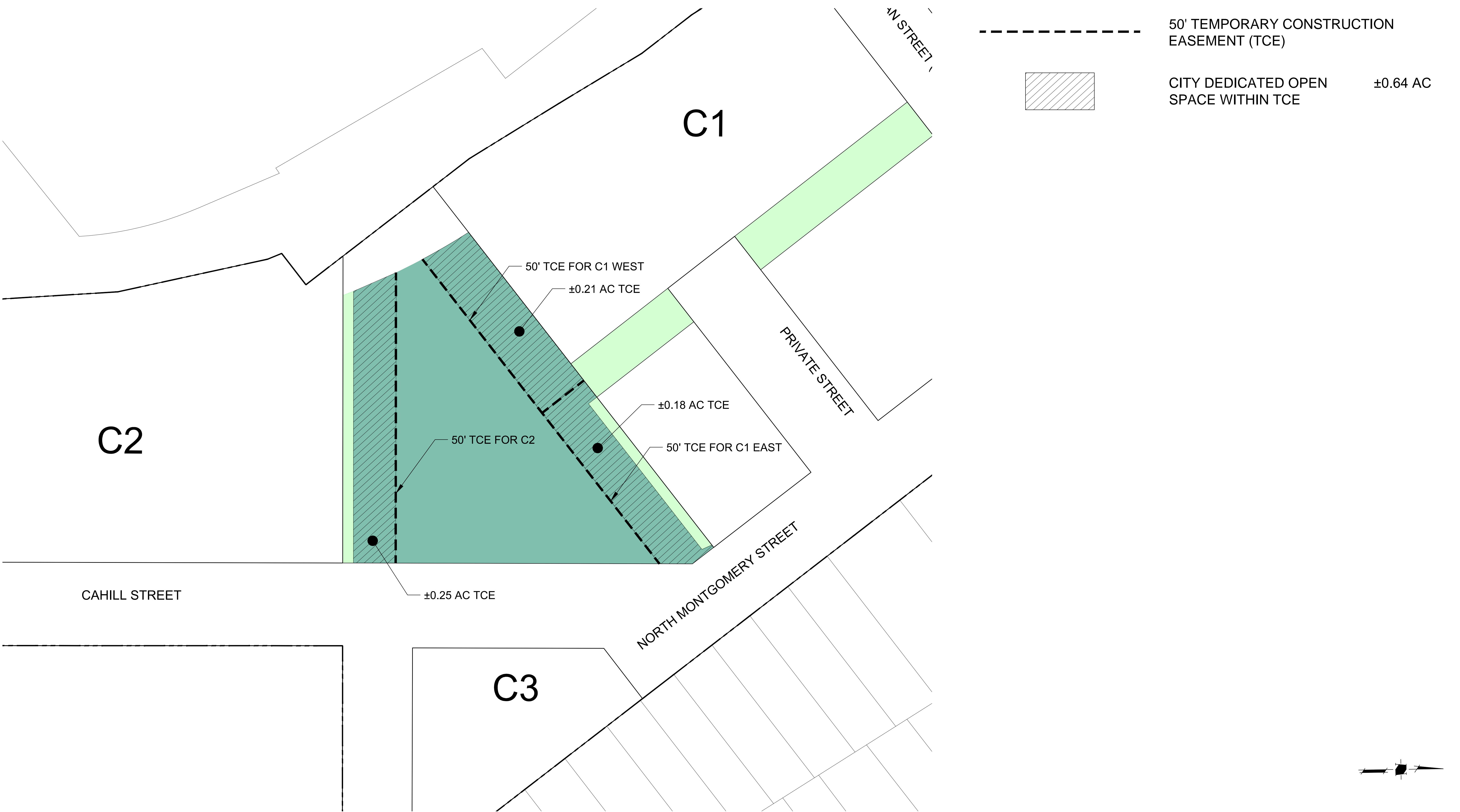


Exhibit E7

Exhibit E7

Parkland Dedication Tracking and Verification Table

Note: City-Dedicated Open Space (CDOS) sizes as of the Effective Date of this Agreement are listed in the table below. When a CDOS receives approval of Conformance Review, the size will be filled in in column D. The Actual CDOS Size (column D) is calculated by measuring the final land area, subject to any exclusions set forth in the Agreements. Column B lists expected acreages stated in Exhibit E2. Column C lists unit equivalents stated in Table 1 of Exhibit E1. For the purposes of Column F, an Average Unit Equivalent/Acre (AC) has been calculated equal to 833 ⅓ units and will be applied to the adjustment to determine the Final Park Credit value per CDOS. This was derived by dividing 4,000 units by 4.8 acres. Subject to the other requirements, limitations, and/ or exclusions of this Agreement, if the Actual CDOS Size (column D) is less than the Land Expected (column B if in acres), one or more other CDOS areas shall be increased in size such that a minimum of 4.8 acres of CDOS are provided in the Project for the development of 4,000 residential units, subject to the requirements, allowances, and limitations set forth in the Parkland Agreement, including Section 2. In the event that Developer pays Parkland Fees pursuant to Section 2, such fees shall be calculated based on the amount of acquired, or lost acreage, multiplied by one hundred ninety-five dollars (\$195).

A. CDOS Name	B. Expected CDOS Size (AC)	C. Estimated Total Residential Unit Equivalent Per Expected Park	D. Actual CDOS Size (AC)	E. Adjustment (Column D - Column B)	F. Final Park Credit (Column E x Average Unit Equivalent/AC + Column C)
Los Gatos Creek Connector	0.91	615			
Los Gatos Creek Park	0.37	348			
Trail on G in Los Gatos Creek Park	0.28	258			
Social Heart	0.57	617			
Trail on E in Los Gatos Creek East	0.25	187			
St. John Triangle	1.53	1,396			
Northend Park	0.89	579			
Total	4.80	4,000			

Exhibit E8

Exhibit E8

Parkland Dedication Obligation

Table 1 Calculation of Total Parkland Dedication Obligation			
Assumptions	Mid-Rise	High-Rise	Total
In-Lieu Fee \$/Unit - Market Rate	\$22,600	\$14,600	
In-Lieu Fee \$/Unit - Moderate Income Rate (50% Credits)	\$11,300	\$7,300	
In-Lieu Fee \$/Unit - Affordable BMR Rate (50% Credits)	\$11,300	\$7,300	
MR to HR Ratio - Market Rate Units	3%	97%	
MR to HR Ratio - Moderate Income Units	4%	97%	
MR to HR Ratio - Land Dedicated BMR Units	100%	0%	
# of Market Rate Unit	105	3,095	3,200
# of Moderate Income Unit	7	193	200
# of Land Dedicated BMR Unit	600	-	600
Total Units	712	3,288	4,000
Population/Unit	2.34	1.51	
Total Population (# of Units x Population Ratio)	1,666	4,965	6,631
Parkland Required (0.003 ac/person)	5.00 ac	14.89 ac	19.89 ac
In-Lieu Fee - Market Rate Units	\$2.4M	\$45.2M	\$47.6M
In-Lieu Fee - Inclusionary Units	\$.1M	\$1.4M	\$1.5M
In-Lieu Fee - Land Dedicated BMR Unit	\$6.8M	-	\$6.8M
Total Net In-Lieu Fee	\$9.2M	\$46.6M	\$55.8M

Table 2 Blended Per Unit In-Lieu Fee Obligation*

In-Lieu Fee	\$13,957
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*The Parkland Dedication Obligation, based on the number of type of units to be provided – such as mid-rise, high-rise, market-rate, and affordable – shall be blended across the Project, regardless of unit type, and administered uniformly based on the number of residential units produced, as reflected in Table 2 to this Exhibit.

Exhibit E9

Exhibit E9

List of Required Exceptions from Parkland Dedication Ordinance

1. San Jose Municipal Code Section 19.38.300(A) - The Park Improvements to be installed on the City-Dedicated Open Space shall be Completed in accordance with the City-Dedicated Open Space Dedication and Improvements Schedule included as Exhibit E3 to this Agreement. Although the City has determined that dedication of the open spaces and Completion of the Park Improvements in accordance with the Schedule set forth in Exhibit E3 is in the public interest and ultimately will be beneficial to the City, Completion and delivery is not tied directly to production of residential units in the same manner described in Section 19.38.300(A). Therefore, an exception from Section 19.38.300(A) is required to allow Completion and delivery of open space in the manner depicted in Exhibits E3.1 and E3.2.
2. San Jose Municipal Code Section 19.38.330 (B) - The Project requires a waiver from the requirement that real property conveyed to the City be dedicated free and clear of encumbrances. Development of the Project requires (i) utilities easements through portions of some of the City-Dedicated Open Spaces to serve the Project buildings; (ii) emergency vehicle access easements to serve Project buildings and/or DISC Agency facilities; and (iii) easements for utilities, vehicle and pedestrian ingress and egress, and elevator access, among other potential easements and encumbrances, to allow for development of the Social Heart City-Dedicated Open Space, provided however, that surface areas dedicated to such uses set forth in this provision (iii) shall not count toward the Parkland Dedication Obligation.

Exhibit E10

Bond No. _____

Premium _____

FAITHFUL PERFORMANCE BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and *[insert name of Developer or Contractor, type of entity, and state of incorporation if applicable]* as principal ("Principal") have entered into an agreement entitled *[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]*, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a bond to City for faithful performance of the Contract;

NOW, THEREFORE, we the Principal and *[insert full name of Surety]*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of *[insert bond amount]*, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal, Principal's heirs, executors, administrators, successors, or assigns shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principal in the Contract and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless City, its officers, employees, and agents, as therein provided, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the sum specified above, there shall be included all costs, expenses, and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:

SURETY:

(Principal name)

(Seal)

(Surety name)

(Seal)

BY: _____
(Signature)

BY: _____
Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:

Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

PAYMENT (LABOR AND MATERIALS) BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and *insert name of Developer or Contractor, type of entity, and state of incorporation if applicable*, as principal ("Principal") have entered into an agreement entitled *insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project*, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a good and sufficient payment bond to the City to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code.

NOW, THEREFORE, we the Principal and *insert full name of Surety*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City, and unto all contractors, subcontractors, suppliers, laborers, materialmen and other persons employed in the performance of the Contract and referred to in the aforesaid Civil Code, as obligees, in the sum of *insert bond amount*, on the condition that if Principal shall fail to pay for any materials or equipment furnished or used or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses, and fees, including attorney's fees, reasonably incurred by any obligee in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in the judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect, and shall bind Principal, Surety, their heirs, executors, administrators, successors, and assigns, jointly and severally.

IT IS HEREBY EXPRESSLY STIPULATED AND AGREED that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, and State agencies entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the

specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

Principal name)

(Seal)

(Surety name)

(Seal)

BY: _____

(Signature)

Print name and title)

Principal address and telephone:

BY: _____

(Signature)

Print name and title)

Surety address and telephone:

Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

WARRANTY BOND

WHEREAS, the City of San Jose, a municipal corporation of the State of California (“City”) and ***[insert name of Developer/Contractor, type of entity, and state of incorporation if applicable]*** as principal (“Principal”) have entered into an agreement entitled ***[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]***, incorporated herein by reference and referred to as the “Contract,” which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond to City to make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work so contracted for, which shall have appeared or been discovered, within the period of one (1) year from and after the completion and final acceptance of the work done under the Contract.

NOW, THEREFORE, we the Principal and ***[insert full name of Surety]***, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California (“Surety”), are held firmly bound unto the City in the sum of ***[insert bond amount – 25% of Faithful Performance Bond]***, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal shall well and truly make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work performed under the Contract, which shall have appeared or been discovered within said one-year period from and after completion of all work under the Contract and final acceptance by City of said work, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:

SURETY:

(Principal name) (Seal)

(Surety name) (Seal)

BY: _____
(Signature)

BY: _____
(Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:

Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact

Exhibit F

Privately-Owned Publicly Accessible Open Space

Exhibit F1

Exhibit F1

<p>RECORDING REQUESTED BY, AND WHEN RECORDED RETURN TO:</p> <p>City of San José 200 E. Santa Clara Street, 16th Floor San José, California 95113 Attn: _____</p> <p>with a copy to:</p> <p>Google LLC 1600 Amphitheatre Parkway Mountain View, CA 94043 Attn: Legal Department / RE Matters</p>	
<p>A.P.N. (s): _____</p>	<p>THE AREA ABOVE IS RESERVED FOR RECORDER'S USE</p>

Exempt from recording fees pursuant to Government Code § 27383.

Exempt from documentary transfer taxes pursuant to Revenue Taxation Code § 11922
(conveyance to a governmental entity).

[CHECK W/TITLE COMPANY ON FORM/FORMAT]

DECLARATION OF PUBLIC ACCESS COVENANTS AND RESTRICTIONS

This Declaration of Public Access Covenants and Restrictions (“Declaration”) is entered into as of _____, 2021 (the “Effective Date”), by and between GOOGLE LLC, a Delaware limited liability company (“Declarant”), and the CITY OF SAN JOSE, a California municipal corporation (“City”).

R E C I T A L S

A. Declarant is the owner of the land described in Exhibit “A” and the improvements thereon (the “Covenant Privately-Owned Publicly Accessible Open Space”).

B. Declarant and City have entered into a Development Agreement dated _____, 2021 (the “Development Agreement”) in connection with development of the Project, as defined in the Development Agreement, including development of the Covenant

Privately-Owned Publicly Accessible Open Space. The Development Agreement was recorded in the Official Records of Santa Clara County on _____, 202__ as Document No. _____.

C. Declarant will develop certain Covenant Privately-Owned Publicly Accessible Open Spaces in accordance with the terms and conditions of the Development Agreement, consisting of the Privately-owned Public Parks, Los Gatos Creek Riparian Setback, and Los Gatos Creek Riparian Corridor open space categories (as defined and described in the Downtown West Design Standards and Guidelines). Approximately seven (7) total acres of such open space will be subject to certain covenants and restrictions, the same as those set forth in this Declaration. A declaration similar to this Declaration is to be separately recorded for each such Covenant Privately-Owned Publicly Accessible Open Space. The purpose of this Declaration is to ensure public access to [*insert name given to the subject Covenant Privately-Owned Publicly Accessible Open Space*], which Covenant Privately-Owned Publicly Accessible Open Space is more specifically described in Exhibit “A” in accordance with the terms and conditions below.

D. Capitalized terms used in this Declaration and not defined herein shall have the meaning ascribed to them in the Development Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the Development Agreement, the mutual covenants and terms contained herein and other consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant declares as follows on behalf of itself and all future owners of any affected portion of the Project Site:

1. Recording. This Declaration shall be recorded in the Official Records of Santa Clara County against the Covenant Privately-Owned Publicly Accessible Open Space described in Exhibit A prior to issuance of a Temporary Certificate of Occupancy for [*insert name of the Building or development parcel that corresponds to the subject Covenant Privately-Owned Publicly Accessible Open Space*] and shall also be recorded against [*insert name of the Building or development parcel that corresponds to the subject Covenant Privately-Owned Publicly Accessible Open Space*] to the extent the Covenant Privately-Owned Publicly Accessible Open Space is a separate legal parcel.

2. Timing. Declarant shall Complete the Covenant Privately-Owned Accessible Open Space in the time and manner described in the Development Agreement, the Downtown West Planned Development Zoning, and the Downtown West Design Standards and Guidelines, including in compliance with the schedule set forth in Section 4.1.3(a) of the Development Agreement, which schedule associates each Covenant Privately-Owned Accessible Open Space with development of certain Buildings or development parcels.

3. Legal Description. Following Completion of the Covenant Privately-Owned Accessible Open Space, Declarant shall have the right to prepare a final legal description of such Space and an amendment to this Declaration, in which the precise location or boundaries of the Covenant Privately-Owned Accessible Open Space are described in the legal description or shown

on a site plan or map, and, subject to the City's review and approval of such description and amendment, record such amendment in the Official Records of the County of Santa Clara.

4. City Regulatory Approvals. Prior to commencing any construction, operation, or maintenance of the Covenant Privately-Owned Accessible Open Space, Declarant shall obtain all approvals Declarant is required to obtain from City for such activities in City's regulatory capacity, if any.

5. Purpose of Declaration; Open Space and Public Access. The purpose of the Declaration shall be for access to and use by the public of the Covenant Privately-Owned Publicly Accessible Open Space, subject to the hours of operation and scope of permitted park use set forth in Exhibit F2 to the Development Agreement, which Exhibit is attached hereto as Exhibit B.

Declarant acknowledges and agrees that the provisions set forth in Exhibit F2 may not be changed or modified with respect to the Covenant Privately-Owned Publicly Accessible Open Space if such change or modification would be more restrictive, meaning that the change would reduce the hours of operation or restrict or eliminate a permissible park use, without prior approval by the Director of PRNS; provided, however, that a permanent decrease in the hours of operation for the Covenant Privately-Owned Publicly Accessible Open Space by five percent (5%) or more shall require a public hearing by the City Council and approval by a majority vote. Any such change or modification for which the required approval is not obtained shall be of no force or effect.

The Covenant Privately-Owned Publicly Accessible Open Space shall be maintained and open for public use pursuant the terms of this Declaration until either: (i) the end of the useful life of the [insert name of the Building associated with the Covenant Privately-Owned Publicly Accessible Open Space and that triggered its Completion] or (ii) the City Council approves or authorizes an alternate use of the specific Covenant Privately-Owned Publicly Accessible Open Space, which approval or authorization shall require a minimum two-thirds affirmative vote of the entire City Council.

[Include if Declaration applies to the Covenant Privately-Owned Publicly Accessible Open Space portion of the Open Space Referred to as "the Meander"] In the event that construction on Blocks F1, F2, F3, or F6, or on 150 South Montgomery Street would pose a risk to public safety or interfere with public use of the portion of the Meander that is a Covenant Privately-Owned Publicly Accessible Open Space, and there is no feasible alternative to avoid that risk or interference while still allowing for construction to proceed, Declarant shall meet and confer with the Director of PRNS regarding the need for a temporary construction easement. The City will not unreasonably withhold authorization of a temporary construction easement over a portion of the Meander that is subject to this Declaration; however, the area of any such temporary construction easement or easements shall be the least impactful to public use of the Meander as feasible, and for the shortest duration necessary to protect public safety.

6. Maintenance and Repairs. Declarant shall, at its sole cost and expense, keep the Covenant Privately-Owned Publicly Accessible Open Space and all improvements thereon in good condition and repair at all times for public use.

7. Nondiscrimination. With regard to accessing or using the Covenant Privately-Owned Publicly Accessible Open Space, Declarant shall not discriminate against any person on the basis of fact or perception of a person's economic status, social standing, race, ethnicity, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discriminate against such classes.

8. Compliance With Laws. Declarant shall, at its sole cost and expense, make any improvements to the Covenant Privately-Owned Publicly Accessible Open Space required by laws or changes in laws.

9. Property Taxes; Liens. Declarant or its successors and assigns shall pay, prior to delinquency, all property taxes, special taxes and/or assessments assessed against the Covenant Privately-Owned Open Space, and shall keep the Covenant Privately-Owned Open Space free of all deeds of trust and other liens, except for deeds of trust securing financing for the *[insert name of the Building associated with the Covenant Privately-Owned Publicly Accessible Open Space]* or the Covenant Privately-Owned Open Space (each, an "Encumbrance"), which must be subordinated to this Declaration by a written subordination agreement recorded against the Covenant Privately-Owned Publicly Accessible Open Space that is reasonably acceptable to City. Notwithstanding the foregoing, no breach of or default under this Declaration shall defeat, render invalid, diminish or impair any such Encumbrance or the rights of the beneficiary thereunder (each, a "Lender"), but all of the terms and conditions contained in this Declaration shall be binding upon and effective against and shall run to the benefit of any such Lender or other party who acquires title to or possession of the Covenant Privately-Owned Publicly Accessible Open Space.

10. Lender Notice and Cure Rights. As long as any Encumbrance shall remain unsatisfied of record, City shall give to the applicable Lender a copy of each Default Notice (as defined in Section 11 below) that City gives to Declarant if that Lender has given to the City a written request for Default Notices. Copies of such Default Notices shall be given to any requesting Lender at the address that requesting Lender last furnished to City.

Each Lender shall have the right, but not the obligation, to do any act or thing required of Declarant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof; provided, however, that no such action shall constitute an assumption by such Lender of the obligations of Declarant under this Declaration. In the case of any Default Notice given by the City to Declarant, the Lender shall have the applicable cure period provided to Declarant for remedying the default described in that Default Notice or causing it to be remedied and, if prior to the expiration of the applicable cure period, a Lender gives City written notice that it intends to undertake the curing of such default or to cause the same to be cured, and then proceeds with all due diligence to do so, Lender shall have, in each case, an additional period of thirty (30) days (or, except for a default relating to the payment of money, such longer period as reasonably necessary as long as Lender commences cure within such thirty (30) day period and diligently proceeds to completion) after the later to occur of (i) the expiration of the applicable cure period, or (ii) the date that the City has served such Default Notice upon Lender, and the City shall accept such performance by or on behalf of the Lender as if the same had been made by Declarant. Notwithstanding anything to the

contrary herein, in no event shall the additional cure period provided to the Lender exceed six (6) months beyond the cure period applicable to Declarant.

11. City's Remedies. If City determines that Declarant is in violation of the terms of this Declaration, City shall give written notice to Declarant of such violation ("Default Notice"). If Declarant fails to cure the violation within fifteen (15) days after said Default Notice is given, or said cure reasonably requires more than fifteen (15) days to complete and Declarant fails to begin to cure within the fifteen (15) day period or fails to continue diligently to complete the cure, then City may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Declarant with the terms of this Declaration, to recover any damages to which City may be entitled for Declarant's violation of the terms of this Declaration, or may cure the violation, in which event Declarant shall reimburse City for the costs incurred by City in connection with the violation and cure within thirty (30) days after written demand with evidence of such costs.

12. No Waiver. No waiver by City of any violation under this Declaration shall be effective or binding unless and to the extent expressly made in writing by City Council, and no such waiver may be implied from any failure by City to take action with respect to such violation. No express written waiver of any violation shall constitute a waiver of any subsequent violation in the performance of the same or any other provision of this Declaration.

13. Miscellaneous.

(a) Notices. Any notice to be given under or in connection with this Declaration shall be in writing and shall be deemed to have been given upon: (i) one (1) business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (ii) two (2) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows (or to such other address of which a party notifies the other with a notice given pursuant to this Section):

If to Declarant:

Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attn: REWS Dept. / DevCo Project Executive - San Jose

With a Copy to:

Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attn: Legal Department / RE Matters

If to City:

City of San José
200 E. Santa Clara Street, 16th Floor
San José, California 95113
Attn: _____

With Copy to:

Johnny V. Phan
Chief Deputy City Attorney
Office of the City Attorney
City of San José
200 East Santa Clara Street
San José, CA 95113-1905
johnny.phan@sanjoseca.gov

(b) Runs With Land; Binds Successors-in-Interest. This Declaration binds the Covenant Privately-Owned Publicly Accessible Open Space and the [*insert name of the Building associated with the Covenant Privately-Owned Publicly Accessible Open Space*], and binds all successors to any portion of or interest in the subject Covenant Privately-Owned Publicly Accessible Open Space and the [*insert name of the Building associated with the Covenant Privately-Owned Publicly Accessible Open Space*].

(c) Entire Agreement. This Declaration is the entire agreement between the City and Declarant with respect to its subject matter and supersedes all prior and contemporaneous oral and written agreements and discussions, except the Development Agreement and the Project Approvals.

(d) Amendment; Termination. Subject to the provisions of Section 5 above, this Declaration may be amended or terminated only by an agreement in writing signed by all of the parties. Amendment or termination of this Declaration shall not require an amendment to the Development Agreement.

(e) Neutral Construction: Each of the parties cooperated in the drafting and preparation of this Declaration with the assistance of legal counsel. Accordingly, none of the provisions of the Agreement shall be construed against the other party as the drafter.

(f) Governing Law. This Declaration shall be governed by and interpreted under the laws of the State of California.

(g) Severability. If any provision of this Declaration shall for any reason be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the validity of the other provisions of this Declaration shall in no way be affected thereby.

(h) Counterparts. This Declaration may be executed in any number of identical counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(i) Further Acts. Each of the parties shall execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this Declaration (including, without limitation, obtaining and delivering to City prior to the recordation of this Declaration reasonable subordination agreements from any Lender that is the beneficiary under an Encumbrance that is or might be senior to this Declaration as of the date of the recordation of this Declaration).

(j) Time of Essence. Time is of the essence of every provision hereof in which time is a factor.

(k) To the fullest extent by law, Declarant shall defend, indemnify and hold City harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including without limitation attorneys' fees and court costs) arising from or relating to the Declaration, public use of the subject Covenant Privately-Owned Publicly Accessible Open Space, or (excluding sole negligent or willful acts by City) anything occurring on the subject Covenant Privately-Owned Publicly Accessible Open Space.

(l) [Insurance Requirements, with City named as additional insured.] [CITY STANDARD INSURANCE REQUIREMENTS]

IN WITNESS WHEREOF, the parties hereto have executed this Declaration as of the date first above written.

DECLARANT:

GOOGLE LLC,
a Delaware limited liability company

By: _____
Print Name: _____
Title: _____

CITY:

CITY OF SAN JOSÉ,
a municipal corporation

By: _____
Print Name: _____
Title: _____

ATTEST:

City Clerk

Approved as to form:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Santa Clara)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Santa Clara)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT “A”

**LEGAL DESCRIPTION AND DIAGRAM/DEPICTION OF THE COVENANT
PRIVATELY-OWNED PUBLICLY ACCESSIBLE OPEN SPACE**

EXHIBIT “B”

EXHIBIT F2 TO DEVELOPMENT AGREEMENT

Exhibit F2

Exhibit F2

Rules Regarding Public Access

1. Hours of Operation

Except as set forth in Section 2 herein, each of the Privately-Owned Publicly Accessible Open Spaces, excluding the Los Gatos Creek Riparian Corridor, shall be open to the general public every day from sunrise until 9:00p.m.

2. Scope of Permissible Park Use

The public is welcome to access the Privately-Owned Publicly Accessible Open Spaces for the following general uses:

- to enjoy the park during the hours of operation ("park hours")
- to enjoy open spaces during park hours, other than those times reserved for private events or necessary closing
- to engage in commercial activity and revenue generating activities with permission of the Developer/owner
- to enjoy and participate in public, community curated events that do not require payment, which will happen a minimum 6 times annually
- to enjoy the gardens, naturalized areas, and landscaping without entering flowerbeds or damaging vegetation
- to sit on a park chair or one seat on a bench designed for sharing
- to deposit waste in trash or recycling receptacles
- to walk dogs on a leash so long as the person walking the dog cleans up after the dog and deposits waste into appropriate receptacles
- to take souvenir photos; commercial photography by Developer/owner permission only

- to apply to the Developer/owner to host private events, i.e., corporate events, protests, or other special events

Exhibit F3

Exhibit F3

Rules Regarding Public Events, Private Events, and Temporary Closures

“Public event” and “private event” shall have the meaning set forth in the General Development Plan. Excluding semi-public open space (as defined in the DWDSG) under lease by a business, the Los Gatos Creek Riparian Corridor, and limited-access mid-block passages (as defined in the DWDSG), all spaces are publicly accessible, subject to the following limitations:

- a. All public events and private events require prior Developer/owner permission, and Developer/owner has the authority in its sole discretion to determine whether an event is permitted, consistent with the rules and limitations for public events, private events and/or temporary closures set forth in this Exhibit F3.
- b. All public events and private events permitted by this Exhibit F3 are permitted without any further authorization, permits, or approvals from the Director of PBCE or any other City department, except to the extent a permit is required under the San Jose Municipal Fire Code (Fire Code) or the event includes amplified noise that exceeds [60] decibels (dBA), which permit processes and requirements are set forth in the General Development Plan.
- c. Notwithstanding the limitations regarding partial closures set forth below, each individual Privately-Owned Publicly Accessible Open Space may be closed in its entirety (inclusive of the reservable areas) for a private event a maximum of six (6) times per year, not to exceed eight (8) hours in any month, except as permitted by Paragraph (p). Except for closures described in Paragraph (p), Developer or Owner shall provide notice to the City of each planned closure for a large private event as allowed under this paragraph at least seven (7) days in advance of the closure, and

- shall post notice at the entrance to the subject Open Space least forty-eight (48) hours in advance of such closure to inform the public.
- d. No more than one entire Privately-Owned Publicly Accessible Open Space's reservable area may be reserved for a private event at any one time, except for five (5) days per year, when all Privately-Owned Publicly Accessible Open Space reservable areas may be reserved for no more than five (5) consecutive days, provided that prior notification to the general public via posted signage, and written notification to the City Department of Parks, Recreation & Neighborhood Services (“PRNS”) and other stakeholders. During such closures, public access to all City-Dedicated Park spaces and trails shall be provided unless closure of such City-Dedicated Park space is expressly approved in writing by PRNS.
 - e. Private events held in Privately-Owned Publicly Accessible Open Space reservable areas shall be limited to no more than five (5) consecutive days in one location.
 - f. Events shall be assigned to specific venues within the Privately-Owned Publicly Accessible Open Space network appropriate to the size and nature of the event and where the event will impose the least impact to the level of service on the Privately-Owned Publicly Accessible Open Space or the public's use therefore, as determined by Developer/owner in its sole discretion.
 - g. Non-reservable event areas shall remain open and accessible to the public during private events.
 - h. Events shall maintain a clear public path of travel around the event and through the Privately-Owned Publicly Accessible Open Space, including a safe path of travel marked in accordance with ADA standards shall be maintained.

- i. Private events held during business hours Monday through Thursday shall be encouraged to avoid high public use hours, as determined by Developer/owner.
- j. Private events held during evenings, weekends, and holidays and other hours of high public use should be limited, as determined by Developer/owner, in order to avoid high public use hours, as determined by Developer/owner.
- k. Private events held on weekends shall be limited to one weekend per month per Privately-Owned Publicly Accessible Open Space. As much as possible, as determined by Developer/owner, the event should allow the public to hear, see, or otherwise appreciate the event.
- l. Unless otherwise approved by Developer/owner, event support structures and furnishings shall be located on hardscape areas and shall be selected and arranged with a high regard for the visual and aesthetic quality of the Privately-Owned Publicly Accessible Open Space.
- m. Events involving animal acts, petting zoos, carnival rides, hot air balloons, or helicopter landings shall not be permitted.
- n. Vehicle access through the Privately-Owned Publicly Accessible Open Spaces is prohibited, except that vehicle access for the limited purpose of setting up or dismantling furnishings, decor, or other items associated with a public or private event may be permitted with prior approval of Developer/owner.
- o. Special Events, as defined in the General Development Plans, are permitted with prior Developer/owner permission. Special Events are permitted pursuant to the requirements specified in the Downtown West Planned Development Zoning District and General Development Plan.

- p. Notwithstanding any provision in this Exhibit to the contrary, Privately-Owned Publicly Accessible Open Spaces may be closed, at Developer/owner's reasonable discretion, on short-notice or at any time for security or safety needs, and for maintenance or repair. Any security or safety-related closure lasting longer than seven (7) days shall require written approval from City, a request for which shall be responded to within twenty-four (24) hours of receipt, and the approval of which shall not be unreasonably withheld.

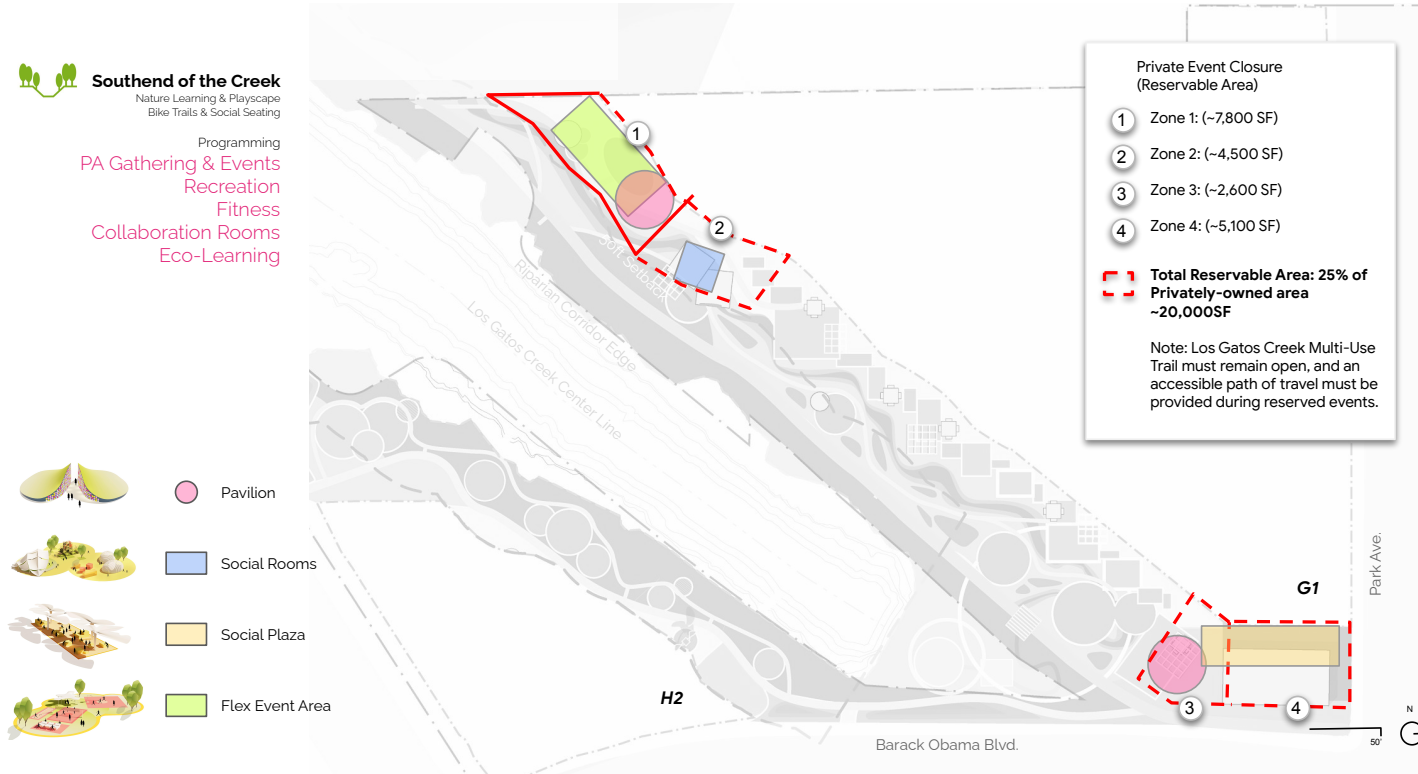
Each of the following Privately-Owned Publicly Accessible Open Spaces may be partially closed for private events as described below (by percentage of total open space, and duration), subject to the rules and conditions above:

- a. Los Gatos Creek Park: A maximum of twenty-five percent (25%) of Los Gatos Creek Park is reservable by the public for private event use for each event zone depicted on Figure 1 for up to fifty-four (54) days per year (15%) from Sunrise to 9:00p.m. The same is reservable by Developer for private event use for each event zone depicted on Figure 1 for up to seventy-three (73) days per year (20%) from Sunrise to 9:00p.m.
- b. The Meander: A maximum of fifty percent (50%) of the total Privately-Owned Publicly Accessible Open Space within The Meander is reservable by the public for event use for each event zone depicted on Figure 2 for up to fifty-four (54) days per year (15%) from Sunrise to 9:00p.m. The same is reservable by Developer for private event use for each event zone depicted on Figure 2 for up to seventy-three (73) days per year (20%) from Sunrise to 9:00p.m.
- c. Creekside Walk: A maximum of thirty-five percent (35%) of the total Privately-Owned Publicly Accessible Open Space within Creekside Walk is reservable by the

- public for event use for each event zone up depicted on Figure 3 for up to fifty-four (54) days per year (15%) from Sunrise to 9:00p.m. The same is reservable by Developer for private event use for each event zone depicted on Figure 3 for up to one hundred twenty-seven (127) days per year (35%) from Sunrise to 9:00p.m.
- d. The Gateway and Los Gatos Creek East: A maximum of thirty-five percent (35%) of the total Privately-Owned Publicly Accessible Open Space within the Gateway and Los Gatos Creek East is reservable by the public for event use for each event zone depicted on Figure 4 for up to fifty-four (54) days per year (15%) from Sunrise to 9:00p.m. The same is reservable by Developer for private event use for each event zone depicted on Figure 4 for up to seventy-three (73) days per year (20%) from Sunrise to 9:00p.m.
- e. Northend Park: A maximum of fifty percent (50%) of the total Privately-Owned Open Space within Northend Park is reservable by the public for event use for each event zone depicted on Figure 5 for up to fifty-four (54) days per year (15%) from Sunrise to 9:00p.m. The same is reservable by Developer for private event use for each event zone depicted on Figure 5 for up to seventy-three (73) days per year (20%) from Sunrise to 9:00p.m.

Exhibit F3 Figures 1-5

Figure 1: Conceptual Reservable Event Zones for Los Gatos Creek Park

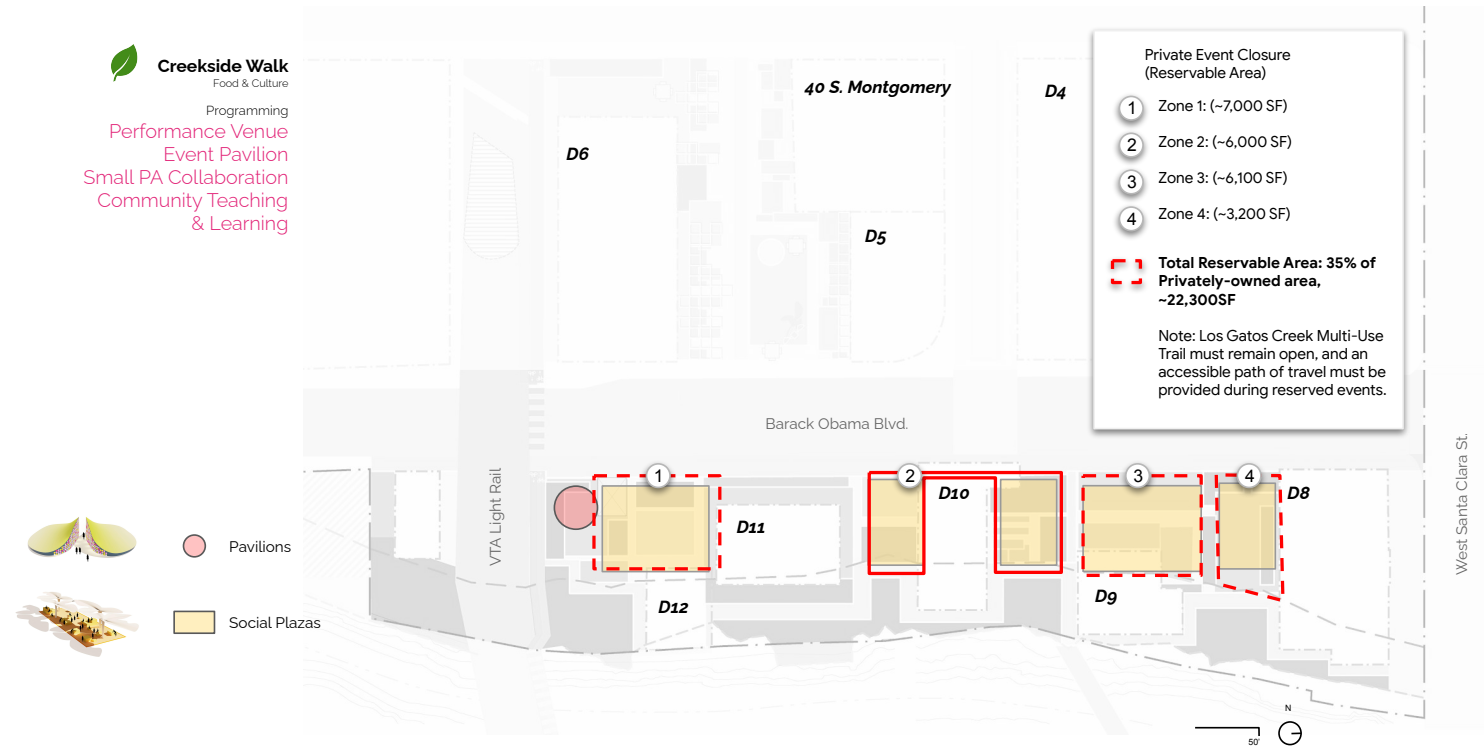


DRAFT — Subject to City Manager and City Council Review and Approval

Figure 2: Conceptual Reservable Event Zones for the Meander

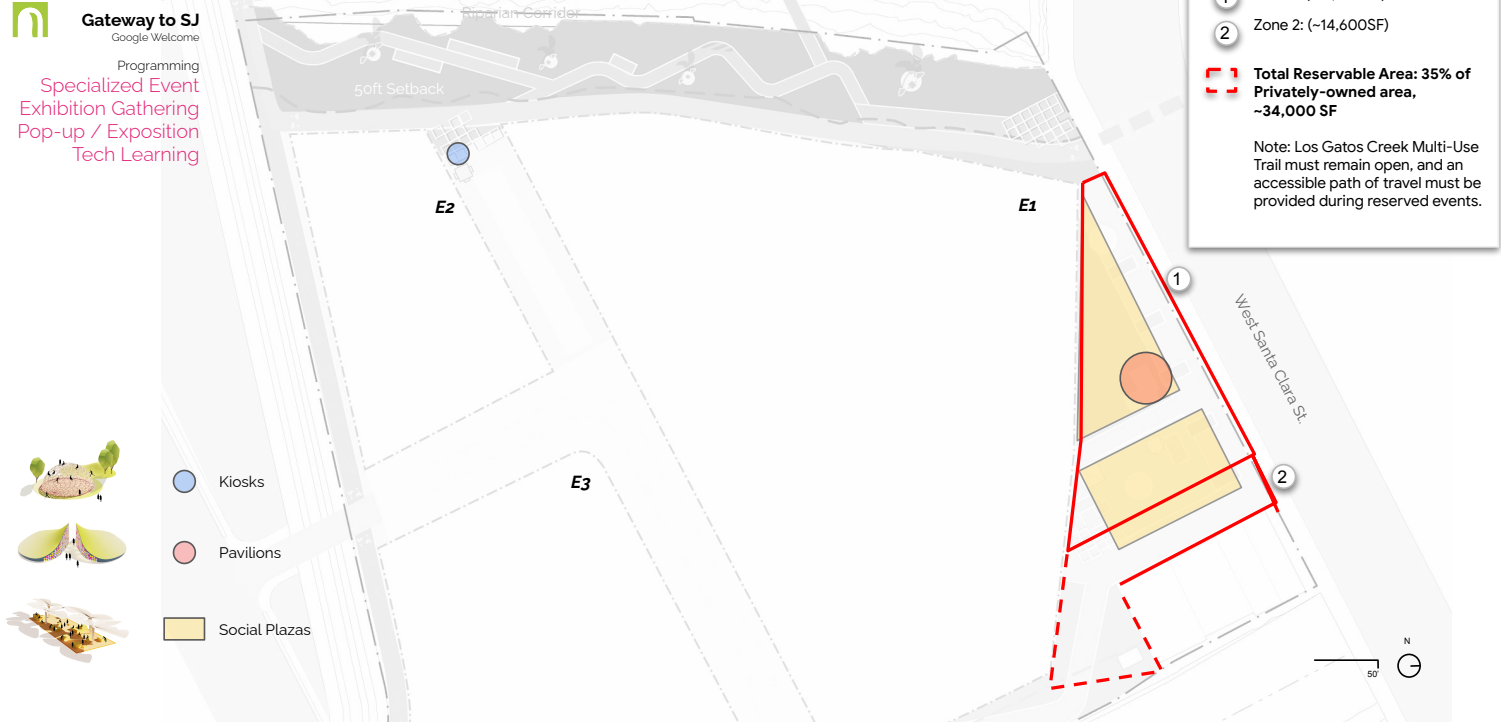


Figure 3: Conceptual Reservable Event Zones for Creekside Walk



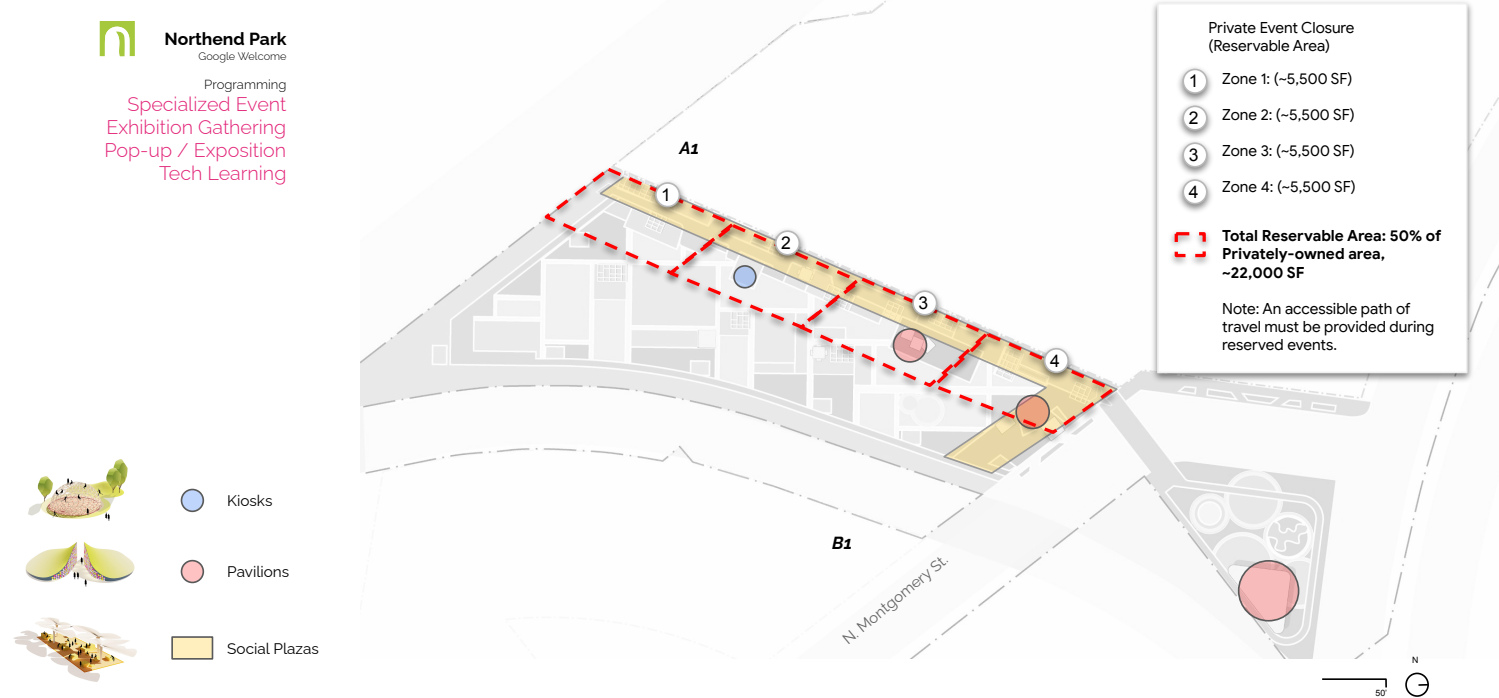
DRAFT — Subject to City Manager and City Council Review and Approval

Figure 4: Conceptual Reservable Event Zones for Gateway to San José & Los Gatos Creek East



DRAFT — Subject to City Manager and City Council Review and Approval

Figure 5: Conceptual Reservable Event Zones - Northend Park



DRAFT — Subject to City Manager and City Council Review and Approval

Exhibit G

Exhibit G

Workforce, Learning, and Education Commitment

Section 1. Google Participation with Community-Based Organizations. Following issuance of a Certificate of Occupancy for the first commercial office Building in the Project, and as long as Google LLC or any Google Affiliate occupies commercial office space in the Project during the term, Google shall use, or cause the Google Affiliate to use, Good Faith Efforts:

a. to promote opportunities for Google employees to volunteer their time with, and to serve as mentors on behalf of community-based organizations that serve San José students from underrepresented backgrounds; and

b. to provide career exploration and skills development opportunities, such as onsite field trips, career days, and computer science workshops, to students from underserved communities and who have an interest in technology and technology-based careers.

Any Transferee that occupies commercial office space in the Project during the term shall meet and confer with the City regarding how it can use Good Faith Efforts to promote employee volunteer opportunities, provide career and skill development opportunities to students from underserved communities, or otherwise engage with community-based organizations.

Section 2. Local and Minority Business Enterprises; Local Hire.

2.1 Local and Minority Business Enterprises - Project Construction. For the construction of the commercial office Buildings within the Project, Developer will use Good Faith Efforts to achieve, or to cause the general contractor(s) to achieve, an overall LBE, DBE, MBE, WBE, and/or LGBTBE, DOBE, and/or SD/VBO participation goal of 10% of the total cost of all contracts for a commercial office building to be awarded to contractors, subcontractors, suppliers,

and/or consultants that qualify as a LBE, DBE, MBE, WBE, and/or LGBTBE, DOBE, and/or SD/VOB. To advance this goal, Developer will use Good Faith Efforts:

- a. to include in its construction contracts for each commercial office building a requirement that the general contractor shall use Good Faith Efforts to contract with subcontractors, suppliers, and other businesses that qualify as a LBE, DBE, MBE, WBE, LGBTBE, DOBE, and/or SD/VOB;
 - b. to notify construction and DBE publications of contracting opportunities;
- and
- c. to host an annual development construction fair to bring together prime/general/sub contractors in an effort to increase diversity and inclusion on major construction projects.

2.2 Local and Minority Business Enterprises - Project Operation. In context to the opening of each commercial office Building, prior to the issuance of a Final Certificate of Occupancy for a commercial office Building in the Project, Developer shall use, or cause its affiliate company and/or its vendors to use, Good Faith Efforts:

- a. to hire contractors, subcontractors, suppliers, and/or consultants that qualify as a LBEs, DBEs, MBEs, WBEs, LGBTBEs, DOBEs, and/or SD/VOBs for ongoing service contracts (e.g. maintenance, janitorial, landscaping, security etc.) related to Developer's commercial office Buildings; and
- b. to host two (2) times per year on a semi-annual basis, an informational session targeted to LBEs, DBE, MBEs, WBEs, LGBTBEs, DOBEs, and/or SD/VOBs interested in providing goods and services to Developer's commercial office Buildings.

2.3 Local Hire - Project Construction. Developer will include in its construction contracts for all onsite construction activity a requirement that the contractor or subcontractor shall use Good Faith Efforts to achieve a goal that Local Residents comprise thirty percent (30%) of all new hires for employment opportunities under the applicable construction contract for construction trade positions and entry-level positions related to providing support to the construction industry. This obligation to use Good Faith Efforts shall not limit the ability of a contractor or subcontractor to assess qualifications of prospective workers, to require a contractor or subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

2.4 Local Hire - Project Operation. In context to the opening of each commercial office Building, prior to the issuance of a Final Certificate of Occupancy for a commercial office Building in the Project, Developer shall use, or cause the Developer Affiliate to use, Good Faith Efforts:

a. to establish a “Local Community Liaison” who will be responsible for connecting primary building operations contractors (e.g. maintenance, janitorial, landscaping, security, and other non-college IT roles) with the City’s lead Workforce Development Board (e.g. work2future) and other local community-based workforce development organizations, and for promoting with the City’s lead Workforce Development Board and other local community-based workforce development organizations applicable roles with Developer or Developer Affiliate, to ensure qualified Local Residents seeking employment are aware of open positions at the Project Site and are considered for the open roles;

b. to encourage building operations contractors that provide services to Developer/affiliate-occupied Buildings to use their Good Faith Efforts to notify the City’s lead Workforce Development Board (e.g. work2future) and other local community based workforce

development organizations when the contractor is hiring for positions that service such buildings, and to make Good Faith Efforts to interview and consider referred candidates from the local workforce agencies with appropriate backgrounds, qualifications, and experience for the open roles;

c. to periodically participate in the City’s lead Workforce Development Board (e.g. work2future) and other local community based workforce development organizations client outreach and recruiting events;

d. to host two (2) times per year on a semi-annual basis, a career development workshop or job fair targeted at local Economically Disadvantaged Communities and Underrepresented Workers;

e. to have a Developer representative serve as a board member on the City’s lead Workforce Development Board (e.g. work2future); and

f. to collaborate on an annual basis with the Community Stabilization and Opportunity Pathways Fund, and with the City’s lead Workforce Development Board (e.g. work2future) and other local community based workforce development organizations to analyze and identify job types, projections for in-demand roles, job readiness and potential career pathways for underrepresented workers leading to economic self sufficiency.

Section 3 Definitions.

The following definitions apply to this Exhibit G (and any term not defined in this Section 3 shall have the meaning provided in the Development Agreement):

3.1 “Disability Owned Business Enterprise (DOBE)” shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons with a disability.

3.2 "Disadvantaged Business Enterprise (DBE)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons who is a socially and economically disadvantaged individual.

3.3 "Economically Disadvantaged Communities" shall mean communities in which the median household income is less than eighty percent (80%) of the county median income, as compared to the nine-county Bay Area region and the respective U.S. Department of Housing and Urban Development income threshold.

3.4 "Good Faith Efforts" shall mean the commercially reasonable efforts that a public company can undertake in light of its fiduciary obligations to its shareholders. Good Faith Efforts shall not obligate Developer to undertake any expenditure or program relative solely to the cost to implement any particular measure described herein. Additionally, Good Faith Efforts shall in no event be interpreted to mean that Developer is obligated to include any particular term pursuant to this Workforce, Learning, and Education Commitment in any agreement, except as otherwise provided in this Exhibit.

3.5 "LGBT Business Enterprise (LGBTBE)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons who identifies as a member of the Lesbian, Gay, Bisexual, and Transgender community.

3.6 "Local Business Enterprise (LBE)" shall have the same meaning as set forth in Chapter 4.12 of the City's Municipal Code.

3.7 "Local Resident" shall mean an individual who is domiciled, as defined by Section 349(b) of the California Election Code, as it may be amended, within Santa Clara County for at least seven (7) calendar days before commencing work on a Private Construction Project.

3.8 "Minority Business Enterprise (MBE)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons who is a member of one or more ethnic minority group.

3.9 "Service-Disabled/Veteran Owned Business (SD/VOB)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by a person or persons who is a Service-Disabled Veteran or Service-Disabled Veterans, as defined in section 3(q) of the Small Business Act (15 U.S.C. 632(q)).

3.10 "Underrepresented Worker" shall mean an individual who meets any one of the following conditions:

(a) The individual is at risk of losing his/her home, the individual is homeless, or the individual is housed within the past twelve (12) months before which he/she was homeless;

(b) The individual is receiving public assistance;

(c) The individual is participating in a reentry program or was formerly incarcerated;

(d) The individual has been continuously unemployed for at least three months over the previous year;

(e) The individual has a family or household income that falls below the current United States Department of Housing and Urban Development threshold for low income households in Santa Clara County;

(f) The individual has been emancipated from the foster care system;

(g) The individual is a veteran of the United States military;

(h) The individual is participating in a program for "at-risk" youth; or

- (i) The individual is a survivor of labor trafficking.

3.11 "Woman Business Enterprise (WBE)" shall mean any business that is an LBE and is at least fifty-one percent (51%) owned and Controlled (as defined in the Development Agreement) by one or more women.

Exhibit H

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, and 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.

Ex. H-1

4. Contributions by Google LLC. Google shall make payments to a restricted Fund in the amount of \$21.20 per gross square foot of office development, excluding any related or similar prepayment amounts identified in Exhibit C1 (subject to Consumer Price Index escalation not to exceed three percent (3%) per year), with payment to be made upon issuance of the Temporary 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. Excluding payments for Fund administrative costs, the initial allocation of Fund monies in the initial Five Year Strategic Plan, 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.
 - 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.
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; ensure compliance with City Council approved Five Year Strategic Plan; 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 certify alignment of grant awards with the approved Five Year Strategic Plan and grantee capacity to perform.
 - 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.

- xii. Escalate to City Administration material disputes with Committee or grantees.
- 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.
 - v. Provide feedback on the Annual Performance Report prior to submission to City Council.
 - vi. Participate in fundraising activities.
 - vii. 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.
 - viii. 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.
 - ix. Escalate to City Administration material disputes with Fund Manager.
- 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. Address material disputes raised by Fund Manager or Committee and unresolved by City Administration.

- 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 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.
 - ix. Escalate to City Council unresolved material disputes raised by Fund Manager or Committee.
 - 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 similar in size and purpose as the Fund, and with experience evaluating program and grantee effectiveness. 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. Detailed qualifications of the experienced Fund Manager will be outlined in the solicitation process and approved by City Council.
10. Committee Composition. The Committee shall be comprised of thirteen (13) voting members. These members shall either live in San José, have a meaningful connection to San José, or have a history of working in San José in the relevant subject areas of the Fund, 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 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 Capitol Expressway and Aborn Rd., and east of Highway 101) 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 including finance models.
 - ii. Tenant advocacy and support.
 - iii. Homelessness or homeless support services.
 - iv. STEAM education (early childhood, K-12, post-secondary).
 - v. Employment and workforce development, job training, apprenticeship programs, labor.
 - vi. Minority-owned, disadvantaged, small, or micro business retention and growth.
 - vii. Neighborhood development, leadership development.
 - viii. Philanthropy, fundraising, grant-making.
 - ix. Nonprofit management, legal, finance experience.
 - x. 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.
- 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. 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 approval of the first Conformance Review application.
- 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 Administration, who will bring it to 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.

Exhibit I

GOOGLE
DOWNTOWN WEST
INFRASTRUCTURE PLAN

April 5, 2021

Authors:

Arup

Lendlease

Schaaf & Wheeler

Sherwood Design Engineers

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1. INTRODUCTION / PROJECT DESCRIPTION

1.1. Purpose

This Infrastructure Plan is an exhibit to the Development Agreement by and between Google LLC (hereafter “Project applicant”) and the City of San José (City), with said agreement referred to hereafter as the “Development Agreement.” The Infrastructure Plan describes the infrastructure improvements (also referred to as horizontal improvements) to be constructed as part of the Downtown West Mixed-Use Plan (hereafter “Project”). The Infrastructure Plan, in tandem with the Planned Development Permit (inclusive of the Downtown West Improvement Standards (DWIS), (Conceptual) Infrastructure Planned Sheets and the Downtown West Standards and Guidelines (DWDSG) and Maintenance Matrix (Exhibit to the Infrastructure Agreement), Encroachment Agreement, Diagram and Exhibits set forth City and Project applicant responsibilities relating to the design, construction, ownership, acceptance, and operation and maintenance of horizontal improvements on the site as contemplated by the Development Agreement. Additionally, this document describes the interface of proposed horizontal improvements with existing City systems, networks and other portions of the public realm.

As recognized in the Development Agreement, some of the infrastructure improvements described in this Infrastructure Plan may be beneficial not only to development within the Project Site but also to existing and future development outside of the Project Site, including development within the broader DSAP's Boundaries and surrounding portions of the City. Therefore, in accordance with the Development Agreement, subject to appropriation of the funding by the City Council, the City will take actions reasonably necessary to develop an updated infrastructure program, which may lead to adoption of a Funding Mechanism, at which time the Project applicant would be eligible to receive a credit and/or reimbursement for the costs of installing qualifying improvements within the Plan Area. The Project applicant has provided the City with a cost estimate for the new and upgraded infrastructure, included as Schedule A Downtown West Estimated Infrastructure Reimbursement Costs to this document, for which it anticipates to be reimbursed, and will be confirmed as part of a future infrastructure plan or Nexus Study.

1.2. Project Description

The Downtown West Mixed-Use Plan encompasses approximately 80 acres of land owned by the Project applicant, the City, PG&E, VTA and Caltrain, which is proposed to be redeveloped, consistent with the EIR boundary. The Project will entail demolition of existing buildings along with construction in phases of up to 7.3 million gross square feet (gsf) of office space; up to 500,000 gsf of active uses (which would include retail, restaurant, arts, cultural, institutional, educational, non-profit and small-format office uses); hotel uses with up to 300 guest rooms; up to 800 limited-term corporate accommodations; a 100,000 gsf event facility that could host various events and assemblies; up to 5,900 residential dwelling units in buildings, some with active use spaces as discussed above at the ground level; an open space program within an aggregate of approximately 15 acres across the site; and onsite parking.

The proposed Project would include public realm improvements aimed at leveraging regional transit connectivity in the immediate vicinity (BART, Caltrain, VTA, and potentially future high-speed rail service), enhancing local pedestrian circulation (via additional connectivity, trail extensions and enhancements), and improving bicycle linkages to downtown for residents and visitors.

To support the Project, significant investment into public infrastructure would be made including streets and utility systems. The Project proposes to extend portions of certain streets and remove sections of

other streets to improve circulation through the Project area. Most notably, the proposed Project would extend Cahill to enhance north-south connectivity throughout the length of the Project site. Public utility improvements will include new utilities within new streets, relocations within reconstructed streets, and upgrades to aging or undersized utility systems. Public utility improvements would include domestic and fire water, storm drain and stormwater management, and sanitary sewer systems. Franchise utility improvements would include electrical, natural gas, and communications systems including the undergrounding of much of the overhead power lines within the Project area.

In addition to the public and franchise utilities, significant private infrastructure improvements would be built to support the Project's office, residential, and retail development. The private infrastructure systems have been conceptualized to be sustainable at their core while meeting a number of Project objectives as outlined in the Infrastructure Plan Overview below. These private infrastructure improvements include thermal heating and cooling system, electrical power, wastewater and solid waste collection, recycled water, and communications.

Additional off-site improvements for the Project will include reconstruction of the existing West San Fernando Street bridge and channel restoration of Los Gatos Creek from W. Santa Clara to W. San Carlos Street bridges to significantly reduce overbank flooding during a 100-year event, as further described in Section 10.1.4.

1.3. Infrastructure Plan Overview

The proposed Project would bring substantial development to the Diridon Station area. The approach builds on the strengths of the existing infrastructure while closing gaps to prepare a platform for a high-quality development as articulated in the December 2018 Memorandum of Understanding between the City of San José and the Project applicant. The existing street grid would largely be maintained and enhanced through circulation improvements. The open space systems would take cues from the local ecology and would be improved and expanded, enhancing connectivity with the Diridon Station area as well as the city as a whole. In most cases, parking provided by surface lots in the existing condition would be replaced with underground or podium parking garages thereby decreasing the parking footprint and increasing opportunities to reduce impervious spaces and improve the public realm. Municipal utility systems would be maintained and improved as necessary to support the Project development. This infrastructure plan aligns with the Project objectives as described in the Project's EIR. Through the implementation of district-wide infrastructure and systems in combination with a high-density mix of land uses, the Project aims to achieve outstanding environmental performance through resource efficiency across water, energy, and waste flows.

This Infrastructure Plan builds upon previous work done by the City of San José during the Diridon Station Area Plan (DSAP) planning process. Horizontal infrastructure improvements proposed in the DSAP included work both within the DSAP boundary and impacts outside of the DSAP Project boundary as identified in the DSAP EIR. Substantial horizontal improvements identified in the Diridon Station Area Analysis Final Report dated January 31, 2017 included:

- Reconstruction and extension of Autumn Street,
- Reconstruction of San Carlos Street, Park Avenue, and Julian Street,
- Storm drain improvements along Stockton Avenue and San Carlos Street,
- Sanitary sewer upsizing along Autumn Street,
- Extension of reclaimed water into the Diridon Station Area,
- Undergrounding of overhead distribution utilities.

Based on Project-specific analyses conducted, proposed upgrades to the existing horizontal infrastructure may differ from the proposed DSAP improvements. Additional detail can be found in sections 6, 7, 8 and 9.

1.4. District Systems and Utilities

The existing Project area is currently served by several public utilities including domestic (potable) water (DW), sanitary sewer (SS), storm drain (SD), PG&E electrical (ELEC), natural gas, and telecommunications (COMM). The Project as a result of an intensification of use will require new connections to these public systems, which will necessitate upgrades to the utilities, and may warrant construction of new thermal, electric, sanitary sewer, recycled water, and potable water private district systems. It should be noted that full electrification of the site is committed over the use of natural gas in line with the City of San Jose Climate Smart goals and Ordinance No. 30502, dated December 1, 2020, which prohibits new natural gas infrastructure in all new construction after August 1, 2021.s.

The Project proposes a district-systems approach to deliver resources via on site systems for energy, wastewater, recycled water and solid waste flows. A “district” system essentially entails the development of an onsite generation or treatment of resources locally with an accompanying network separate from, though sometimes linked to, the City or regional networks. District systems are most commonly used for building space heating and cooling, but may also be employed to generate electricity, collect and treat wastewater and stormwater, and the like. A small mutual water system serving a rural area is another common example of a district system. District systems have additional benefits for the Project. For instance, district thermal systems deliver heating and cooling resources more efficiently as compared to individual and building-specific systems. District water services enable local management of the Project’s resource demands, thereby reducing burdens on existing municipal systems while increasing Project resiliency. Business-as-usual utility connections will be provided to the development for potable and fire water, with joint trench services provided and maintained by service providers. Additionally, in some cases buildings within the Project area may not connect to the proposed district systems and instead connect to existing utilities; these limitations are noted in the private utilities section within this document.

The district-systems would serve the Project area via a utility corridor (“utilidor”) which would be constructed within private parcels to the maximum extent feasible and will cross public right-of-way at some locations to provide system distribution continuity. The utilidor may be a building-integrated structure as further described in the following sections. Business-as-usual utility systems will be run within the right-of-way and joint trench as normal. The scope and extent of the services within the right-of-way is described in further details within the plan.

Integral to the district systems approach would be the construction and operation of central utility plants (CUPs) in up to two infrastructure zones on the Project site. The approximately 130,000 total square-foot CUPs would house mechanical, thermal, power, water reuse, and supporting equipment to service the proposed Project area. An option exists to co-locate the automated waste collection system (AWCS) terminals within the infrastructure zones. Each system is further described in the following sections.

The CUPs would allow for consolidation of services, centrally addressing resource demands, reducing the burden on existing municipal systems, and increasing the Project’s resilience. Moreover, consolidation of services within the CUPs would result in greater spatial efficiency, user density, and productivity by eliminating areas within individual buildings dedicated to these facilities and services. Managing energy and infrastructure services across the site at a district wide scale is anticipated to yield further operational

and spatial efficiencies. For example, consolidation of solid waste collection through automated waste collection at a consolidated terminal could reduce the area required in each building for waste collection and storage. Furthermore, by consolidating waste collection to the AWCS terminal, truck traffic would be less distributed along local streets.

Google LLC is proposing to connect District Systems to the majority of buildings within the Project's boundaries. However due to phasing and property ownership the scope of connections may be restricted in areas of the plan. A summary of the extent of service and variants for each District System is listed below.

Wastewater and Recycled Water. The Project is maintaining two distinct alternatives for wastewater and recycled water servicing, outlined below.

The District Systems alternative consists of an onsite district water reuse facility(s), which will collect wastewater from the development for treatment, producing recycled water for non-potable uses, such as for water closet and urinal flushing, irrigation, and cooling. A private wastewater collection system and recycled water distribution network will be installed to facilitate operations.

A City alternative is also being considered, which will connect individual buildings to the municipal wastewater system via typical sewer lateral connections. In this alternative, the Project will connect to the South Bay Water Recycling (SBWR) recycled water network and extend the network to individual buildings and systems within the Project's boundaries.

Microgrid. The Project is proposing to service the Project with electricity from a microgrid, distributing 12.47kV/21kV electrical networks across the plan to service the Project. The Microgrid to the fullest extent will service all properties within the plan area, with potential limitations on servicing some residential buildings, existing assets and first phase buildings.

Thermal Heating and Cooling. The Project is proposing to service the development with an all-electric thermal heating and cooling District System, distributing energy via a thermal network contained within the utilidor. The production of heating and cooling energy will be via the central utility plants (CUPs). The District Heating and Cooling systems to the fullest extent will service all properties within the plan area, with potential limitations on servicing some residential buildings, existing assets and first phase buildings.

Automatic Waste Collection System (AWCS). The Project is considering the option of an alternative means of collecting solid waste from the Project via an AWCS. This system will collect the majority of waste from potentially all buildings within the plan area. This is an alternative system to a traditional building by building approach to solid waste collection and management.

1.4.1. Temporary Phasing of Equipment

The Project phasing strategy may require temporary equipment (including heating and cooling equipment) to some buildings while the CUPs are constructed. Temporary equipment will be required for parcels where entitlements and construction proceed ahead of those for the CUP parcel. This may be due to early construction on some parcels, the additional required regulatory approvals for the combined CUP parcel, or the need to complete civil infrastructure from the CUP through multiple parcels which may present short term sequencing challenges relative to service connections. Provisions for temporary equipment to be removed when the CUPs are commissioned will be made.

1.5. Mapping & Permitted Encroachments

The applicant will apply for one or more vesting tentative maps or tentative maps, each of which may permit phased final maps as otherwise authorized by the City of San José Municipal Code and the Subdivision Map Act (Cal. Gov. Code §§ 66410 et seq.). Improvements to service the various subdivisions as described on final maps will correspond with this Infrastructure Plan as it may be amended from time to time and related provisions of the proposed Project's General Development Plan and Planned Development Permit. As otherwise described herein, improvements required as a condition of approval for any vesting tentative map or tentative map will correspond with this Infrastructure Plan and related provisions of the proposed Project's General Development Plan and Planned Development Permit. It is anticipated that street improvement plans and final subdivision maps encompassing the areas proposed for vacation will be approved prior to or concurrent with any required street or easement vacations. Dedications of public improvements will conform to the requirements of the Municipal Code, the Subdivision Map Act and the proposed Project's Development Agreement and Parkland Agreement as applicable. The applicant will obtain City, State or other property-owner approval (including, e.g., City Encroachment Permits) for any encroachments contemplated herein prior to effectuating such encroachment.

1.6. Project Datum & Coordinate System

All elevations referred to herein are based on the North American Vertical Datum of 1988 (NAVD88).

The Downtown West Project is based on the ground coordinate system. Per the topographic survey dated August 2019, the calculated bearing of south 02° 43' 35" west taken between the record position of GPS control point 2218 and GPS control point 1049, as shown on that certain record of survey filed for record on June 21, 1996, in book 677 of maps at page 54, official records of Santa Clara County was taken as the basis for all bearings shown hereon.

1.7. Project Phasing

If approved, construction of the Project's proposed buildings, street network changes, and infrastructure would occur in three primary phases (each of which may be subdivided pursuant to multiple final or parcel maps). Construction would begin in 2021 and is conservatively assumed to continue through 2031. The duration of each phase of construction would vary, with the end of one phase and the start of the subsequent phase sometimes overlapping one another. Actual phased implementation could be constrained by external factors such as market forces and construction staging for the BART Downtown extension, and thus could extend over a longer period. Each phase would include development parcel(s) and associated infrastructure to serve the incremental build-out of the Project.

The Project would phase demolition on the principle of adjacency and as needed to facilitate a specific proposed development phase. It is anticipated that certain infrastructure preparation such as abatement, demolition, environmental management, grading, geotechnical improvements, and utility construction may be required or desired at an earlier stage of development and will be addressed in future street improvement, site and building permit packages as applicable.

1.8. Modifications to the Infrastructure Plan

The Downtown West Infrastructure Plan describes the horizontal improvements to be constructed as part of Downtown West. The Infrastructure Plan, [which is an exhibit to the Development Agreement], works in tandem with the DWIS, and DWDSG, to set forth the City's and project sponsor's responsibilities relating to the design and construction of the horizontal improvements.

The Horizontal Review Implementation Guide is set forth in the Downtown West Planned Development Zoning and Planned Development Permit and establishes the submission and review criteria for 35%, 65% and 95% Improvement Plans ("Preliminary Improvement Plans") by the Director of Public Works and applicable City agencies. Prior to the submission of the Preliminary Improvement Plans, the project sponsor has the option to submit Preliminary Concept Documents that would provide sufficient information to convey intent in advance of commencing improvement drawings and to seek feedback from Public Works.

1.8.1. Deviations

As street and infrastructure improvement plans progress from 35%, 65% to 95% Plans, minor deviations will be reflected in the Plans, examples may include but are not limited to the following:

- Location of the utilidor within a private property and within ROW in designated street as defined in concept infrastructure planned sheets;
- Resizing or pipe material changes for private utilities within the utilidor;
- Location and size of utilidor access vaults;
- Extent of temporary improvements required;
- Location of utility manholes, valves, laterals and related appurtenances;
- Specified equipment within the water reuse facility provided that the functional intent of each individual system does not change;
- Relocation or resizing of public utilities within the public right-of-way, location or sizing of franchise utilities within the public right-of-way, or location of a utilidor crossing of the public right-of-way, provided that any mitigation proposed by the Developer (including relocation of City Utilities at the Developer's cost) meets all applicable standards and codes;
- Extension of utilities beyond the limits shown within the Infrastructure Plan;
- Location of stormwater treatment facilities within the ROW, provided that it meets all the minimum requirements of the Green Stormwater Infrastructure (GSI) Plan.

Minor deviations are permitted by the permitting agency provided the deviation will not affect the overall system, its configuration and performance, is otherwise compatible with the intent of the Infrastructure Plan and does not otherwise qualify for treatment as a Non-Material Amendment or Material Amendment as set forth in Section 1.8.2. Minor deviations are subject to review and approval by applicable City departments.

1.8.2. Amendments

The project sponsor may request (1) Non-Material Amendments, and (2) Material Amendments from the Infrastructure Plan. The table below details the review process for Non-Material and Material Amendments.

Type of Relief	Standard of Review	Decision Maker
<p>Non-Material Amendment: The project applicant may request a Non-Material Amendment to the Infrastructure Plan. A Non-Material Amendment is a modification to or deviation from the Infrastructure Plan that does not either (i) include a new type of infrastructure or improvement that is not contemplated by the Infrastructure Plan or (ii) result in a material increase in the City's risk or a material increase in the City's costs</p> <p>Non-Material Amendments may include such topics as: routing of public utilities within private parcels; public utility distribution / collection adjustments (i.e. altering the drainage watershed of the storm drain system, rerouting a building to a different sewershed, rerouting of a utilidor to an alternative street, location of retaining walls within the public ROW); addition of public utility easements.</p>	<p>The project applicant may submit a request for a Non-Material Amendments as part of the Improvement Plan Review process.</p> <p>The Public Works Director shall reasonably approve a Non-Material Amendment if the following criteria are met:</p> <ol style="list-style-type: none"> 1. The DWIS & applicable federal and state standards are met; 2. The Non-Material Amendment will be in accordance with all applicable public health or safety standards; 3. The Non-Material Amendment will not result in a new or more significant environmental impact than previously analyzed under the Downtown West Final Environmental Impact Report; and 4. The Non-Material Amendment will not have a material adverse effect on public or private property, utilities or improvements. <p>Any approved Non-Material Amendments will be memorialized in an updated version of the Infrastructure Plan to be retained on file by the City.</p>	<p>The Public Works Director is responsible for reviewing and approving a requested Non-Material Amendment. The Public Works Director shall circulate the requested Non-Material Amendment to applicable City agencies for review. Where a requested Non-Material Amendment involves improvements within private property, the Public Works Director shall review the request in consultation with the Director of PBCE.</p> <p>If the City and project applicant cannot agree on whether a requested amendment is Non-Material or Material, the project applicant may apply to the City Council for reconsideration of the decision of the Public Works Director or Planning Director, as applicable.</p>
<p>Material Amendment: The following shall constitute a Material Amendment:</p> <ol style="list-style-type: none"> 1. A change in the service intent of one or more proposed utility systems (collection or distribution) beyond the alternatives listed within the IP; <p>OR</p> <ol style="list-style-type: none"> 2. A material change in the required flood protection strategy beyond the alternatives listed within the IP; 	<p>The Director of Public Works, or City Council, as applicable, may approve a Material Amendment provided all of the following findings are made:</p> <ol style="list-style-type: none"> 1. The Infrastructure Plan, as amended, is consistent with and furthers the policies of the General Plan (as vested under the DA); 2. The Infrastructure Plan, as amended, conforms in all respects to the PD Zoning District; and 	<p>If the requested Material Amendment, can be approved in reliance on the Downtown West Final EIR, an Addendum to the EIR, or a Supplemental or Subsequent EIR that does not identify any new or substantially more severe significant environmental effects, following mitigation, than the original EIR, the Director of Public Works is responsible for reviewing and approving a requested Material Amendment. The Public Works Director shall circulate the requested Material Amendment to applicable City agencies for review.</p>

<p>OR</p> <p>3. Any amendment that is not a Non-Material Amendment</p>	<p>3. The Material Amendment will not have a materially adverse effect on public or private property, utilities or improvements.</p> <p>Any Material Amendments will be memorialized in an updated version of the Infrastructure Plan to be retained on file by the City.</p>	<p>Where a requested Material Amendment involves improvements within private property, the Public Works Director shall review the request in consultation with the Director of PBCE.</p> <p>City Council (following a recommendation from Planning Commission) if a Supplemental or Subsequent EIR is required and identifies one or more new or substantially more severe significant effects, following mitigation, than the original EIR.</p>
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2. SUSTAINABILITY

The Project applicant is seeking to create a sustainable place through integrated design. The Project aims to achieve this goal through a number of sitewide and building specific sustainability strategies. These may include district systems, green roofs, building-integrated photovoltaics, dense, walkable development with mixed income housing, and measures to reduce vehicular traffic and emphasize transit, biking, and walking. Through certification under California Assembly Bill 900 (AB 900), the Project has committed that the master plan will be designed in pursuit of LEED for Neighborhood Development Gold Certification, with vertical office buildings designed to meet LEED Gold Certification.

The Project applicant's commitments to the Project's contribution to regional and global greenhouse gas (GHG) emissions are provided in the Environmental Leadership Development Project (AB 900) application. As part of the commitments through the AB 900 process, the Project would offset its emissions in part through a combination of design measures intended to reduce energy consumption, switch to equipment utilizing lower emission energy sources, water use and vehicular movement, which in turn would reduce GHG emissions. GHG emissions offsets would be purchased for remaining emissions not reduced through design measures. These design measures and the purchase of offsets are discussed in the AB 900 application.

District systems form a key strategy in reducing emissions and resource use. District systems consolidate infrastructure such as heating and cooling generation, electricity generation and distribution, and wastewater treatment and water reuse at a neighborhood scale. By bringing together these services district systems can take advantage of efficiencies across building types and resource systems. Strategies that leverage efficiency may include heat exchange with wastewater treatment and cooling generation, rejection and absorption of heat via a ground loop, and thermal exchange between commercial and residential buildings. Consolidation enables greater energy and water efficiency by enabling the use of technologies that would otherwise not be cost-effective at the building or municipal scale. While district systems are intended for use across the Project, limitations on extent may be required due to Project phasing or physical considerations; final determination on the extent of systems will be made prior to permitting of parcels and infrastructure. Subsequent sections in this narrative outline the potential extent of each system.

A more detailed explanation of the sustainability features of the proposal can be found in the Sustainability Chapter of the Downtown West Design Standards & Guidelines.

3. ENVIRONMENTAL

Portions of the Project site have a long history of development, including industrial uses that may have resulted in subsurface contamination of soil, soil gas and/or groundwater. During the initial Project phase, the Project team must review the available environmental due diligence for the Project site, and collaborate with the Google LLC EHS Environmental Manager to determine the specific Project needs based on the available environmental information, as well as the redevelopment plans.

As part of its development process, the Project team must summarize known environmental conditions on and adjacent to the Project site and would address the potential for hazardous materials impacts to result from implementation of the proposed Project. All remediation, demolition and excavation work would comply with codes and regulations.

4. DEMOLITION, SOIL DISTURBANCE AND IMPACTS ON RESOURCES

Soils disturbance, excavation and earthmoving are anticipated in order to implement utilities and district systems, and horizontal infrastructure on the site. Project construction activities may result in potential environmental impacts associated with hazardous soils; potential archeological resources, and tribal cultural resources; ground-water inundation and dewatering; seismic/structural design considerations.

Additionally, some existing utilities may require demolition, upgrading and/or relocation to accommodate the proposed street grid, parcel configuration and building design. Refer to Sections 7 - 9 of this document for additional detail on rerouting for individual utilities. All demolition work will comply with applicable codes and regulations.

4.1. Archeological Resources

The Project's Environmental Impact Report finds that there is high sensitivity across most of the Project site for prehistoric archeological resources to be present and the proposed Project has a high potential to uncover previously undiscovered archeological resources. The Project Mitigation Monitoring and Reporting Plan (MMRP) defines mitigation measures to reduce potential impacts on archaeological resources including cultural resources awareness training for construction and field personnel involved in soil disturbance and archeological testing, evaluation, and treatment. The City of San Jose sent letters to the culturally affiliated Native American tribes requesting consultation regarding tribal cultural resources impacts in line with the requirements of PRC Section 21080.3.1 (b) and California Government Code 65352.3. No responses were received and the consultation is considered complete.

5. GEOTECHNICAL CONDITIONS

Localized geotechnical assessments were previously completed as part of other development Projects in the area, and further detailed analysis will be completed to support the Project's development in conjunction with the issuance of street improvement, site or building permits as applicable. A general description of the geologic setting for the area is provided in the Diridon Station Area Plan Existing Conditions Report and included herein for reference. "The Project site is located in northern Santa Clara County, an alluvial valley between the Mt. Hamilton Range (east) and Santa Cruz Mountains (west). The area is underlain by Quaternary-aged unconsolidated, moderately compressible, alluvial soils consisting of soft to stiff silts, clays, and loose to dense sands. The area is relatively flat with an average elevation of approximately 100 feet above mean sea level. Soils are of the Yolo association and have moderate to high shrink/swell potential. The entire Bay Area is located within the San Andreas Fault Zone, a complex of active faults where moderate to strong earthquakes have been generated. For this reason, the Bay Area is classified as Zone 4, the highest risk category for seismic risk. Regional active faults include the San Andreas, Hayward, and Calaveras; however, no faults cross the Project area. Much of the Santa Clara Valley, including the Project area, is located within a Liquefaction Hazard Zone (Field Paoli, Diridon Area Station Plan Existing Conditions Report, City of San José, 2019).

6. STREETS AND TRANSPORTATION

6.1. Scope of Service

Within the Project boundary, the Project proposes changes to the street network. The Project does not propose changes to the street network outside of the Project boundary.

6.2. Changes to the Street Network

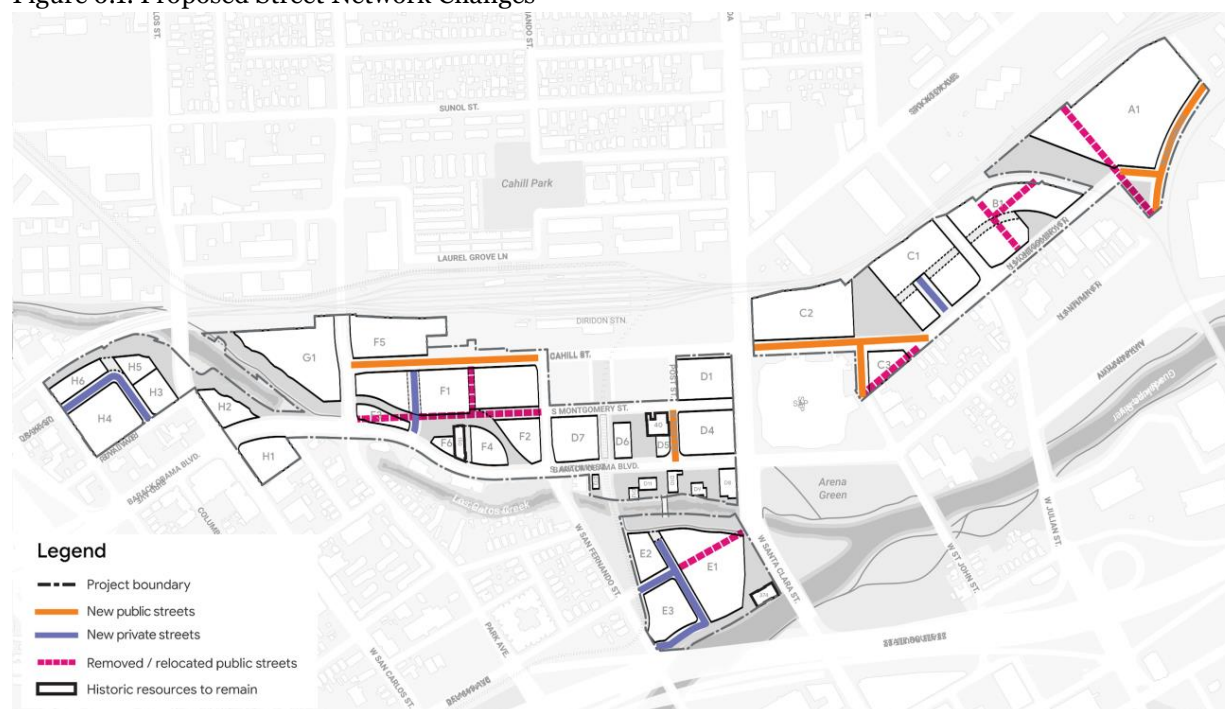
The Project proposes to extend portions of certain streets across the Project site and remove sections of other streets as shown in Figure 6.1. Notably, the proposed Project would extend Cahill Street from its current terminus at West Santa Clara Street to North Montgomery Street in the north and from West San Fernando Street to Park Avenue in the south to enhance north-south connectivity throughout the length of the Project site.

North of the SAP Center, West St. John Street would be extended to connect with the extended Cahill Street. North of the Union Pacific Railroad tracks, North Montgomery Street would be extended to connect with a new street linking Lenzen Avenue to the North, and oriented towards North Autumn Street to the South. The Project would create a new block-long east-west extension of the roadway to the south of West Santa Clara Street between South Montgomery and Barack Obama Boulevard (formerly South Autumn Street), a new east-west private street between Cahill Street and Barack Obama Boulevard between West San Fernando Street and Park Avenue, and a new L-shaped street linking Royal Avenue and Auzerais Avenue through the Project site.

The proposed Project would remove a number of street segments within the Project site: Cinnabar Street, North Montgomery Street between West St. John and Cahill Streets, Delmas Avenue between West Santa Clara and West San Fernando Streets, South Montgomery Street between West San Fernando Street and Park Avenue, and Otterson Street east of the Cahill Street extension. The southern portion of the segment of Delmas Avenue to be removed as a through street would be reconfigured as a private street serving as driveway access from West San Fernando Street to provide parking access and egress to and from the

proposed development on the portion of the Project site between Los Gatos Creek and the Guadalupe River.

Figure 6.1. Proposed Street Network Changes



6.3. Street Improvements

Refer to the Mobility Chapter of the Downtown West Design Standards & Guidelines for additional detail on proposed street improvements. Street improvements proposed by the applicant as part of improvement plan submittals will be deemed acceptable so long as they substantially comply with street sections for appropriate typologies as shown on DWDSG and any cross section for the associated street segment shown on an approved tentative map or vesting tentative map.

A local transportation analysis (LTA) for the Project is included as an appendix to the EIR. The LTA identifies potential adverse effects of the proposed Project on the surrounding transportation system. The LTA would typically include specific site access and on-site circulation evaluations, including driveway operations, sight distance, and other relevant metrics. However, as proposed, the Project includes a land use concept with general areas of specified development. This means the Project currently does not include a specific site plan that designates exact building location and access for each parcel. As development phases are initiated, after approval of tentative or vesting tentative maps and before approval of phased final maps and improvement plans, the focused LTAs will be developed for the Project area to address site access and on-site circulation, in addition to evaluation of multimodal access within the Plan area.

6.4. Fire Department Access

Existing easements, including fire department access, are recorded in the Vesting Tentative Map (VTM). Fire Department Access will be evaluated as part of the final subdivision process. The Project applicant will be required to dedicate any necessary easements to the City on privately-owned property to ensure access for the Fire Department or other emergency vehicles.

6.5. Logistics

The Project is proposing the option of a hybridized approach for managing the everyday delivery of goods. The principal logistical components of this approach include up to two delivery warehouse-like "mini-hubs," dynamic curb space and loading docks supporting individual buildings. Collectively, these components aim to reduce the size and quantity of trucks entering the district thereby increasing the quality of the pedestrian experience.

For security and efficiency the applicant's delivery operations will utilize the off-site consolidation center and the mini-hub warehouses. From the mini-hubs to end-delivery point, the applicant may utilize a combination of last-mile equipment including trucks, electrically-powered vehicles and manual equipment. The mini-hubs and their associated routes to the buildings may be located on the surface, underground or both. The movement of goods may take place partially underground within limited sections of the utilidor.

The applicant's supply chain is managed and operated independently of other site tenants. All deliveries to third-party (non-applicant) site tenants will be able to utilize a combination of nearby flex-curb zones and assigned loading dock of their respective building. Loading docks will be designed in accordance with City of San Jose requirements. These facilities will be located at individual buildings or have shared loading docks to serve multiple buildings. The loading docks will be situated away from the front entrances of buildings and avoid opening to residential uses to the greatest extent practical. Loading docks will be situated to avoid trucks reversing in the public ROW. Details on individual loading docks to be addressed during the subsequent building permit process.

7. PUBLIC UTILITIES

7.1. POTABLE WATER SYSTEM

7.1.1. Scope of Service

The existing potable water system in the Project area is owned and maintained by San José Water Company (SJWC). Project impacts to the existing water mains are based on a conceptual, parcel-specific fire flow analysis completed 7/28/2020. See subsequent sections for additional detail. All proposed new water mains will be constructed, owned and maintained by SJWC.

7.1.2. Existing Distribution System

The Project area is served by San José Water Company (SJWC), an investor-owned public utility serving the greater San José metropolitan area. The water supply for this area of San José is primarily sourced from the Santa Clara groundwater basin. Water mains in adjacent streets vary from 4" to 16" in diameter and may be over 100 years old in some streets. Table 7.1 lists the backbone water lines serving the Project area. Backbone infrastructure lines are based on the Diridon Station Area Infrastructure Analysis, dated January 31, 2017.

Table 7.1: Backbone Water Infrastructure

Water Line	Pipe Size
West Santa Clara Street	12" - 16"
Delmas Avenue	12" & 6" parallel lines
Barack Obama Boulevard (formerly South Autumn Street)	16"
Park Avenue	12" - 12.75"

7.1.3. Proposed Distribution System

Approximately 5,810 linear feet of new water mains will be needed to serve both building demands and fire hydrants within new proposed streets as shown in Figure 7.1 and Table 7.2. The proposed development will connect to the SJWC system at each building to serve both domestic and fire water needs. The sizes shown below were determined by the SJWC.

Upgrades to existing water lines will also be required to accommodate increased fire demands including line size upgrades and the addition of new fire hydrants. See Table 7.5 for the required system upgrades for fire flow.

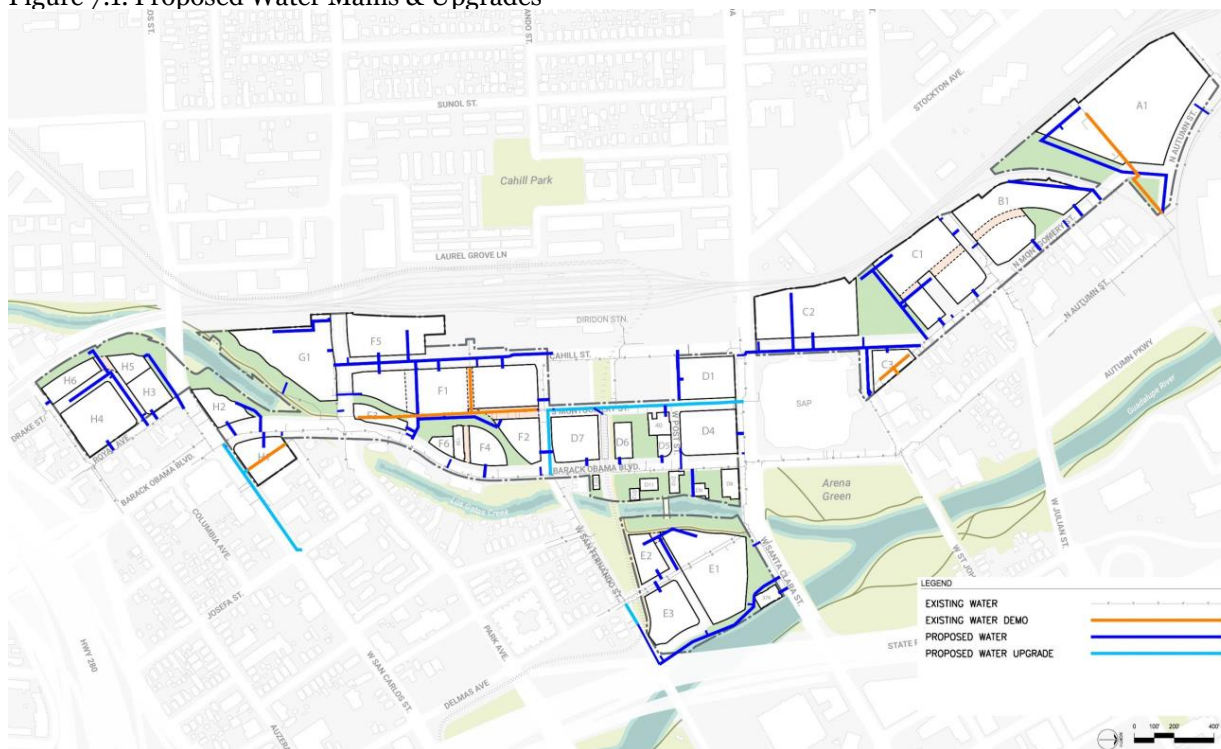
The Project proposes to remove segments of the existing water line aligning with the removal of portions of South Montgomery Street and North Montgomery Street, as well as the reroute of Cinnabar Street and the change to Delmas Avenue. Work will be completed by SJWC and may require the lines to either be demolished or abandoned in place. The removal of these existing water line segments will be phased with the construction of new water lines to ensure no service interruptions.

Booster pumps may be needed at each building in order to supply enough pressure for either potable water or fire water service. See Section 7.1.5 below for additional detail on the proposed fire water demands.

Table 7.2. Proposed New Water Mains in Public & Private ROWs

Street	Extent	Proposed Size	Length
L-shaped street linking Royal Avenue and Auzerais Street	Perpendicular to Auzerais Ave	12"	200'
	Perpendicular to Royal Ave	10"	240'
Lorraine Avenue	Perpendicular to S Montgomery St	6"	50'
Cahill Street (South)	Park Ave to W San Fernando St	8"	1,135'
Cahill Street (North)	W Santa Clara St to N Montgomery St	10"	935'
Private Service Street in D-Block	Barack Obama Blvd to Cahill St	10"	420'
West San Fernando Street & E-Block Loop	CA-87 towards Delmas Ave and between W San Fernando St and W Santa Clara St	8"	925'
West St John Street	Existing N Montgomery St intersection to Cahill St	10"	240'
Cinnabar Reroute & Chestnut Street	N Montgomery St to Lenzen Ave	10"	1,415'

Figure 7.1. Proposed Water Mains & Upgrades



7.1.4. Project Potable Demands

Projected potable water demands are provided in Table 7.3 as an engineering estimate only. This anticipated water consumption for the proposed development has been developed based on similar, high density urban developments as well as utilizing demand factors required by CalGreen and LEED. As a part of the environmental review process, a Water Supply Assessment (WSA) was issued by SJWC for the Project in January 2020. The applicant has reviewed the demand factors used to estimate the Project's water demand, as provided in Table 7.4. Proposed factors include reduced demand factors for office, residential, hotel/corporate accommodation, retail, event center, and logistics/warehouse land uses, and an increased demand factor for restaurant use, which would decrease the overall water demand for the Project. Therefore, the anticipated water use is less than that reflected in the WSA.

SJWC provided a development-specific water capacity modeling based on fire flows, not potable water demands. Refer to Section 7.1.6 for detail on the modeling analysis.

Potable demands do not account for the non-potable demands from water closet and urinal flushing, irrigation, or mechanical processes (such as cooling tower make-up).

Table 7.3: Average potable water demands

Program	Average Daily Potable Demand (gal/d)	Average Annual Potable Demand (MGY)
Office	227,200	83
Residential	263,100	96
Retail	2,000	0.7
Restaurant	195,600	71.4
Hotel	14,000	5.1
Event space	2,000	0.7
District Systems	1,000	0.4
Logistics/Warehouse	1,000	0.4
Total	705,900	258

Table 7.4: Comparison of SJ Water typical demand factors and Project proposed demand factors
Demand factors include both potable and non-potable water demands.

SJ Water Typical Land Use Types	Units	SJ Water Typical Demand Factors ¹	Proposed Demand Factors for the Project				Proposed Land Use Types
			Total Demand	Non-Potable		Potable	
				Cooling Demand	Interior (water closet and urinal flushing)		
Office Space	gal/sf-d	0.1	0.055	0.010	0.010	0.035	Office
Residential/ Apartment	gal/unit-d	340 ²	71.8	7.00	8.64	56.2	Residential
Hotel	gal/room-d	100	64.1	4.27	9.60	50.3	Hotel
Hotel	gal/room-d	100	35.0	4.27	4.80	26.0	Corporate Accommodations
Retail/ Commercial	gal/sf-d	0.2 ³	0.10 ⁴	0.01	0.05	0.04	Retail
Retail/ Commercial	gal/sf-d	0.2 ³	0.25 ⁵	0.01	0.00	0.24	Restaurant
Movie Theater	gal/sf-d	0.1	0.035	0.010	0.010	0.015	Events
Light Industrial	gal/sf-d	0.18	0.07	0.01	0.05	0.01	Logistics/ Warehouse
Open Space/Park (Native Plants)	AFY/acre	2.6	2.6 ⁶	n/a			Irrigation

Notes:

1. Project demand factors estimated based on the average of values presented in previous WSAs in San José including: Samaritan Medical Center (2015), Downtown Strategy 2040 (2018), Santana Row Expansion (2014), 1410 South Bascom Avenue (2019), Envision San José 2040 (2010), and 237 Industrial Center (2017).
2. A range of 300-400 gal/unit-d was presented for Residential/Apartments in the WSAs.
3. A range of 0.10-0.25 gal/sf-d was presented for Retail/Commercial in the WSAs.
4. The lower value presented in the Retail/Commercial values in the WSA range is appropriate for proposed retail.
5. The higher value presented for the Retail/Commercial land type in the WSAs is appropriate for proposed restaurant.
6. Irrigation demand will be met with recycled water.

7.1.5. Project Fire Demands

The Project engaged with SJWC to complete a conceptual, parcel-specific fire flow analysis for the proposed Project, received on 7/28/2020. While the majority of the water lines highlighted in the SJWC analysis are the new water lines to be installed as part of the proposed Project, the approximately 2,025 linear feet of existing lines shown in Table 7.5 will require upgrading to serve the Project with adequate fire flows. These lines are also shown in Figure 7.1.

Table 7.5. Upgrades to Existing Water Mains Required for Adequate Fire Flows

Street	Extent	Existing Size	Proposed Size	Length
W San Carlos Street	Josefa Street to Bird Avenue	4"	8"	500'
W San Fernando Street	Barack Obama Blvd to S Montgomery Street	4"	8"	330'
W San Fernando Street	Delmas Avenue towards CA-87	4"	8"	2000'
S Montgomery Street	W San Fernando Street to W Santa Clara Street	5"	8"	995'

Future coordination will be required with the Fire Marshall to refine individual building fire demands based on requirements of the San José Fire Code.

7.1.6. Project Supply

The Project will continue to be supplied by the SJWC via water mains within the public rights of way. The WSA conducted by SJWC confirmed that the Project's potable demands would be within the 2040 demand Projections for the SJWC service areas. As noted in the WSA, the SJWC would be able to meet the needs of its service area as a whole through 2040 for average years, and through 2035 for single dry years, without a call for water use reductions. In 2040, water use reductions would be required to meet Projected demand during single dry years.

The WSA also assumed that all water demands for the Project would be met with potable water, thus demonstrating that the full water demand for the Project could be met by the SJWC without the use of recycled water.

7.1.7. Water System Phasing

It is anticipated that SJWC will design and install the new water mains for the Project area. The Project team met with SJWC to review the proposed development and noted that their involvement will begin during the design phase. The Project team will work closely with SJWC staff during the design phase to determine timing of work effort and ensure coordinated design. Domestic and fire water laterals and required pumps and storage within buildings would be constructed on a parcel-by-parcel basis. Temporary water connections may be constructed and maintained by the Project applicant as necessary to maintain potable water and fire protection services to existing buildings and buildings under construction.

7.2. SANITARY SEWER SYSTEM

7.2.1. Scope of Service

The existing sanitary sewer system in the Project area is owned and maintained by the City of San José. The Project proposes two alternatives (“City” and “District Systems”) to connect to the City’s sanitary sewer system, which have different impacts to the existing system. Refer to Section 7.2.5 for details of each alternative.

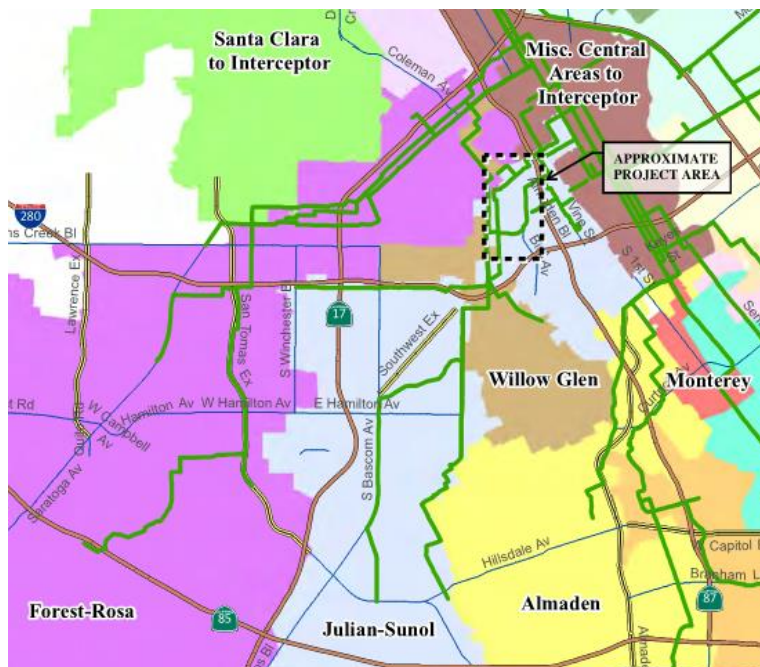
Under the City alternative, the Project impacts existing sanitary sewer mains within the development boundary. It is expected that the City would be responsible for maintenance of the public sanitary sewer system improvements installed by the Project applicant upon acceptance, unless the City, at its discretion, agrees to an alternate arrangement.

Under the District Systems alternative, the Project does not generate the need for any on-site sanitary sewer upgrades due to a private sanitary sewer discharge connection. Refer to Section 9.2.4.3 for detail on the discharge connection and the scope of service for the private system.

7.2.2. Existing Gravity Collection System

The Project area is currently served by the City’s existing sanitary sewer network which flows north to the SJ-SC WRF. There are two sewersheds which currently serve the greater Diridon area as shown in Figure 7.2.

Figure 7.2. Excerpt: Figure 1-5 Trunk System Basins. *Sanitary Sewer Master Plan Capacity Assessment, Phase II and Update of Phase I, April 2013.*



Referring to the City of San José published GIS data, there are five existing sanitary sewer siphons that carry wastewater from the site to the San José-Santa Clara Regional Wastewater Facility, as outlined in Table 7.6. These siphons transfer wastewater from the west to the east side of Guadalupe River,

Guadalupe Creek, and Los Gatos Creek. Pipe materials include ductile iron (DI), cast iron (CI), and cast-in-place (CIP). Twin siphons are assumed to have two pipes running adjacent to one another for redundancy. There is at least one structure at the beginning and end of each siphon to tie it back into the sewer main.

Table 7.6: Siphon locations from north to south, per City of San José GIS data.

Street Crossing	Stream Crossing	Size	Siphon Type	Facility Identifier
Old West Julian Street	Guadalupe River	24"	Twin Siphon	81713
West St John Street	Guadalupe River	30"	Twin Siphon	81718
West Santa Clara Street	Los Gatos Creek	10"	Twin Siphon	29561
West Santa Clara Street	Guadalupe Creek	12"	Siphon	28806
West San Fernando Street	Guadalupe Creek	16"	Twin Siphon	42534

7.2.3. Existing Sewer Flows

The City of San José maintains a sanitary sewer model for the Diridon Station Area. This model was used as the basis for the City's Project-specific analysis to determine expected Project impacts as discussed in Section 7.2.5.

7.2.4. Proposed Connections

In order to align with the proposed updated street grid, the Project proposes to remove segments of existing sanitary sewer where the proposed design conflicts with the existing infrastructure. New segments will be realigned with the updated street grid to ensure connectivity for all existing buildings to remain. See Table 7.7 below for the relocations. Proposed sanitary sewer upgrades required for the project are discussed in section 7.2.5.

Table 7.7: Sanitary Sewer Relocations

Existing Location	(E) Pipe Diameter	Demo Length (LF)	Proposed Location	New Length (LF)
Cinnabar Street, between N Montgomery St and the Rail	8"	~270	Relocated Cinnabar, south side of A1	~750
South side of Park Ave, between S Montgomery St and the Rail	36"	~280	Relocate within parcel G1, closer to the northern property line	~280
S Montgomery St between W San Fernando St and Park Ave	8"	~910	Demo only, abandonment will not impact existing sewer system	n/a
Delmas Ave between W San Fernando St and W Santa Clara St	10"	~1040	Demo only, abandonment will not impact existing sewer system	n/a

The Project proposes to construct a private, low-pressure connection network with one or two district onsite water reuse facilities (WRFs). Based on this design, there would be up to two sanitary sewer discharge connections to the City's system. Individual models were run for a one versus two WRF scenario. Refer to Section 9.2.4 for additional detail on the WRF(s), discharge connections, and impacts of this design.

As an alternative, a collection system with individual buildings connected to the City's existing sanitary sewer system is also being considered. Under the City alternative, individual buildings will connect to the municipal wastewater system via typical sewer lateral connections. Results from the City's sanitary sewer modeling of this business-as-usual approach are detailed below.

The existing sanitary sewer main located along the south side of Park Avenue will need to be relocated to avoid conflicts with the proposed building design and changes to the parcel boundaries. A conceptual relocation strategy is shown in Figure 9.3 within parcel G1, which connects back to the existing sanitary sewer main within Park Avenue. Additional studies will be required when the parcel and building reach a more detailed level of design.

7.2.5. Sanitary Sewer Capacity Model

Business-as-Usual Scenario

For the business-as-usual scenario, the modeling results show that two upgrades would be required: (1) at North Autumn Street between Howard Street and West Julian Street and (2) at West Santa Clara Street between South Montgomery Street and Barack Obama Boulevard (formerly South Autumn Street). Model results for the business-as-usual scenario were provided by the City of San José to the Project team on July 31, 2020; preliminary results were also provided by the City on March 20, 2020. The City sanitary sewer modeling of this business-as-usual approach presented in the December 12, 2019 meeting also concluded that:

- The Project increases the wastewater flows expected for the area by 150% compared to the General Plan.
- The Project contributes 5% of total flows to the Fourth Major Interceptor.
- There are no capacity impacts to the sanitary sewer siphons.

If any upgrades to the existing siphons emerge, those upgrades would require approval from multiple federal, state, and local agencies.

The City is in the process of upgrading the Fourth Major Interceptor, one of four large diameter sanitary sewers running in parallel streets from 7th and Empire streets to the San José-Santa Clara Regional Wastewater Facility, under their Sanitary Sewer Capital Improvement Program (CIP). The 2017 Diridon Station Area Infrastructure Analysis did not consider the downstream capacity of the interceptor sewers a Project constraint. Upgrades to the interceptor sewers are documented in the 2013 *Sanitary Sewer Master Plan Capacity Assessment: Phase II and Update of Phase I*. There are seven segments, or phases, of the interceptor sewer. The Phase VI upgrades are under construction and the design of the Phase VII upgrades are due to start towards the end of 2021. The Phase VII upgrades were identified in an August 1986 report titled, "Preliminary Design Report for a Fourth Major Interceptor" (2013 Master Plan). As described in the *2020-2024 Proposed Capital Improvement Program*, "[c]ompletion of the Phase VIIA Project will conclude capacity improvements for the Fourth Major Interceptor system between the intersections of North 5th Street and Commercial Street, and North 7th Street and Empire Street." It is

anticipated that the Phase VII Interceptor Project will be completed by the City prior to the completion of the last phase of Downtown West Development to provide the necessary area wide capacity.

Water Reuse Facility(s) Scenario

The City of San José modeled three water reuse facility scenarios to determine the Project's Projected impacts to the sanitary sewer system:

1. Scenario 1, One or Two WRFs: Discharge via a pipeline to the West San Fernando Bridge, with one point of connection to the sanitary sewer along Almaden Boulevard.
2. Scenario 2, One WRF: Discharge into the sewer main in Park Avenue, with one point of connection to the sanitary sewer.
3. Scenario 3, Two WRFs: Discharge into sewer mains in Park Avenue and West Julian Street, with two points of connection to the sanitary sewer.

Model results for the three water reuse facility scenarios were provided by the City of San José to the Project team on March 20, 2020; as shown in Figures 7.3, 7.4 and 7.5. The City also provided a *Sanitary Sewer Level of Service Council Policy* (dated June 15, 1982), which defines any pipe having a level of service (LOS) lower than "D" or flowing full at peak flow as deficient and therefore requiring improvement. The 1982 LOS policy (Council Policy 8-7) is "currently under review to ensure it is in alignment with recent regulatory changes and the planned growth identified in the 2040 General Plan" as documented in the October 16, 2019 City Council meeting minutes. In addition to the LOS policy, the City has capacity management and condition assessment programs that help the City comply with the Statewide General Waste Discharge Requirements (GWDR) to prevent sanitary sewer overflows (SSOs). The City also has an Exfiltration Abatement Program to minimize the risk of wastewater leaching from the sanitary system as required by the 2016 Baykeeper Consent Decree (City Council meeting minutes, February 16, 2010).

Model results for the water reuse facility scenarios with the Phase VII upgrades

Under Scenario #1 (Figure 7.3), where wastewater would enter the City's sanitary sewer system at Almaden Boulevard, the City's model analysis indicates that no upgrades will be needed to the existing infrastructure in order to accommodate these flows. Under Scenario #2 (Figure 7.4), where wastewater would enter at Park Avenue, the model results indicate "surcharge due to capacity limitations" from the connection point to Guadalupe Parkway plus "surcharge due to backwater" just upstream of the connection point. Under Scenario #3 (Figure 7.5), where the wastewater would be split between Park Avenue and West Julian Street, the model results indicate that the discharge from the southern WRF would result in "surcharge due to capacity limitations" along portions of Park Avenue and Barack Obama Boulevard (formerly South Autumn Street) and along West St. John Street from North Autumn Street to Guadalupe Parkway. The discharge from the northern WRF to West Julian Street resulted in "surcharge due to backwater" along West Julian Street. Under Scenario #2 and Scenario #3, the section of the sanitary sewer between the water reuse facility and the siphons would be upsized to 42-inches. See Table 7.8 below for the sanitary sewer pipe upgrades that would be required under each scenario. The WRF(s) connection(s) and anticipated discharges are discussed in more detail in Section 9.2 District Wastewater Collection System.

Table 7.8: Proposed Sanitary Sewer Pipe Upgrades

Scenarios	Proposed Sanitary Sewer Pipe Upgrades
Scenario #1 - one or two WRFs with one point of connection along Almaden Boulevard	None
Scenario #2 - one WRF with one point of connection at Park Avenue	42" sanitary sewer upgrade between the WRF and the siphons
Scenario #3 - two WRFs with two points of connection at Park Avenue and West Julian Street	42" sanitary sewer upgrade between the WRF and the siphons

Figure 7.3. Scenario 1, One or Two WRFs with one point of connection along Almaden Boulevard

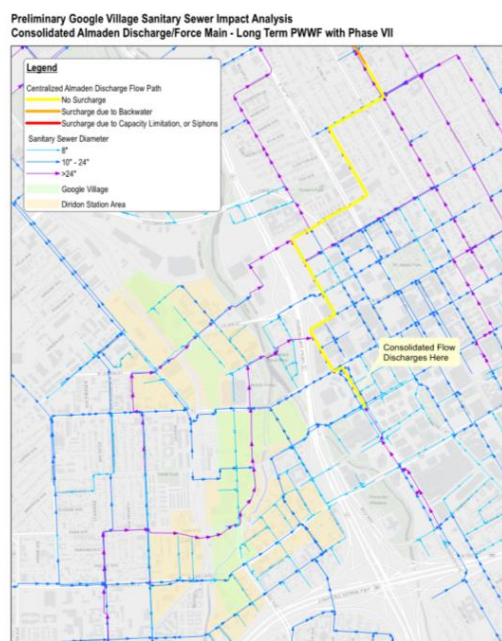


Figure 7.4. Scenario 2, One WRF with one point of connection at Park Avenue

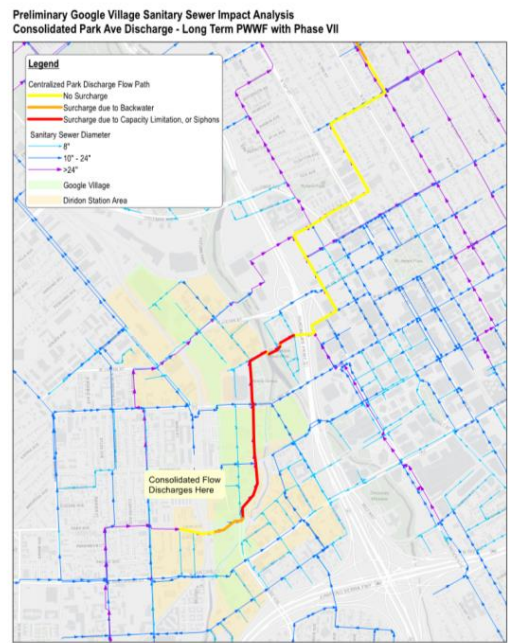
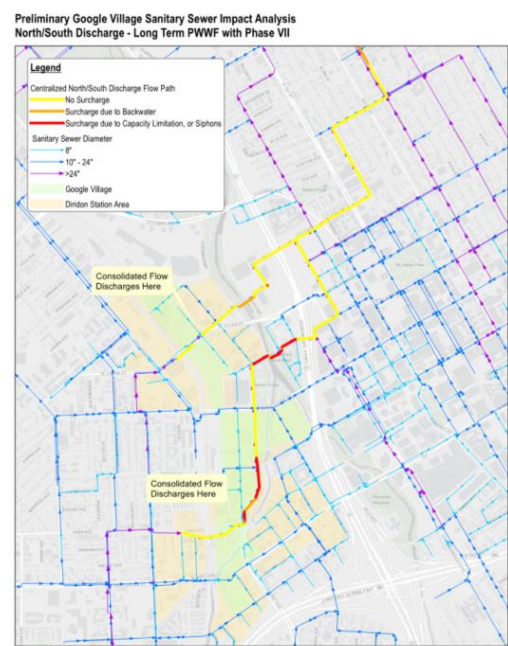


Figure 7.5. Scenario 3, Two WRFs with two points of connection at Park Avenue and West Julian Street



7.3. RECYCLED WATER SYSTEM

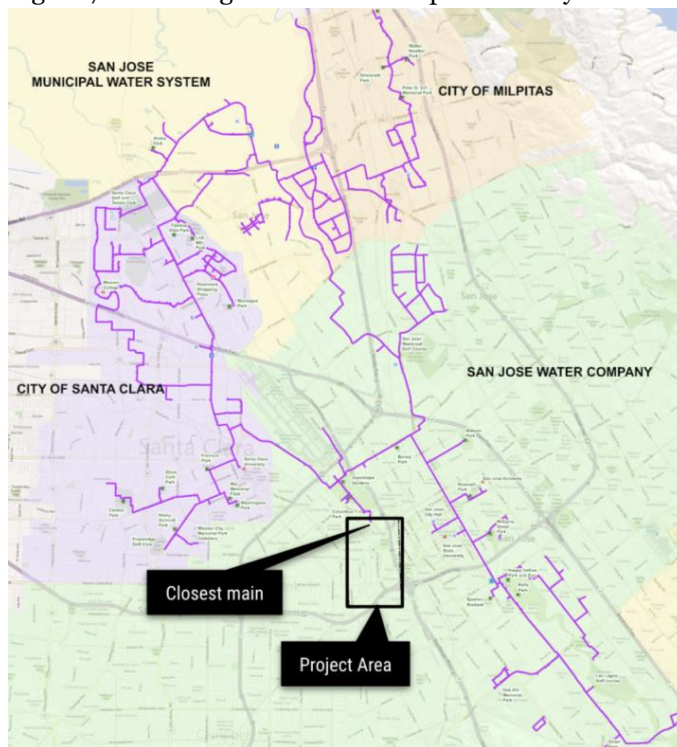
7.3.1. Scope of Service

The Project is maintaining an option to extend the existing recycled water system to the Project boundary. The potential impacts to the existing recycled water system are discussed below.

7.3.2. Existing Recycled Water System

Recycled water is not currently available within the DSAP area. There is an existing 8" recycled water pipeline offsite currently terminating at Autumn Parkway north of the Union Pacific Railroad tracks that carries recycled water provided by South Bay Water Recycling (SBWR). The pipeline itself is owned and operated by San José Water Company (SJWC). This existing line serves both Guadalupe River Park and Columbus Park.

Figure 7.6. Existing San José Municipal Water System Recycled Water Pipeline (2011)



Based on discussions with the City, there are currently no plans to extend the recycled water network into the Diridon Station Area and no technical feasibility studies have been conducted for the extension. The Diridon Station Area Infrastructure Analysis recommended expanding the City's recycled water system into the DSAP area from its current nearby terminus in Autumn Parkway on the north side of the UPRR tracks. However, the Infrastructure Analysis also notes that the City does not currently have any planned improvements programmed.

7.3.3. Future Recycled Water System

Although recycled water is not currently provided to or planned for the DSAP area, the Project could be served in the future by municipal recycled water. Based on the 1997 Wholesaler-Retailer Agreement

between the City of San José and the SJWC plus amendments in 2010 and 2012, SJWC is the recycled water retailer for the DSAP area and as approved by Wholesaler and Retailer, may construct additional recycled water infrastructure that would be owned, operated, and maintained by SJWC. Note, the Agreement referenced above only applies to recycled water infrastructure which would be connected to SBWR and funded by SJWC.

To serve the Project through the SBWR system, the existing recycled water system would need to be expanded to the Project site. Options for connecting to the existing system include connecting at Coleman Avenue, Autumn Parkway and/or West Hedding Street. The Coleman Avenue pipeline is understood to be 12" based on discussions with the City and would not be adequate to serve the entire Project based on discussions with SJWC. The Diridon Station Area Infrastructure Analysis states that the Autumn Parkway line from Coleman Road is 8"; this line would also not be adequate to serve the entire Project.

In West Hedding Street (within a mile of the Project), there is a 20" recycled water main according to discussions with SJWC; an appropriately-sized connection here could be sufficient to serve the Project - perhaps in addition to a connection at Autumn Parkway. A hydraulic study conducted by SJWC would be required to confirm the alignment, pipe size and necessity for two parallel connections (i.e., new connection from West Hedding Street and a connection at Autumn Parkway). In addition, SBWR would need to confirm that adequate recycled water supply could be provided including storage and re-pressurization if needed.

In addition to the connection(s) to the north of the Project site discussed above, a loop system could also be considered between the Downtown pipeline terminating at South 4th Street and East San Fernando Street and the north connection point to improve reliability.

Refer to Section 9.3 for detail on the proposed district non-potable water supply.

7.4. STORM DRAIN SYSTEM

7.4.1. Scope of Service

The storm drain system in the Diridon Project Area is owned and maintained by the City of San José. The City developed stormwater main upgrades within and outside the Project boundary that will require further negotiation and may result in revisions to the proposed improvements described herein. All new and upgraded mains within the stormwater collection infrastructure are proposed as publicly owned and maintained utility lines. It is expected that the City would be responsible for maintenance of storm drain system improvements installed by the Project applicant upon acceptance.

7.4.2. Existing Collection System

The storm drain system in the Diridon Project Area is owned and maintained by the City of San José. The Project area is served by approximately 3.5 miles of backbone storm drain pipe of 18-inches in diameter or larger, which drain via 17 existing subwatersheds into Los Gatos Creek, Guadalupe Creek or Guadalupe River, which are all under the jurisdiction of the Santa Clara Valley Water District (SCVWD).

There are 3 existing pump stations within the proposed Project area. The first is located on the northeast corner of the existing San José Fire Department Training Center along Park Avenue. The second is located at the northeast corner of SAP Center parking lots A, B, & C along Julian Street. The third is located on West Santa Clara Street at the rail crossing underpass.

There are 17 outfalls of interest in the Project area which have been indicated for analysis. Refer to Figure 7.7 for the Storm Drain Plan which shows existing outfall locations.

7.4.3. Existing Capacity

Currently the City of San José does not maintain an on-going storm drain assessment program to identify existing conditions of storm drain pipes. The Diridon Station Area Infrastructure Analysis found that the existing storm drain conveyance infrastructure does not have the capacity to convey existing flows. As shown in the analysis completed by Schaaf & Wheeler in August 2020, the existing storm drain network is under capacity for a 10-year, 24-hour storm event in the existing land use condition.

7.4.4. Proposed Drainage Areas

The Project proposes to maintain existing storm drainage watersheds to the highest extent feasible. New streets and redeveloped parcels will generally drain into the same collection networks they presently drain to.

7.4.5. Storm Drain Capacity Model

As shown in the storm drain analysis completed by Schaaf & Wheeler in August 2020, improvements would be required to eliminate flooding within the Diridon Project Area during a 10-year, 24-hour storm for the proposed land uses. To mitigate flooding near the proposed Diridon developments, two improvements were modeled and are described below.

7.4.6. Proposed Storm Drain Collection System

The Project proposes to connect into the existing storm drain mains in the public ROWs. Approximately 6,300 linear feet of new storm drain mains will be added to proposed streets in order to serve new development, new streets, or streets with new stormwater treatment. Additionally, new laterals would be added to connect all Project parcels to the storm drain system. All new pipes shall be designed for the 10-year storm capacity to flow underground and would meet all additional standards as described in the DPW Development Manual (2002). See Table 7.9 for the proposed storm drain pipe upgrades.

The Project proposes to remove two street segments to align with the new street grid: South Montgomery Street between West San Fernando Street and Park Avenue; and North Montgomery Street for approximately 200 linear feet north of West St. John Street. These upgrades are proposed to mitigate existing flooding, as the proposed development does not increase discharge to the storm drain mains.

Additional upgrades to the existing storm drain system will be required to eliminate existing flooding to accommodate the proposed development and provide capacity for the upstream watershed. These improvements have been divided into two categories, upgrades within the Downtown West boundary proposed by this project and improvements within the wider Diridon Station Area to be led by the City as part of future development.

New pipes in Cinnabar Street from Caltrain to N. Autumn Street will mitigate existing flooding along Cinnabar Street and N. Autumn Street as well as provide capacity for the upstream watershed to the west. The pipe in Montgomery will be increased to 18". The proposed new pipe to be constructed by the Platform 16 development in N. Autumn Street will connect to an adequately sized proposed outfall that

will be built by the City which eliminates the need to construct a new outfall to Guadalupe River. Future improvements to the upstream system along Stockton Avenue may occur as part of the larger Diridon Station Area.

The proposed larger pipes in West Santa Clara Street will eliminate existing flooding in the respective area and improve capacity in the upstream system outside the project boundary. This Project will reconstruct the existing outfall to Los Gatos Creek, upsizing the existing pipe from 18" to 33". The outfall, located underneath the West Santa Clara Street overcrossing, will require a new larger flap gate to accommodate the larger pipe and to control exit conditions. Future improvements to the system upstream of Cahill Street to Stockton Avenue may occur as part of the Diridon Station Area improvements.

Additional upgrades within the Diridon Station Area to be led by the City as part of future development include pipe upgrades in W San Carlos Street from Sunol Street to a reconstructed 72" outfall with flap gate and pipe upgrades from Delmas Avenue to a 27" outfall with flap gate at Park Avenue. These improvements provide 10-year capacity within the Diridon Station Area and upstream watershed but are not required or proposed as part of this project and are included herein for reference.

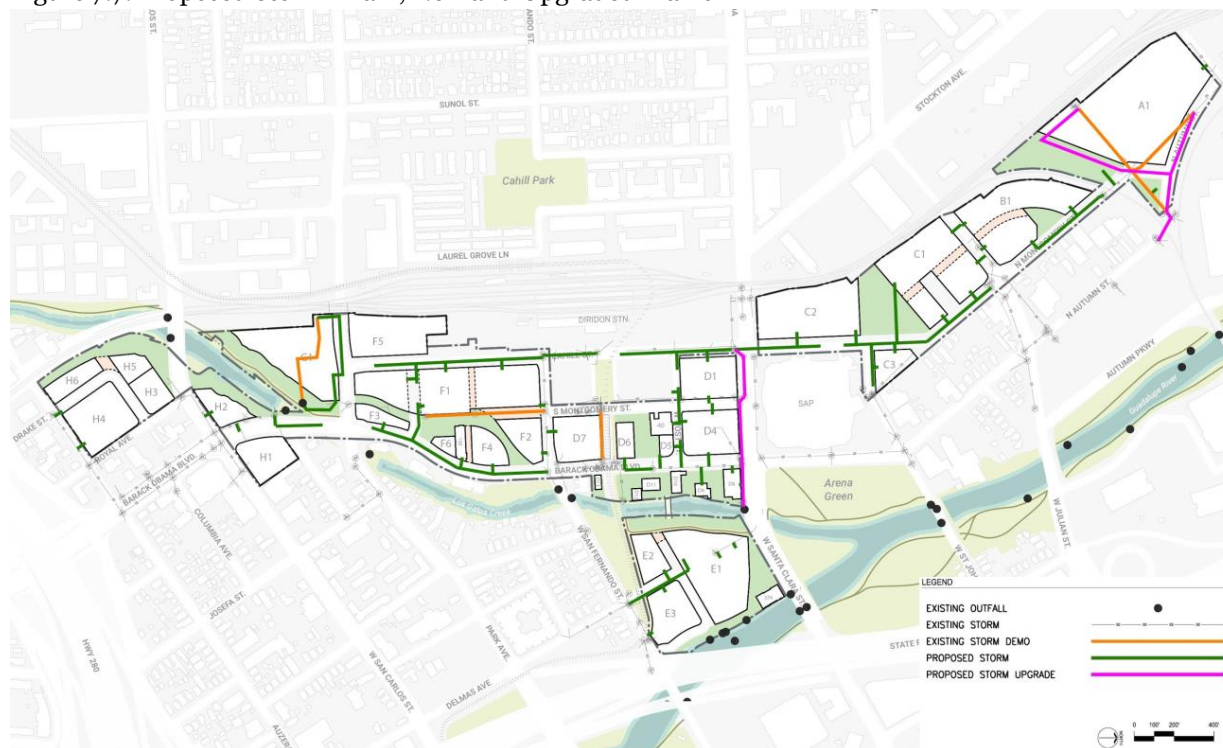
Table 7.9: Proposed Storm Drain Pipe Upgrades

Pipe Location	(E) Pipe Diameter	Length	Proposed Pipe Diameter
Cinnabar St & N Autumn St – Montgomery St to Railroad	27" RCP	~880'	66" RCP
N Montgomery St - South of Cinnabar St	8" RCP	~185'	18" RCP
Santa Clara St - Cahill Street to Los Gatos Creek	18" RCP	~840'	33" RCP

The existing pump station located along Park Avenue will need to be relocated in order to avoid conflicts with the proposed building design and changes to the parcel boundaries. This pump station may be relocated either within the same parcel, or within the existing ROW if there is available space. A conceptual relocation strategy is shown in Figure 7.7 within parcel G1, which connects back to an existing outfall via gravity flow. A conceptual relocation strategy is shown in Figure 7.7 within parcel G1, which connects back to an existing outfall via gravity flow.

Refer to Figure 7.7 for the Conceptual Storm Drain Plan. Refer to Section 10.3 of this report for proposed stormwater management design both in the public ROW and within private development.

Figure 7.7. Proposed Storm Drain, New and Upgraded Mains



7.4.7. Overland Flow (100-year Flood Event)

In the existing condition, the lowest elevations are located on the north side of the Project and at the existing top of bank of Los Gatos Creek. Proposed grading does not intend to change existing grades within ROWs in order to maintain overflow flow paths to the highest extent feasible.

Per the City's DPW Development Manual (2002), new proposed streets should be designed to have capacity to convey runoff from the 100-year storm event without overtopping curbs. However, it should be noted that overland flows from adjacent creek overflows exceed the capacity of the roadways in some locations under existing conditions. See Figure 7.7 for conceptual overland flow paths.

7.4.8. Storm Drain System Phasing

The Project will design and install the new storm drainage mains based on the principle of adjacency and as needed to facilitate a specific proposed development phase, completing improvements downstream as needed to ensure capacity. Storm drain laterals will be constructed on a parcel-by-parcel basis. Temporary storm drain connections may be constructed and maintained by the Project applicant as necessary to maintain service to existing buildings.

7.5. UTILITY RELOCATIONS IN THE ROW

The Project proposes street improvements within the limits of the Project. As part of this effort, some existing utilities within the ROW may require relocation in order to avoid conflicts between proposed streetscape elements and existing utilities. One of the major components of the new streetscapes are stormwater treatment areas and tree planters which require subgrade area. The following figures show example utility relocation studies for three (3) street sections at West Santa Clara Street, North Montgomery Street, and South Montgomery Street/Bird Avenue. Figures 7.8 through 7.11 are preliminary, shown for reference only. Final street sections to be included in the Vesting Tentative Map (VTM) and are subject to approval by the City of San José.

Figure 7.8: Utility Section Key Plan



Figure 7.9: Conceptual Street Section 1. West Santa Clara Street - existing utility relocations

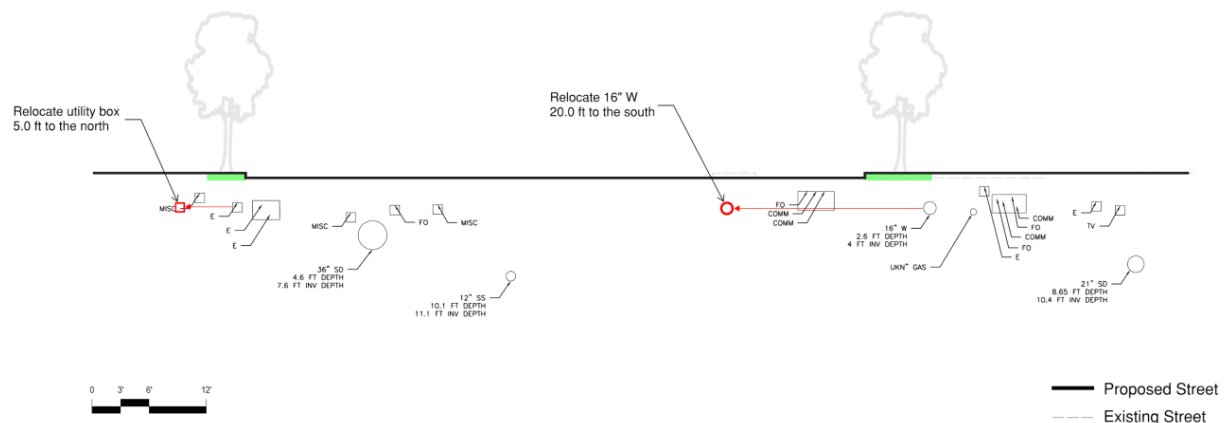


Figure 7.10 Conceptual Street Section 2. North Montgomery Street - Minor existing utility relocations required

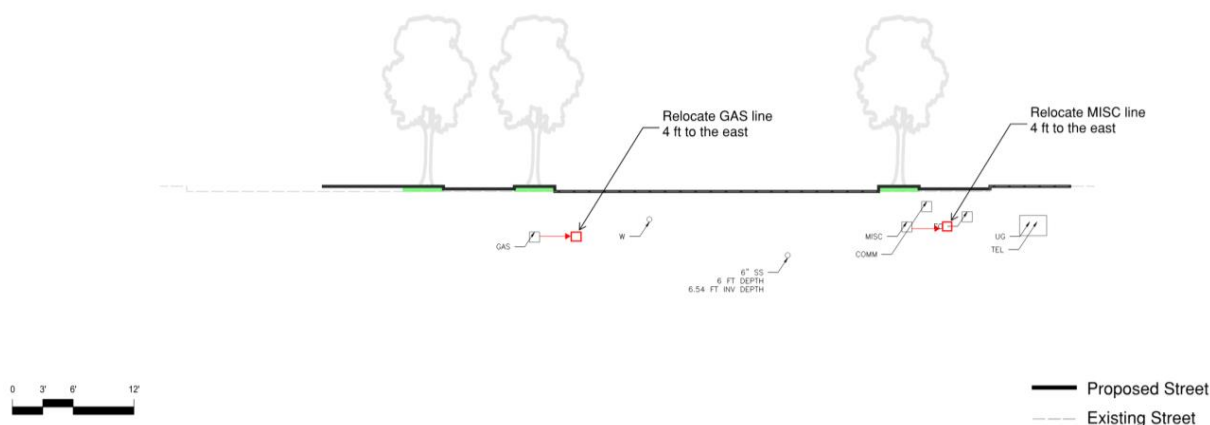
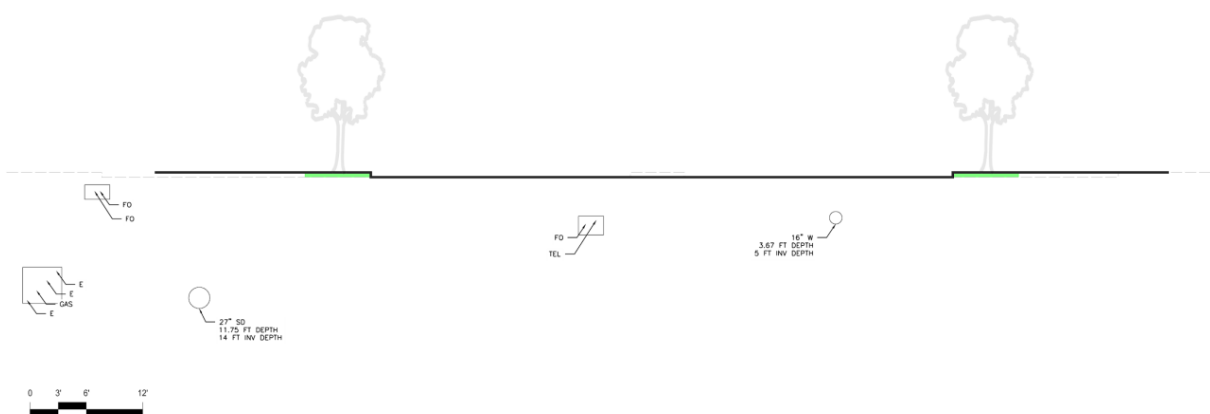


Figure 7.11: Conceptual Street Section 3. South Montgomery Street / Bird Avenue - No existing utility relocations required



8. FRANCHISE UTILITIES

8.1. ENERGY SYSTEMS

8.1.1. Scope of Service

Existing electrical systems in the Project area are owned and operated by Pacific Gas and Electric (PG&E) and San José Clean Energy (SJCE). Proposed modifications, upgrades, and undergrounding of the existing systems are proposed to extend beyond the development boundary. Refer to Sections 9.3.1 and 9.3.2 for the extent of the proposed work. It is expected that PG&E and SJCE will continue to own and operate these upgraded systems.

Existing natural gas systems within the Project area are owned and operated by PG&E. The Project may relocate some existing gas lines into the proposed joint trenches as needed.

8.1.2. Existing Electric

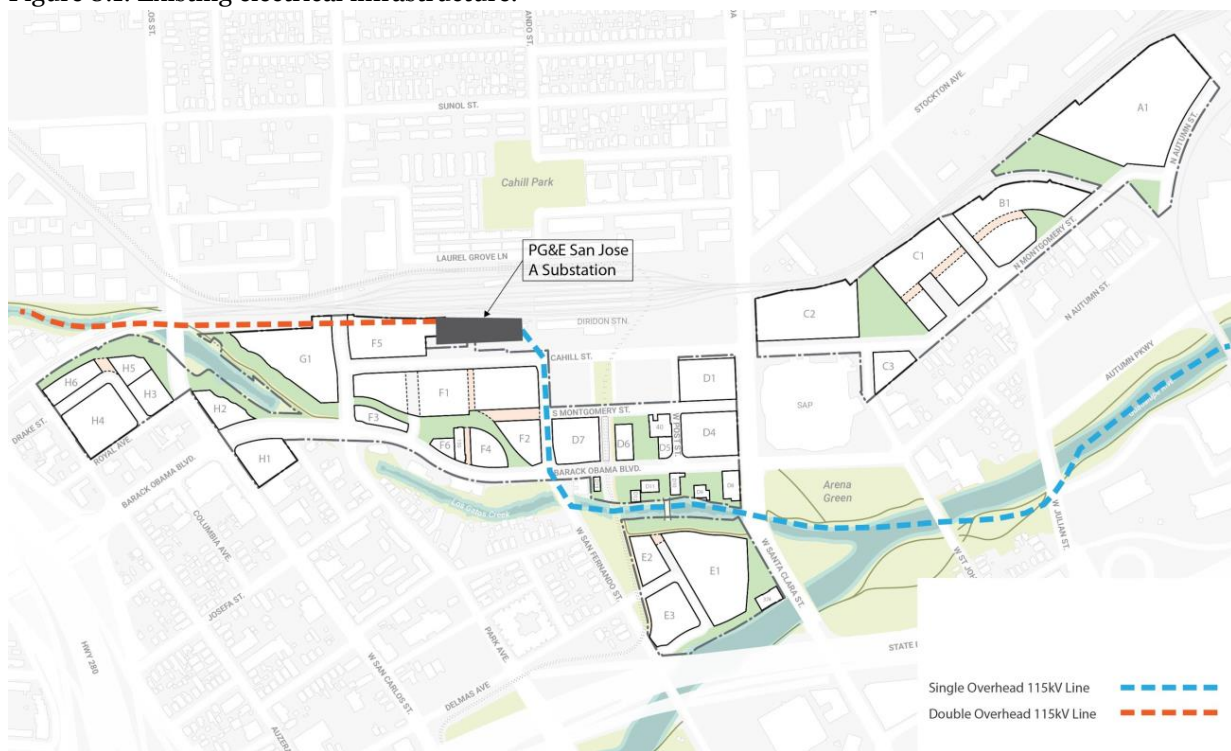
The Project area is served with power from Pacific Gas and Electric (PG&E) and San José Clean Energy (SJCE). SJCE is a community choice energy agency governed by the San José City Council as a City department. SJCE purchases energy directly from the energy source and delivers to customers through existing PG&E infrastructure. There is an existing PG&E transmission to distribution substation, 'San José A', located adjacent to Diridon station.

San José A receives a double 115kV circuit from the El Patio substation to the southwest. This circuit is overhead on existing electrical towers. From San José A, there is an additional single 115kV circuit to the San José B substation in the north. This circuit is also overhead.

San José A has two available distribution voltages, 12.47kV and 4.16kV. Within the Project area there are overhead and underground PG&E distribution systems and overhead and underground secondary distribution and service systems for various voltages below 600V. These circuits serve customers both within the Project area and elsewhere in the city. Parcels within the Project area are also served by San José B.

San José A, in the current configuration, has around 5MW of capacity remaining on the 12.47kV network. The 4.16kV system is a legacy voltage and not available for new customers.

Figure 8.1. Existing electrical infrastructure.



8.1.3. Existing Natural Gas

The site is currently served from the existing PG&E gas network. Gas lines exist and serve parcels within the Project area from most roadways within and adjacent to the Project site, including:

- Auzerais Avenue
- Cinnabar Street
- Cahill Street
- Montgomery Street
- West Santa Clara Street
- Delmas Street
- Julian Street
- Autumn Street
- West San Fernando Street
- Stover Alley
- Lorraine Avenue
- Park Avenue
- Royal Avenue
- West San Carlos Street

Within the Project site, gas mains exist within sections of Cinnabar Street, Delmas Street, Autumn Street, W. San Fernando Street, and Stover Alley. Existing parcels serviced by gas infrastructure connect either to these interior lines or lines in adjacent roadways; not all existing parcels are served by natural gas connections. Gas mains running through the site connect to buildings outside the Project site as well and will be required to be maintained during and after the Project.

A gas transmission line terminates near the site at the corner of Julian Street and Autumn Street which serves mains within the Project site. The transmission line originates north and east of the termination and does not pass through the Project site.

8.1.4. Proposed Electricity and Gas System

Electrical delivery for the Project is expected to be served from PG&E at transmission voltage (115kV) via a switching station to a Project area substation. The exact size of both the utility switching station and customer substation would be confirmed based both on further design of the Project and supply capacity from PG&E. The electrical infrastructure will be located within the Southern Infrastructure Zone and PG&E Substation - San Jose A. The project subject to design and phasing may also be served via a direct PG&E distribution service from San Jose A, in this option the project would not require a new dedicated customer substation and switching station, and would be served with 12 kV supplies directly from San Jose A. The ultimate Project load and capacity that PG&E have studied is for up to 48MW of electrical capacity. Ownership and management of the customer substation is also undergoing negotiation, with the final ownership agreement to determine the permitting required to construct the substation. Planning with PG&E has commenced for transmission supply to the required capacity levels (48MW) required to support the Project's total land use. The 115kV electricity would be stepped down from the PG&E switching station at a Project area substation to either 21kV or 12.47kV and distributed to the various buildings within the development. The proposed scope of electrical work to service the Project are outlined below and shown in Figures 9.7 and 9.8:

New Project Area Substation: The new substation will require a transmission voltage connection to be built to the distribution substation with the following criteria:

- Gas insulated high voltage 115kV incoming switchgear, arranged in a redundant configuration with utility metering
- Two 45MVA, fan assisted transformers to provide redundant power to the district
- 21kV or 12.47kV distribution switchgear
- It is estimated that the customer substation would be approximately 110 feet x 110 feet and be 40 feet high.

Power Distribution within the Project Area: The substation is intended to serve only the Project area initially. Depending on final ownership of the substation, additional customers may be connected in the future at the discretion of the owner and based on power availability. To serve the Project area, the following distribution will be required:

- Install a 21kV or 12.47kV distribution network to provide power to all Project areas. This is to be located within the utilidor or direct-buried in a joint trench.
- Each individual building, or groups of buildings would then contain step-down transformers to provide building level 480V power.

8.1.5. Required Utility Upgrades

PG&E have been engaged to determine the necessary upgrades required on their system to provide the necessary amount of power at 115kV to service the Project area. This section details the utility system modifications needed to facilitate this. Upgrades to PG&E existing substations and protection settings serving their transmission systems would occur within PG&E's existing footprints.

San José A Substation: The following upgrades are understood from PG&E to be necessary at the San José A Substation as part of the Project:

- Provide capacity mitigation to the 115kV transmission lines to allow for the Projects full build out capacity
- Construct new ancillary control building with associated battery building.
- Install new protective devices.
- Remove redundant protective relays.
- Install telecommunication equipment.
- Install two 115kV overhead to underground transition risers to connect the underground looped 115kV feeders to San Jose A.
- There is an option subject to detailed design to accommodate the switching station within San Jose A the following upgrades would apply under this scenario;
 - The proposed upgrades would include removing and replacing existing substation equipment. The 115kV open-air bus would be replaced with gas-insulated equipment. A new building would be erected on site to house both the 115 kV bus and the control room. Building size would be an estimated 110 feet x 55 feet x 40 feet tall.
 - The existing 115 / 12 kV power transformer would be replaced with a similar unit of higher capacity
 - The existing open-air 12kV bus would be replaced with a 12 kV metal-clad switchgear. The switchgear would connect into the existing 12 kV distribution circuits within the substation

- The two existing 115 / 4 kV power transformers would be replaced with smaller 12 / 4 kV auto transformers. The open-air 4 kV bus would be replaced with a 4 kV metal-clad switchgear. The switchgear would connect into the existing 4 kV distribution circuits within the substation
- The El Patio and Station B 115kV lines, which currently feed the open-air 115kV bus, would be modified to connect into the gas insulated 115 kV bus equipment

El Patio Substation: The following upgrades are understood from PG&E to be necessary at the El Patio Substation as part of the Project:

- Provide capacity mitigation to the 115kV transmission lines to allow for the Projects full build out capacity
- Install new protective devices.
- Remove redundant protective relays.
- Replace an existing circuit breaker.

San José B Substation: The following upgrades are understood from PG&E to be necessary at the San José B Substation as part of the Project:

- Install new protective devices.
- Remove redundant protective relays.
- Install telecommunication equipment.

New Switching Station:

- Install a gas-insulated substation (GIS) two-bay, six (6) circuit breaker, 115kV Breaker-and-a-Half (BAAH) layout operated as a ring bus. The footprint of the land requirements from PG&E, which includes access requirements are estimated at 150 feet x 110 feet. The minimum building size would be an estimated 110 feet x 55 feet x 40 feet tall with an additional basement of 12 feet. However, the customer substation may be sited on top of the switching station and therefore the physical size of the switching station may be 110 feet x 110 feet to match the dimensions of the customer substation. Access would be required to the building from street level.

Transmission Line Scope of Work: Additional work is required for the transmission lines within the Project site.

The switching station would receive 115 kV power from looping PG&E's El Patio – SJ Station A 115 kV line through the switching station 115 kV bus. The developer requests that PG&E place approximately 1300 feet of the El Patio – SJ Station A line underground starting just north of West San Carlos Street north and into Station A. The loop providing power to the switching station would also be located underground. To accommodate this, PG&E would install a steel transition pole north of West San Carlos Street and transition the circuit underground. The circuit would be routed north for about 1000 feet in the same alignment as the overhead line and across Park Avenue. The circuit would then turn to the east into the new switching station. The other part of the loop would exit the switching station to the west and turn north in the same alignment as the overhead line and into Station A. At Station A, the circuit would transition back overhead and reconnect to the 115 kV bus.

The customer substation would be provided with two 115kV feeds from PG&E's switching station into the adjacent customer-owned 115 / 21 or 12kV substation. How the two 115 kV feeds are routed, and their length, would depend on the site geometry. It is anticipated that the circuits would be very short and only between the two adjacent sites.

These are detailed in Section 9.5, but a summary of required work includes:

- Provide capacity mitigation to the transmission line serving San José A.
- Provide a transition station at the existing electrical tower north of San Carlos to transition the double El Patio / San José A circuit to underground.
- Provide double circuit underground duct bank and cabling.
- Provide a transition station in a yet to be identified location to transition the single San José B / San José A circuit to underground.
- Provide single circuit underground duct bank and cabling.
- Loop the 115KV San José A - El Patio line into the New Switching Station.
- Provide connections at San José A substation.

Proposed electrical infrastructure is shown in Figures 9.7 and 9.8.

In the option of a direct PG&E 12 kV distribution service being provided from San Jose A, the following changes would apply;

- PG&E would construct up to four underground circuits between Station A and the customer's development. Each circuit would be approximately 500 to 1000 feet long depending on the route and site chosen by the customer. The circuits would be installed either within franchise areas of public streets or within easements obtained from private property owners.
- The required substation A modifications to facilitate direct service by PG&E include the replacement of the 115 kV, 12 kV and 4 kV buses and replace the three existing transformers and control room within the existing substation property. The 115 kV bus and control room would be housed in a new building. The 12 kV and 4 kV buses would be housed within metal-clad switchgear buildings. The power transformers would be located on outdoor concrete pads.

8.1.6. Undergrounding of Overhead Transmission

The existing PG&E overhead transmission circuits, as part of this development and other developments, will be placed underground at certain locations on PG&E's network.

In order to facilitate this, transition stations (from overhead to underground) are required at the locations of existing PG&E electrical towers. Proposed electrical infrastructure is shown in Figure 9.8.

Undergrounding the transmission lines will take place according to PG&E standards and will typically be in underground duct banks with associated vaults and access points.

Should the existing PG&E double circuit overhead line be placed underground, the likely location for the 100' x 75' footprint (including the existing tower) transition station would be the PG&E's existing electrical tower, to the north of San Carlos.

Should the existing PG&E single circuit overhead line be placed underground the likely location for the 50' x 75' footprint (including the existing tower) transition station would be within an identified zone as depicted in Figure 9.8.

In the case that the switching station is located on PG&E San Jose A land PG&E would construct two underground circuits between Station A and the customer-owned substation. Each circuit would be approximately 500 to 1000 feet long depending on the route and site chosen for the customer-owned

substation. The two circuits would be installed either within franchise areas of public streets or within easements obtained from private property owners.

8.1.7. Proposed Natural Gas

There is a desire to eliminate natural gas throughout the Project to meet the Project's sustainability goals. The City of San Jose also supports an all-electric site design in line with the Climate Smart San Jose goals, and has legislated this outcome through a natural gas prohibition ordinance that will take effect August 1, 2021, for all buildings. In line with these commitments, the project does not propose new natural gas use for any end uses.

8.2. COMMUNICATION SYSTEMS

8.2.1. Scope of Service

The existing Project site is served by the incumbent local exchange carrier, AT&T, and franchised competitive local exchange carriers such as Comcast and others., which each own and operate their individual systems. The Project design team is in the process of mapping and verifying existing joint trench routing and will coordinate carriers on final configuration in the future to provide uninterrupted service to adjacent property owners.

8.2.2. Existing Communication Systems

The telecommunications serving the Project area consists of above-ground and buried telecommunications circuits from several providers, primarily AT&T and Comcast. There is a combination of coaxial cables and strand-mounted active equipment for Comcast service. There are medium count copper cables to provide voice services to businesses and residents in the area. There are also fiber-optic cables for high-speed data service.

North of the SAP Center/The Alameda the circuits are a mix of pole mounted communications cables on the PG&E poles with undergrounding at rail crossings and major street intersections. In the area to the south and east of the SAP Center the cabling has been undergrounded.

South of The Alameda telephone and cable TV lines are primarily above-ground mounted on electrical poles with a few dedicated telecommunications poles. Undergrounding occurs at major intersections, creek/river crossings, and rail crossings.

There are also train signaling cables in the Project area. From the main Caltrain trunk to the rail crossing between Cinnabar Street and N. Autumn Street there is an above-ground, pole-mounted signaling cable. In the green area to the east of Diridon Station at Crandall Street before the tracks emerge aboveground, there are light rail communications and signaling circuits.

The Project area contains one cross-connect box at the southeast corner of Cinnabar Street and North Montgomery Street. While outside the Project area, the cross-connect box and an active equipment controlled environment vault at the Northwest corner of West St. John's Street and North Autumn Street may be close enough to be of concern. This appears to serve the SAP Center.

There are four pole mounted cellular telephone sites in the Project area:

- Southeast corner of North Montgomery Street
- Mid-block on South side of West Julian Street
- Mid-block on the east side of South Montgomery Street south of Crandall Street
- Mid-block on the west side of South Montgomery Street adjacent to the Fire Training Center

There is a radio transmission tower in the PG&E substation south of Diridon Station.

The central office that serves the Project area is the AT&T San José A central office at 95 Almaden Avenue (CLLI Code SNJSCA02). This central office serves, but is located outside, the Project area.

There is an AT&T service center located at 145 S. Montgomery Street. While this is no longer identified as a central office, there is an underground telecommunications structure on S. Montgomery Street and a large telecommunications structure consisting of multiple underground vaults in both the north and south lanes of Park Avenue. Further research is required on this facility as it may still act as a wire center even if it is no longer a central office so cables may need to be relocated.

Intelligent Transportation System

The existing Intelligent Transportation System (ITS) provides connectivity for enabling and enhancing mobility to provide centrally controlled and monitoring services for different modes of transport and traffic management. This enables users to be better informed and make safer, more coordinated, and 'smarter' use of transport. The pathways that are used for ITS also provide pathways for general fiber optic cabling to connect other city resources.

There are traffic signals at:

- W. Julian Street at N. Montgomery Street
- W. Julian Street at N. Autumn Street
- W. Julian Street at Autumn Parkway
- W. Julian Street at N. Pleasant Street
- W. Santa Clara Street/The Alameda at White Street/Stockton Ave
- W. Santa Clara Street at Cahill Street
- W. Santa Clara Street at S. Montgomery Street
- W. Santa Clara Street at Barack Obama Boulevard (formerly S. Autumn Street)
- W. San Fernando at Delmas Avenue
- Barack Obama Boulevard at VTA crossing
- Park Ave at Delmas Avenue
- Barack Obama Boulevard at S. Montgomery Street
- Barack Obama Boulevard at W. San Fernando
- Park Avenue at S. Montgomery Street
- W. San Carlos Street at S. Montgomery Street/Bird Avenue
- Bird Avenue at Auzerai Avenue
- Bird Avenue at Interstate 280

These signals are connected together with singlemode fiber optic cable that route to the individual devices via a series of trunks and branches.

- Main north-south trunk
 - Routed along Bird at the south of the Project area, along Barack Obama Blvd to W. Julian St. The trunk turns east at S. Julian and is routed away from the Project area
 - Trunk contains varying amounts of fiber, up to 500 strands
- East-west trunk along Park Avenue crossing the Project area
 - Up to 144 strands in multiple sheaths
- East-west edge cable along W. Julian Street crossing the Project area
 - Small count fibers up to 36 strands in multiple sheaths
- East-west edge cable along W. Santa Clara Street crossing the Project area
 - Small count fibers up to 12 strands in a single sheaths
- Edge fibers feeding traffic signals at the intersections noted above
 - The fibers are used by multiple entities, including City of San Jose, SJ DOT, and Silicon Valley ITS. The entities responsible for the fiber is being ascertained, as it is likely different from the user.

The intersection of Barack Obama Blvd and the VTA lines has rail signal equipment in addition to traffic lights for pedestrian crossing.

The extent of city fiber within the area is being studied. City fiber maps were made available on August 14 and are being studied and validated against the Project plans.

Information regarding existing conditions and facilities have been obtained from publicly available sources and have not been verified in the field or with the service providers. Validation will be required prior to design efforts and are underway.

Access to the Project area requires careful planning as it is bordered by multiple forms of transit and the Guadalupe River and Los Gatos Creek. The Caltrain/Amtrak tracks on the west side will likely require an infeasible right of use agreement, as will crossings of State Highway 87 on the east side and I-280 on the South.

Within the Project site the primary dedicated streets will require agreements with the city for crossings to create a distribution loop for the cable within the Project. The south area of the Project will have to contend with crossing beneath Los Gatos Creek to create a connectivity loop for the four proposed buildings south of the Creek.

The discontinuous nature of the Project area at The Alameda/SAP center suggests that special attention will be needed to create diverse pathways or a distribution loop, as is typically requested by the Project sponsor.

The building at 145 S. Montgomery was an AT&T central office and wiring center. Based on correspondence with AT&T, it has been decommissioned and is no longer owned by AT&T. The large duct structure on Park Avenue south of 145 S. Montgomery is indicated as still owned by AT&T.

City fiber within the Project area will be protected or rerouted based on site conditions. Joint trench conduit pathways for city and other fiber providers are being designed as part of the public joint trench

design package. Extent of the modifications to the City has yet to be determined. The Project is waiting on the city to provide information regarding locations of city fiber.

8.3. JOINT TRENCH

8.3.1. Scope of Service

Due to the proposed street vacation and new roads, existing public dry utilities will require relocation and/or overhead to underground conversions. The joint trench scope includes proposed relocation of existing public dry utilities in preparation for future developments and to maintain utility clearance requirements within new site conditions. The joint trench team is in the process of performing field verifications to identify existing utility infrastructure and begin planning the proposed joint trench routing to accommodate these relocated utilities.

8.3.2. Proposed Joint Trench

The joint or common trench system to be included in the public ROW may include underground electric, gas, phone, cable TV and streetlight facilities. This trench would be separate from the utilidor (described in Section 9.1.3) as it will not provide routing for private utilities systems, only Franchise and City utilities.

The joint trench will allow for separate, dedicated pathways for: city services, including ITS; incumbent local exchange carriers (such as AT&T and Comcast); and competitive local exchange carriers.

9. PRIVATE UTILITIES

9.1. DISTRICT UTILITIES

9.1.1. Scope of Service

The proposed district utilities are designed to serve only privately owned parcels within the development boundary with the option of serving public Parks within the Project boundary and will run almost exclusively within private parcels within the development boundary. Private systems will be owned, operated and maintained by the Project applicant.

9.1.2. District Systems

The Project proposes a district-systems approach for wastewater, energy, and solid waste flows most efficiently, meaning that such services would be delivered through shared district-wide infrastructure, rather than individual and building-specific systems. Providing district systems and services enables local management of the Project's resource demands, thereby reducing burdens on existing municipal systems while increasing Project resiliency.

9.1.3. Utilidor Distribution

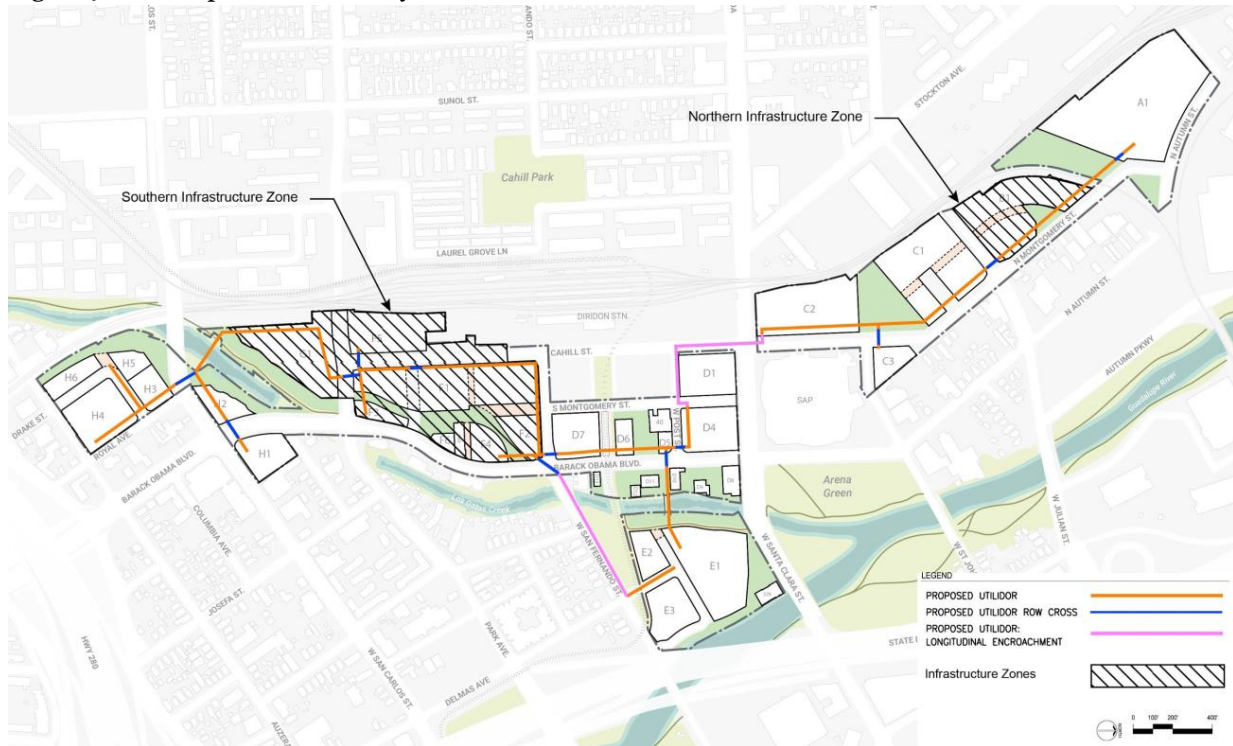
The Project proposes to include new utility corridors (“utilidors”) for the conveyance of private utilities to serve the Project area. These private utilities may include thermal systems (chilled and hot water), communications, electrical distribution, sanitary sewer collection, recycled water distribution, and automated waste collection. The utilidors will be constructed as a combination of direct-bury utility trenches, utilities within basement parking, or underground tunnel structures. When crossing Los Gatos Creek, the proposed utilidors may be constructed using a jack-and-bore method, or integrated into a proposed bridge structure.

Underground tunnel structures are generally proposed for right-of-way crossings. A deep utilidor structure allows for under-crossing of public ROWs with minimal disturbance or rerouting of existing City-owned and franchise utilities. A direct bury construction method at these ROW crossings would result in conflicts with the existing utility systems and would require significant existing utility protections and relocations. At a maximum, the utilidor reaches an outer width of 24 feet. Its size is based on a conceptual design and is subject to change through detailed design, including a reduction in width where appropriate. This width will accommodate a range of services and is sufficient to ensure access by maintenance staff, installation and maintenance of equipment (including withdrawal of valves and electrical systems) while maintaining free access for general maintenance. Refer to Figure 9.1 for the Conceptual Utilidor Plan and Figure 9.2 for a conceptual utilidor section. Tunnel access to the utilities will reduce future construction and traffic disturbance at the street level for repairs or upgrades to the proposed utilities.

In future design phases, the utilidor will be designed for liquefaction potential and to mitigate differential settlement. Soil prep and additional soil enhancement may be required for installation of new or upgraded public and/or private utilities. Alternative pipe materials choices may also aid to mitigate differential settlement.

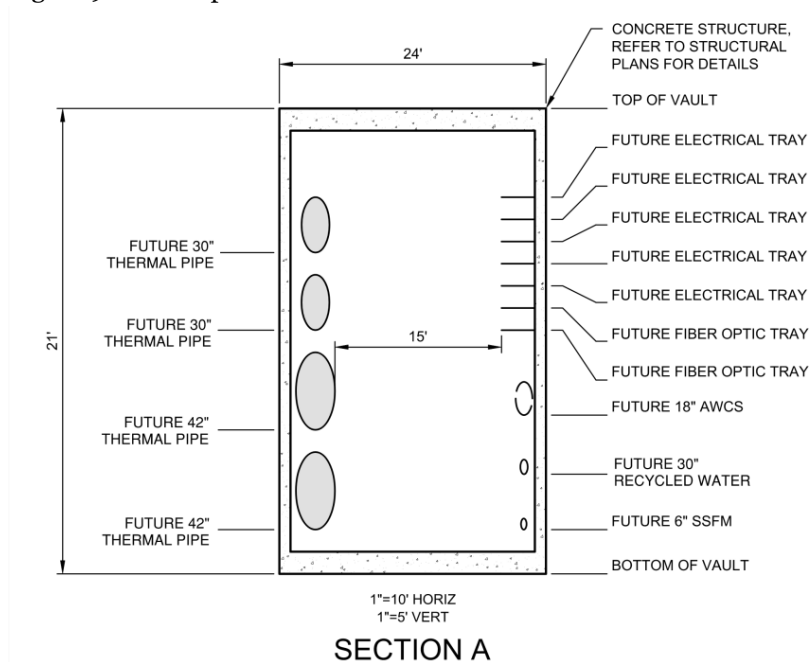
Buildings that are proposed to receive tenant improvements only are not intended to connect into the proposed utilidor system, but instead would connect directly to existing utilities within the ROW. However, there is a possibility that these buildings could connect into the private utilidor system which would be determined in future design phases on a building-by-building basis.

Figure 9.1. Conceptual Utilidor Layout



If constructed, District Systems would be available to the H1, H5 and H6 Properties, and those developments would have the right to connect to the District Systems subject to any required regulatory approvals.

Figure 9.2. Conceptual Utilidor Tunnel Section



9.1.4. Central Utility Plant

The Project proposes to consolidate district utility services via the construction of one or more Central Utility Plants (CUPs). Consolidating the Project utility services CUP(s) improves equipment spatial and operational efficiency, helping the Project achieve its stated sustainability goals. There may be up to two infrastructure zones, one in the southwest portion of the site (parcels north and south of Park Avenue between the railway and Cahill Street) and one in the northern portion of the site (at the corner of Julian St. and N Montgomery St) as shown in Figure 9.1. The Project's phasing strategy may also require a temporary thermal utilities to serve some parcels prior to the construction of the CUPs.

The central utility plant(s) (CUP) will provide a consolidated location for the following utilities:

- Water reuse facility to treat privately-collected wastewater and produce recycled water for non-potable uses. This facility would meet California Code of Regulations Title 22 disinfected tertiary (unrestricted reuse) recycled water standards.
- Central utility plant to provide heating hot water and chilled water. Equipment in this facility would comply with Title 24 energy code requirements.
- A CUP may be co-located with a proposed logistics center (including AWCS facilities) to further consolidate infrastructure.
- The proposed electrical substation and switching station may be co-located with the CUP as well to further consolidate infrastructure.
- The plant may also include back up facilities for resilience and life safety including generators and battery storage.

9.2. DISTRICT WASTEWATER COLLECTION SYSTEM

9.2.1. Scope of Service

The district wastewater collection system will serve the majority of the proposed parcels within the development area and will be located within the proposed utilidor system. A small portion of the sanitary sewer system which will provide a discharge connection from the water reuse facility will be located outside of the utilidor and will extend beyond the development boundary, along W San Fernando Street to Almaden Blvd. Refer to Section 9.2.4.3 for additional description of the discharge connection. The Project applicant will be responsible for ownership and maintenance of the onsite district water reuse system and private sanitary sewer collection system.

9.2.2. Collection Areas

The proposed sewer system would collect wastewater from the majority of the Project's proposed development parcels via a private collection network owned by the Project applicant and connected to an onsite district water reuse facility (WRF). See Section 9.2.4 below for additional detail on the WRF. Some development parcels (e.g., Parcel D8) may connect directly to the city's sanitary sewer network as identified in Table 9.1 and Figure 9.3. Modeling of estimated sanitary sewer flows from these individual parcels will be completed in subsequent design submissions. The extent of upgrades required is not anticipated to exceed those described in Section 7.2.5 under the Business-as-Usual Scenario.

Table 9.1: Development Parcels Proposed to Connect to the City's Sanitary Sewer Network

Parcel	Proposed Connection
40 South Montgomery Street	To the existing line in South Montgomery Street
150 South Montgomery Street	To the existing line in Barack Obama Boulevard (formerly South Autumn Street)
Parcels D8, D9, D10, D11, D12, & D13	To the existing line in South Montgomery Street
374 West Santa Clara Street	To the existing line in West Santa Clara Street

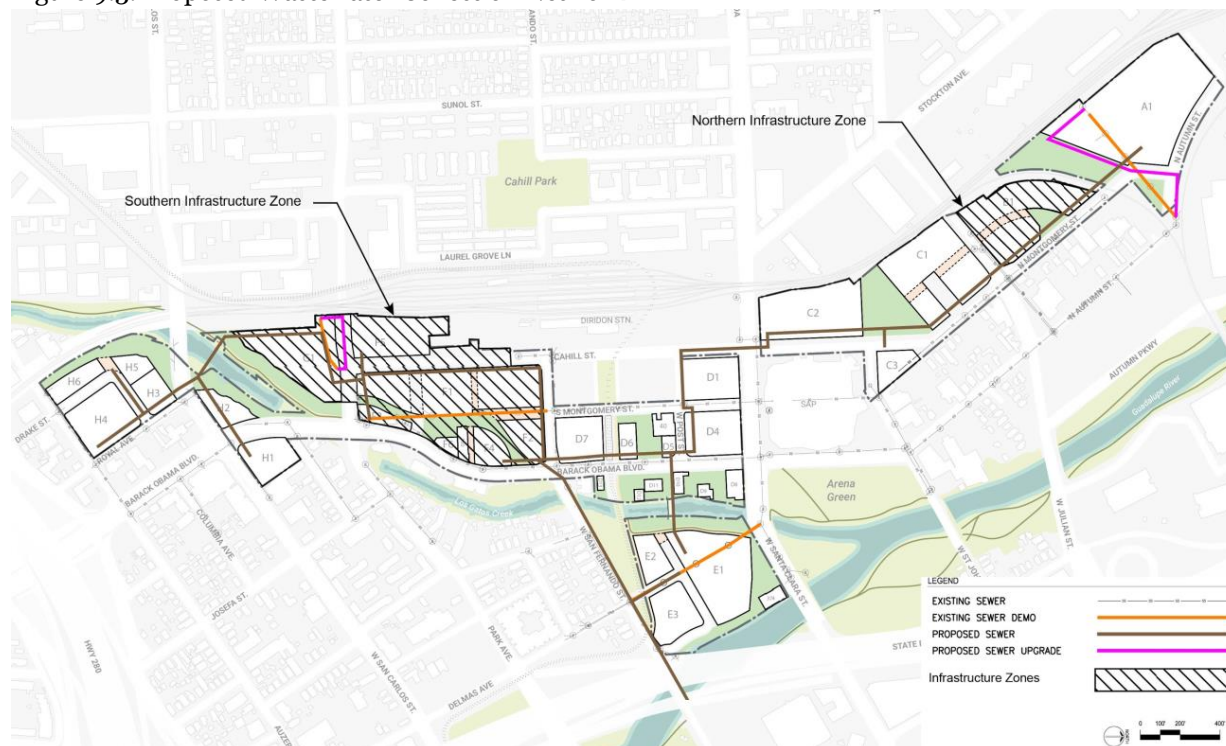
9.2.3. Proposed Low-Pressure Collection System

The proposed design for wastewater collection includes a private, low-pressure sanitary sewer collection network which would be integrated into the proposed utility corridor alignment as shown in Figure 9.3. Sanitary waste would be collected in a small pump station in each building basement. The pump stations would include a collection tank and a pump to feed into a low-pressure force main, routed within the proposed utility corridor. Pumps would be selected to adequately transfer wastewater solids through the network to the WRF.

A low-pressure collection system (also known as a pressure sanitary sewer, PSS) is proposed as it allows for the controlled transfer of sewage in a more efficient footprint than conventional gravity systems. A pressurized system would allow for wastewater to be collected in smaller diameter pipes within the utilidor whereas a gravity system would require that a dedicated trench be constructed with larger diameter pipes to achieve adequate slope for flow. A PSS operates through a sealed system, eliminating leakages (exfiltration) and stormwater inflow and infiltration (I/I) while also reducing odor issues. The pump station wet wells associated with the PSS will be vented as required by CPC to prevent odorous conditions. If needed, air blowers and odor control units (e.g., carbon filters) may be incorporated into the pump station design.

The inclusion of PSS and WRF avoids the upsizing of buried gravity mains, which would be a much larger construction Project and would involve trenching within public roadways. Additionally, a PSS allows for system optimization, as the operator can program the system's operating periods and stagger peak loads. This flexibility could potentially reduce the discharge volume that would be sent to the City.

Figure 9.3. Proposed Wastewater Collection Network



9.2.4. Onsite District Wastewater Treatment and Water Reuse Facilities

9.2.4.1. Facility Design

Up to two private onsite district water reuse facilities (WRFs) are proposed to treat Project-generated wastewater for reuse to meet non-potable demands; where a second WRF would be constructed if the existing Sharks parking lots are not included in the Project. The WRF(s) would meet California Code of Regulations Title 22 disinfected tertiary (unrestricted reuse) recycled water standards through a multi-stage treatment system, including primary treatment, secondary treatment, tertiary filtration, and disinfection. The WRF(s) have been sized to treat up to a maximum wastewater production flow of 1 million gallons per day (MGD). Water that has been tertiary filtered and disinfected would be stored in a non-potable storage tank before being distributed for uses such as water closet and urinal flushing, irrigation, and cooling. Treated non-potable water would be distributed via a pressurized distribution network within the private utilidor.

The Project wastewater flow estimates account for low-flow fixtures, as required by LEED and CalGreen, and are aligned with the Project's sustainability commitments. The unit demand factors associated with these low-flow fixtures are lower than the unit demand factors provided by the City of San José (July 2020) and in San Jose Water's Water Supply Assessment (WSA) (January 2020), resulting in lower projected wastewater flows. A comparison of San Jose Water's typical demand factors and the Project's proposed demand factors, including potable and non-potable water demands, are presented in Table 7.4.. The revised unit demand factors would decrease the Project's estimated total water use, thereby also decreasing the Project's wastewater production estimates. Using the revised unit demand factors, the Project's annual non-potable water demands are projected to be 107 million gallons per year (MGY) and the annual discharges to the City's sanitary sewer are projected to be up to 165 MGY.

9.2.4.2. Treatment Standards

The proposed onsite district WRF(s) would treat wastewater to California Code of Regulations Title 22 disinfected tertiary (unrestricted reuse) recycled water standards. These are the same public health standards met by the recycled water produced by the San José-Santa Clara Regional Wastewater Facility (SJ-SC RWF) and distributed by South Bay Water Recycling (SBWR). The WRFs would be co-located with the mechanical and thermal equipment in the CUP locations outlined in Section 9.4.

The recycled water produced at the WRF(s) will be regulated by the State and meet the same water quality as the SBWR system, which produces disinfected tertiary (unrestricted reuse) recycled water. This level of treatment allows for unrestricted reuse for approved non-potable end uses including spray irrigation. The Project will have the capacity to irrigate public areas (which could include publicly-owned parks and/or privately-owned parks with public access) with recycled water produced at the WRF thereby leaving potable water available for other uses.

9.2.4.3. Discharge Connection

As described above, the private district system would tie into the City's sanitary sewer network to discharge excess wastewater from the water reuse facility and, potentially, for disposal to the City sewer system of residual solids (sludge). This connection would allow the water reuse facility to discharge excess wastewater to the City's sanitary sewer system if there is a lower demand for recycled water or the district system is offline for any reason. These discharges would be governed under an industrial wastewater discharge permit. This arrangement would avoid the need for the Project applicant to permit a treated water discharge to the environment. Connections to the City's sanitary sewer with monitored flows will have wastewater metering.

Industry standards typically referenced by the State Water Quality Control Board, define 'sludge' as the solid, semisolid, and liquid residues removed during primary, secondary, or advanced wastewater treatment processes. Solid waste refers to grit and screening material generated during preliminary treatment. Biosolids refers to sludge that has been treated and tested and shown to be capable of being beneficially used as soil amendment pursuant to federal and state regulations.

This sanitary sewer discharge connection would connect across Los Gatos Creek via the proposed utility corridor and Guadalupe Creek via the West San Fernando bridge. An existing 33" RCP City sanitary sewer trunk line has been identified running within Almaden Boulevard where a connection is proposed. The point of connection would be determined in coordination with City staff. The discharge infrastructure may require some installation within existing roadways once it exits the proposed utilidor. Discharge infrastructure outside of the proposed utilidor would require an encroachment permit within the ROW.

If a northern WRF is constructed, a second sanitary sewer discharge connection to the City system would be required outside of the proposed utility corridor.

9.2.4.4. Solids Management and Corrosion

The sludge from the treatment plant would be predominantly liquid, with a very low percentage of solids. The primary solids are preliminarily estimated to be 2% (20,000 mg/L) total suspended solids flow, while the secondary solids are preliminarily estimated to be 1% (10,000 mg/L) total suspended solids flow.

One alternative being considered is discharge of these low solids concentrations to the City sanitary sewer. Based on the *2012 Sanitary Sewer Flow Monitoring Service Order No. 6*, the City's sanitary sewers have adequate flow to carry these solids to the SJ-SC RWF. As such, it is not anticipated that this discharge would create a high corrosion potential in the sewer lines.

The Project is also studying onsite solids management alternatives. Any product of onsite treatment would be beneficially reused and would not be taken to the SJ-SC RWF. For example, the sanitary solids produced as a by-product from the onsite district WRF(s) could be managed onsite through pyrolysis, generating biochar (a high-quality soil amendment), and/or through anaerobic digestion, generating biogas that could be used in fuel cells to generate electricity. Should anaerobic digestion be implemented, co-digestion with food waste collected via the automated waste collection system would increase the amount of biogas and biosolids production. The digested biosolids would be dewatered and reused beneficially as soil amendment.

California Senate Bill 1383 requires a 50 percent reduction in organic waste disposal from 2014 levels by 2020, and a 75 percent reduction by 2025. Onsite beneficial reuse will help the City to meet that goal by diverting this organic waste from the landfill. Any products of the onsite solids management will be used within the Project boundaries or as close to the Project site as possible; the hauling distance will be minimized to the greatest extent feasible.

The City of San José currently has a robust condition assessment program. As stated in the Sanitary Sewer Corrosion and Odor Potential letter provided to the City dated March 13, 2020, the Project applicant does not expect the discharge from this Project will exacerbate any corrosion or odor potential in the sewer lines based on its initial analysis.

9.2.4.5. Odor Control

At the initial stage of treatment, raw wastewater is screened to remove inorganic solids, which are collected in a roll-off bin and periodically hauled off-site. Preliminary screening of wastewater is intended to remove large materials from the flow stream that may damage or clog subsequent treatment equipment and reduce overall treatment reliability. Screens can either be coarse or fine depending on the size of material intended for removal. Materials captured by the screens are called screenings and can include rags, plastics, and paper. Screenings are composed of primarily inorganic wastes that are not biodegradable and not beneficial for post processing and resource recovery. As such, screenings are typically washed, compacted and hauled off site at regular intervals for disposal in a permitted landfill.

Grit such as sand, gravel, coffee grounds and eggshells are removed to prevent their accumulation in downstream processes such as aeration basins and anaerobic digesters. These materials are typically removed via gravity settling; scour air or another abrasion process can be used to more effectively separate grit from other suspended solids. Similar to screenings, grit does not have a resource recovery value and is hauled off site.

The screenings and grit would need to be managed to not create nuisance odors; wastewater treatment plant odors are subject to the jurisdiction of the Bay Area Air Quality Management District. Handling and disposal would require screenings and grit to be washed and drained, and the wash water may be recycled to the front of the treatment train. Once washed and dewatered, the screenings and grit will be stored in refuse containers satisfying the City's requirements, and routinely hauled offsite to a permitted landfill. Refuse containers would have to be odor proof and contained within an area draining to the sanitary sewer in the case of a rain event. Odor control measures may also include housing primary screenings in a ventilated enclosure at the WRF.

Primary treatment and management of primary and secondary solids will also produce odors. The WRF will have appropriate odor controls to manage any objectionable odors from these processes. The headspace of tanks with the potential to produce odors will be vented. If needed, air blowers and odor control units (e.g., carbon filters) may be incorporated into the wastewater treatment design. Specific solutions will be developed as the Project moves into design.

9.2.4.6. City Permitting and Fees

As the control authority for the San José-Santa Clara Regional Wastewater Facility (SJ-SC RWF), the City of San José is required by state, federal, and local laws to regulate wastewater discharges of specified commercial businesses and industrial users to the SJ-SC RWF. Through its Pretreatment Program, the City permits and inspects specified commercial and industrial facilities - as outlined in Municipal Code Chapter 15.14 (Sewer Use Regulations). Through Industrial Wastewater Discharge Permits, the City authorizes industrial process water discharges to the sanitary sewer and the SJ-SC RWF. The wastewater discharges from the WRF to the City's sanitary sewer will be subject to the City's Pretreatment Program and permitted through an Industrial Wastewater Discharge Permit.

The City has two rate structures for sewer service and use charges: Standard Use Type Rates - including Residential Rates (calculated by unit) and Commercial, Institutional, and Light Industrial Rates (calculated by volume) - and Monitored Industrial Rates (calculated by volume and loading).

The Standard Use Type Rates apply to non-residential users discharging sewage of uniform strength or discharging less than 25,000 gallons per day. The rate structure for these classes is based on adjusted water consumption (and in the case of Downtown West, reduced by the provision of recycled water to the buildings) data reflecting the difference in sewage strength among the standard classifications of users (e.g., Restaurants-Delis, Hotel-Motels, Business Offices/Condos, etc.). An annual charge is computed for non-residential users using the unit rates and placed on the property tax rolls for collection by the Santa Clara County Tax Collector's Office.

The Monitored Industrial Rates apply to non-residential users discharging more than 25,000 gallons of sewage per day or discharging sewage of widely varying strength. These users are billed monthly on the basis of samples collected during the billing month, while the monthly sewage flow is derived from actual sewage flow meter data or estimated from potable water consumption.

The wastewater discharges from the WRF to the City's sanitary sewer will be charged for sewer service and use under either the Standard Use Type Rates or the Monitored Industrial Rates, subject to the final design of the WRF.

9.2.5. Private Sewer System Phasing

The sanitary sewer collection system will be built out as buildings come online through the three phases of construction as described in Section 1.7 Project Phasing. Sewer laterals and all required pumps would be constructed on a parcel-by-parcel basis.

9.3. DISTRICT NON-POTABLE WATER

9.3.1. Scope of Service

The non-potable water pipe is proposed to serve only parcels within the development boundary with the option of serving public parks within the Project boundary. The non-potable system will be located on Project applicant property and within the utilidor system. The non-potable water systems will be owned and maintained by the Project applicant.

9.3.2. Project Demands

In the proposed development, non-potable recycled water may be used for water closet and urinal flushing, irrigation, and mechanical cooling tower use. Use of recycled water may help the Project comply with the City of San José's New Construction Green Building Requirements which require meeting LEED Silver with a goal of reaching LEED Gold. All Google LLC office buildings in line with the AB900 certification will achieve LEED Gold and water incentives will be a contributor to the overall performance.

Estimated average non-potable water demands based on unit demands for similar developments are given in Table 9.1. Non-potable demands do not account for potable water uses such as drinking water. A preliminary water balance shows an excess of non-potable water during winter months. Additional winter season non-potable demands would be investigated to use this surplus. As described in Section 7.1, Project water demands are provided here as an engineering estimate for informational purposes only.

Table 9.1: Average non-potable demands

Program	Average Daily Non-Potable Demand (gal/d)	Average Annual Non-Potable Demand (MGY)
Office	62,100	23
Residential	44,900	16
Retail	10,200	3.7
Restaurant	-	-
Hotel	2,900	1.1
Event space	600	0.2
District Systems	5,100	1.9
Logistics/Warehouse	5,100	1.9
Subtotal: Interiors	130,900	48
Cooling	99,100	36
Irrigation	63,400	23
Subtotal: Seasonal	162,500	59
Total	293,400	107

9.3.3. Proposed Non-Potable Water Supply

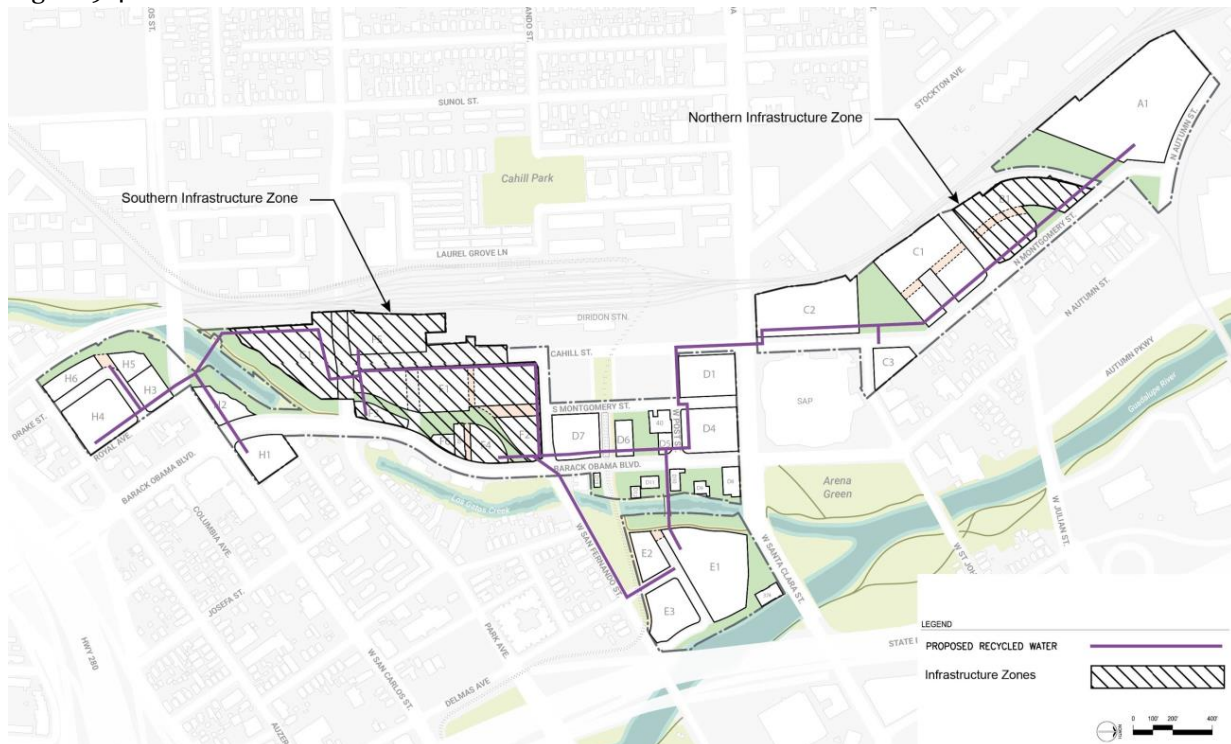
As outlined above, the non-potable water supply to the Project site would be provided by up to two onsite district WRFs that would treat sanitary sewer flows produced by the Project for non-potable reuse throughout the Project.

San Jose Water Company-supplied potable water would be used as a backup supply to the recycled water system. Due to the phasing of the Project, potable water would also be used as a supply for non-potable uses until the water reuse facility(s) are constructed and brought online.

9.3.4. Proposed Distribution System

Treated non-potable water would be distributed to all or most Project development parcels through a private distribution system. The non-potable pipe would be routed through the utility corridor and connect to all proposed buildings as a non-potable supply for water closet and urinal flushing and irrigation. The non-potable supply would also be sent to the proposed central utility plants (CUPs) as a makeup water supply for the cooling towers.

Figure 9.4. Non-Potable Water Distribution



9.3.5. Non-Potable Water System Phasing

The non-potable water distribution network would be built out as buildings come online through the three phases of construction as described in Section 1.7. Non-potable laterals and any required booster pumps would be constructed on a parcel-by-parcel basis. As described above, the majority of the onsite district WRFs would be built during the proposed Project's initial phase, to ensure that a non-potable supply would be available for buildings as they are developed.

9.4. DISTRICT THERMAL SYSTEMS

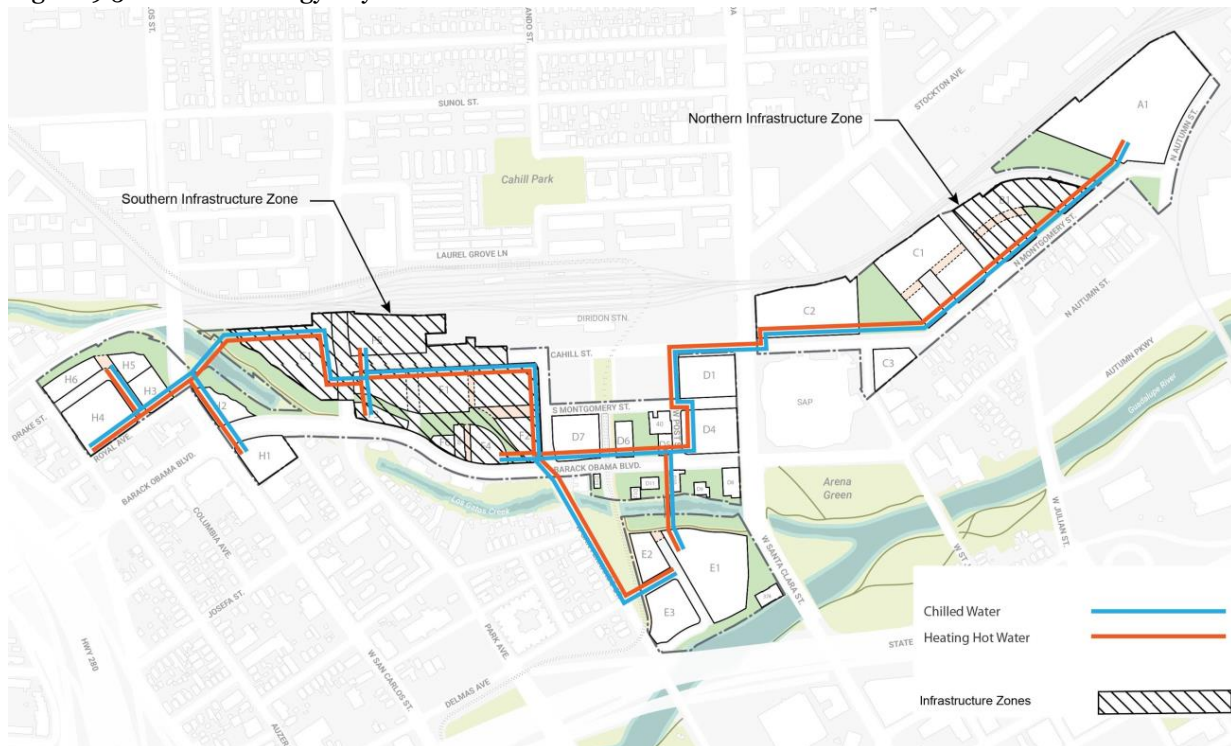
9.4.1. Scope of Service

The proposed thermal systems would serve the full proposed Project, with some buildings being serviced by standard BAU systems depending on phasing constraints, as noted below. The CUPs and distribution of heating hot water and chilled water would be owned and managed by the Project applicant.

9.4.2. Proposed Thermal System

There is no existing heating hot water or chilled water system serving the site. Thermal energy for the Project is proposed to be served from up to two central utility plants (CUPs). The Project phasing strategy may require temporary thermal service to some buildings while the CUPs are constructed. Provision for temporary heating and cooling equipment to be removed when the CUPs are commissioned will be made. The CUPs would provide heating hot water and chilled water to the majority of the buildings within the Project area via underground heating hot water and chilled water pipes located within the utilidor and/or direct-buried.

Figure 9.5. Thermal Energy Layout



Equipment at the plant would be selected to comply with Title 24 energy code requirements and support achievement of LEED-ND Gold for the Project and LEED Gold for the office buildings. Additional energy, carbon, and water savings are possible through centralization and heat recovery between buildings within the Project. Centralizing thermal production also allows for improved operating efficiency of primary cooling and heating equipment, reducing electricity and natural gas use for the Project.

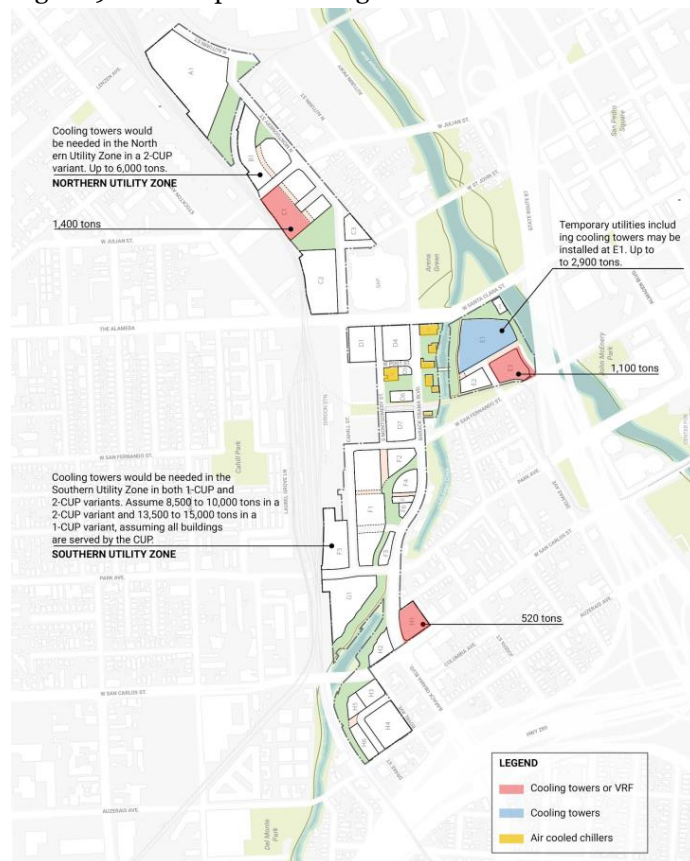
Central cooling generation for most buildings in the Project area is currently proposed via water cooled chillers and heat recovery chillers rejecting heat to cooling towers mounted on the roof of the CUP

building. Heat rejection via a localized ground loop utilizing structural piles or mat foundations within the Project area may be utilized as well. Heating is proposed to be all-electric via air source heat pumps located on the roof of the CUP building, heat recovery chillers, and water source heat pumps connected to a ground loop located within the mat foundation and/or structural piles of the CUP and nearby buildings. Alternate means of heat exchange would be subject to additional approval. Centralizing thermal equipment provides greater operational efficiency as well as a means to exchange heat between residential and commercial buildings, as well as reduce water consumption required for cooling towers. The Project may also include wastewater heat exchange from the district non-potable water system, thermal energy storage, and anaerobic digestion of onsite generated organic waste for use as biogas for fuel cells onsite.

Several buildings within the Project area may not be connected to the CUP. These include existing buildings that will remain within the development area, certain residential buildings, and parcels which may be constructed prior to the CUP and hot and chilled water lines being complete. Where appropriate, temporary thermal service may be located at these parcels with a connection to the CUP replacing the temporary service. In other cases, the parcels will maintain stand-alone thermal equipment unconnected to the CUP. In all cases, non-CUP thermal equipment will meet all required standards under California's Title 24 building Energy Efficiency Standards. The map below indicates the parcels for which local cooling towers may be utilized.

Heating hot water and chilled water distribution would be via pipes located either in the proposed utilidor or where necessary direct buried. A condenser water pipe between buildings may additionally be required to connect the ground loop within the mat foundation and energy piles.

Figure 9.6. Conceptual Cooling Tower Locations for Satellite Thermal Services



9.5. DISTRICT ELECTRICAL SYSTEM

9.5.1. Scope of Service

The proposed microgrid electrical distribution and thermal systems would serve the full proposed Project. The final ownership and operation of the systems is under review to ensure that the benefits are realized from an environmental and economic perspective. The proposed modifications and upgrades to PG&E Systems which extend beyond the development boundary are described in further detail in Section 8.1.

9.5.2. District Microgrid and Renewable Energy

Renewable generation technologies including photovoltaic arrays and building-integrated photovoltaic products may be located on building rooftops and facades, with an anticipated minimum peak generation capacity of 7.8 MW. In addition, storage technologies such as batteries may also be deployed within the substation area, the CUP, or within buildings throughout the development. Such storage technologies could be used to provide both resilience and/or backup power services in addition to the proposed generators. Both storage and generation on-site would allow the realization of Project benefits such as:

- Provide power to key Project area loads in the event of a utility wide grid outage.
- Allow renewable energy to be shared between buildings.
- Allow the generation and storage technologies to provide grid services and balance demand and onsite generation with grid import and export.

The Project is also proposing providing localized 12.47/21 kV infrastructure from a dedicated transmission substation to connect the majority of buildings within the development area in a microgrid with one or more connections to the PG&E transmission system. The microgrid would include controls to share power between buildings across the microgrid distribution, and controls to operate any below substation generation and storage disconnected from the grid in the event of an outage. It is not anticipated, however, that the microgrid will have sufficient renewable energy and storage to operate for an extended period in an islanded scenario due to the high-density nature of the Project. The intent of a microgrid topology is primarily to enable sharing of renewable power and storage and provide limited resilience to critical functions in the event of an outage on the transmission network.

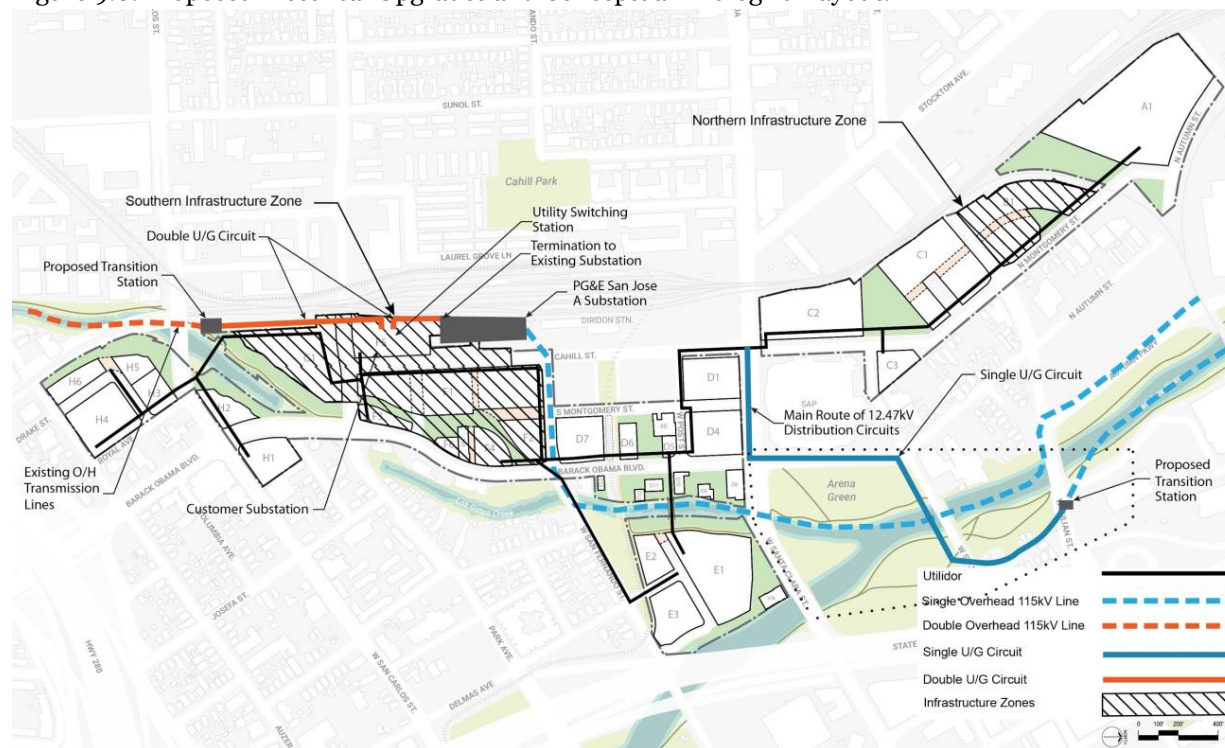
A limited number of buildings may not connect to the microgrid; these include existing buildings which will remain in the development area, some residential buildings, and parcels which may require power prior to construction of the CUP and microgrid due to phasing. These are noted in the figure below. In this event, electrical distribution to these buildings will be provided by PG&E to the main meter for the building via distribution lines in the public right of way rather than the private utilidor. Renewable generation and storage assets located at these buildings will not contribute to the microgrid.

Figure 9.7. Locations of buildings which may be provided with power from PG&E directly instead of the CUP and microgrid.



The Project's microgrid distribution would be housed within the proposed utilidors as described in Section 9.1.3.

Figure 9.8. Proposed Electrical Upgrades and Conceptual Microgrid Layout.



9.6. DISTRICT COMMUNICATIONS

9.6.1. Scope of Service

The Project's infrastructure obligations include the design and construction of the proposed communication utility systems to serve the development. These systems encompass a combination of Project applicant-owned, franchise-owned, and city-owned communications pathways and cabling. Privately-owned cabling will be located within the proposed utilidor, while other cabling will be located within the proposed joint trench.

9.6.2. Proposed Communication Systems

The proposed improvements for communications and data infrastructure include a combination of privately-owned and franchise-owned systems.

Singlemode fiber-optic cabling to each new building with diverse routing to provide resiliency. Based on previous campus Projects this could take the form of multiple self-healing rings based on geographic zones.

Modifications and additions to franchise communications systems include the following:

- Undergrounding or removal of existing telecommunications fiber and copper in the Project area.
- Provision for communications connectivity to residential areas of the Project including data connectivity and connectivity for cable-television and voice services. Connections to residences will likely be provided by fiber-optic cable, regardless of who provides the service. Within the residences this may transition to copper cable or remain on fiber.

- Modifications to the City communications fiber optic cable to place in the joint trench and modify City ITS fiber based on changes to traffic signaling extent and locations.
- Provision for installation of future 5G cellular service. The trajectory of 5G service is being developed and will remain under study, but the timing of this Project and the rollout of 5G services nationwide would indicate a substantial 5G infrastructure including small cell equipment and fiber backhaul. Provision for 5G should be allowed for in the joint trench.

9.7. SOLID WASTE COLLECTION

9.7.1. Scope of Service

The proposed automatic waste collection system (AWCS) would serve the full proposed Project with solid waste collected at centralized terminal facility(s). Additional residual waste streams not transported by the AWCS would be collected by a vehicle from each building. Waste truck access will be provided at both the AWCS terminal(s) and each building. All components of the waste management system would be owned and managed by the Project applicant, and interface with the City's commercial and multi-family residential waste franchisees for waste collection. The AWCS system shall be designed to conform with the City of San Jose Municipal Code.

9.7.2. Existing Solid Waste Collection Infrastructure

The site is currently served by truck-based municipal waste collection. There is no existing underground infrastructure onsite for solid waste collection.

9.7.3. Proposed Automated Waste Collection System

The Project is considering various strategies to manage solid waste, including an automated waste collection system (AWCS). The system is described here and addressed further in the Downtown West Improvement Standards DWIS to enable its future implementation. The AWCS is a project option and its approval will be subject to a subsequent and separate Council approval. If the system is not progressed by the Project, the waste facilities will be developed inline with all applicable codes and standards.

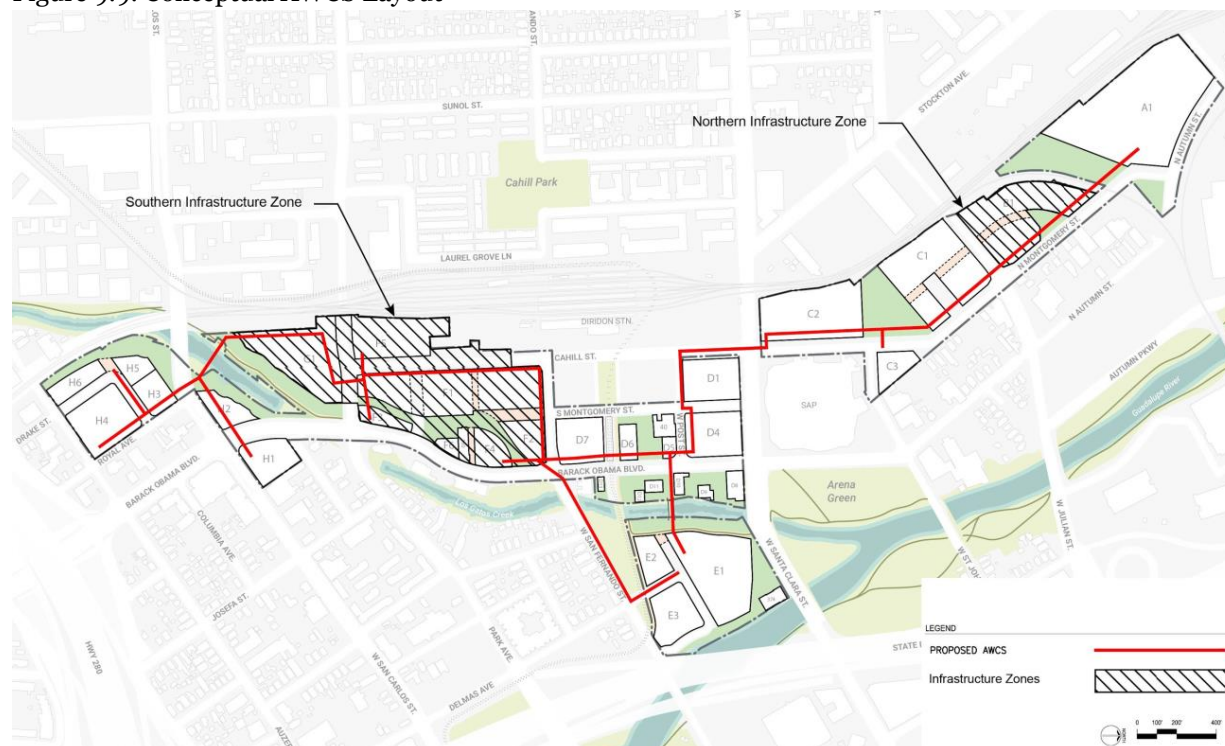
The AWCS option comprises a main pressurized pneumatic pipe that runs below grade, primarily within the proposed utilidors. Individual buildings are connected to the main AWCS trunk via below-grade laterals. The computer-controlled system would allow for the collection of a variety of solid waste streams via waste inlets distributed within the buildings and at select exterior locations. The waste is transferred through a single-pipe that pneumatically pulls the waste to one or more central terminal facilities, where each waste stream is deposited into the appropriate container. A roll-off waste collection truck would then arrive at the terminal facility to haul away a full container, while delivering an empty replacement container. These terminal facilities, collectively sized at approximately 15,000 square feet would be located within one or both of the infrastructure zones and/or near the CUP(s) or an onsite logistics hub.

This system is expected to support three primary commercial waste streams: wet, dry, and a customized single stream (CSS), and for multi-family residential: recycling and garbage. The Project is considering a custom food scrap stream to allow for food waste to be co-digested with solids from the wastewater treatment process at the water reuse facility(s). The co-mingling of these organic waste streams would allow for better energy recovery onsite. Solid waste is placed in bags then deposited in an inlet specific to the given waste stream. Waste streams remain separate via the automated process that evacuates one stream at a time. Commercial and residential waste streams shall remain separate according to the City of

San Jose Municipal Code. The AWCS supports glass if it is mixed with other waste within the dry stream; glass-only bags of waste would need to be hauled via traditional means from each building. Cardboard will generally not be used in AWCS but hauled via traditional means. Waste bags used in the AWCS will be selected for the purpose, reducing instances of bag breakage.

Other residual waste streams not transported by the AWCS will be collected by a waste vehicle from each building. These residual streams will be sorted as wet and dry for commercial, and recycling and garbage for multi-family residential, in accordance with San Jose standards. Further details of the overall solid waste management strategy can be addressed in a subsequent stand-alone narrative.

Figure 9.9. Conceptual AWCS Layout



9.7.4. AWCS Phasing

The AWCS option would be implemented and extended throughout the construction phases beginning with the terminal facility and associated pneumatic pumps in phase 1. AWCS laterals and required trunk extensions would be constructed on a per-parcel basis. Inlets for the system would be constructed on a per-building basis.

10. SITE DESIGN

10.1. FLOOD MANAGEMENT

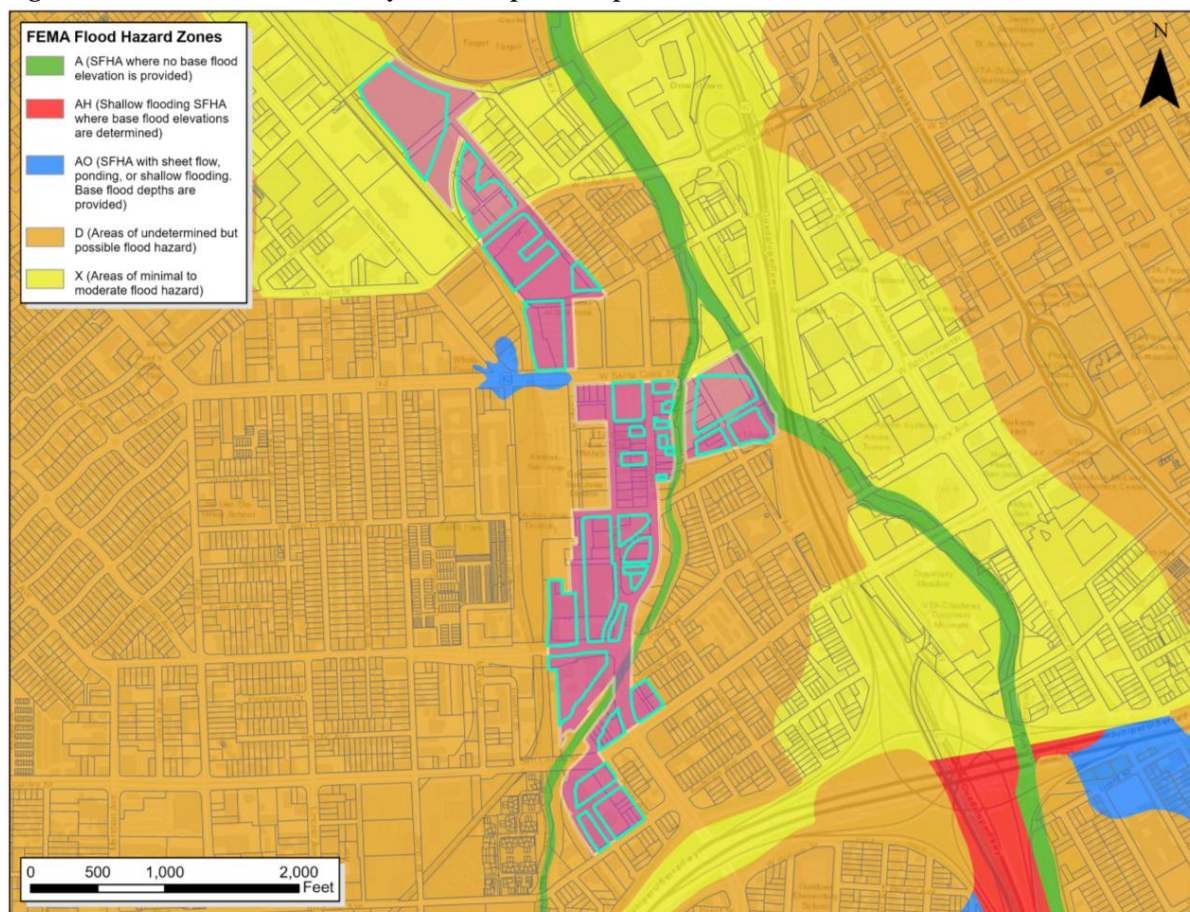
10.1.1. Scope of Service

The Project is required to design proposed buildings to meet flood-proof design standards for all proposed buildings. Additionally, the Project proposes alternatives which can reduce existing flooding within the development boundary. The effects of the alternatives may provide additional flood relief outside of the Project boundary, depending on which alternative is chosen.

10.1.2. Existing Conditions

The effective FEMA Flood Insurance Study (FIS) Number 06085CV001B dated February 19, 2014 depicts all 100-year flows are contained within Los Gatos Creek and Guadalupe River as shown in Figure 10.1 The development parcels outlined are located within Zone X and Zone D which have no development requirements. Some parcels abut Zone A and Zone AO floodplain designations, however there are no proposed structures located in a mapped special flood hazard area (SFHA) Zone A or AO.

Figure 10.1. Effective FEMA 100-year Floodplain Map

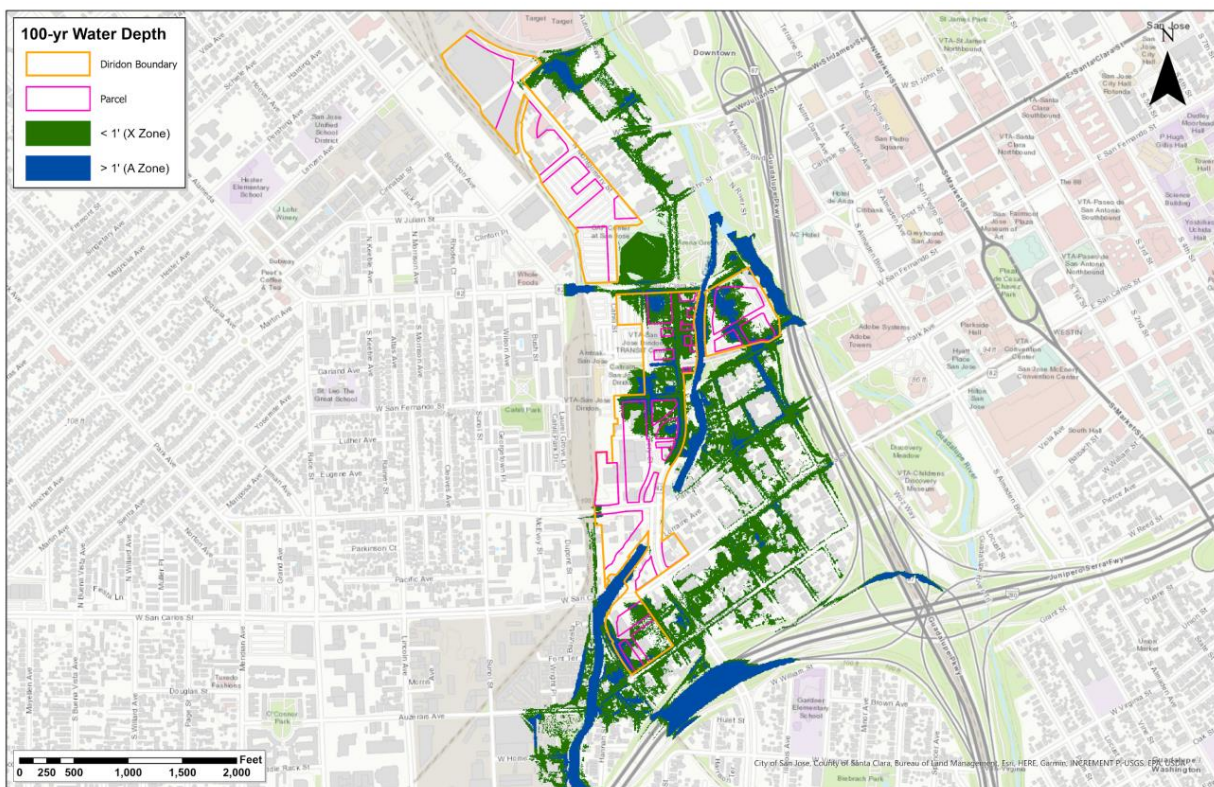


10.1.3. Hydraulic Modeling

The Santa Clara Valley Water District (Valley Water) has developed a two-dimensional hydraulic HEC-RAS model of Los Gatos Creek which represents the best available floodplain data within the watershed. The creek model identifies a deficiency of capacity in the channel that results in overbank flooding during the 100-year event that is not identified on the FEMA FIRM. As such, this Project will need to address the updated floodplain within the design to meet all local and federal requirements.

The results of the Valley Water hydraulic model shown in Figure 10.2 for the 100-year floodplain extent. Where water depths exceed one foot an A Zone designation is shown, whereas depths less than one foot are classified as X Zone. FEMA and the City require the elevation or floodproofing of structures within A Zones as described below.

Figure 10.2. Valley Water Best Available 100-year Floodplain Map (Existing Condition)



10.1.4. Proposed Conditions

Channel rehabilitation and the reconstruction of the Los Gatos Creek bridge at West San Fernando Street are considered as Project alternatives which would help mitigate existing 100-year flood impacts. Portions of this work would be located outside of the Project boundary as described in the Project's EIR but would be considered a Project improvement.

10.1.4.1. Channel Rehabilitation

An in-channel rehabilitation Project would both improve creek ecology and improve user experience adjacent to the creek as well as lessen impediments to flow and improve channel hydraulics thereby reducing overbank flooding.

The existing channel has a high roughness coefficient which slows flow, reduces capacity, and results in overbank flooding. Existing condition roughness coefficients could be reduced by approximately 0.01 through removal of trash, debris, dead and live trees, and invasive plant species. Ongoing maintenance (in perpetuity) would also help reduce the roughness coefficient by preventing the accumulation of additional debris and re-growth of select trees to lower flow obstruction.

The rehabilitation Project could extend from the West Santa Clara Street bridge to the West San Carlos Street bridge and occur on both banks.

10.1.4.2. Reconstruction of San Fernando Bridge

The existing West San Fernando Street bridge represents an impediment to flow due to columns and abutments within the channel and a low bridge deck. In conjunction with the channel rehabilitation Project, reconstructing San Fernando bridge to a clear span would significantly reduce overbank flooding during a 100-year event. In order to accomplish this, the bridge would need to be reconstructed so that the abutments are located outside of the channel with no supports within the channel. This requires an approximate 100-foot free span with a minimum soffit elevation of 91.8 feet.

10.1.4.3. Design Alternatives

With channel rehabilitation and bridge reconstruction, structures located on five (5) parcels would remain in a Zone A designation and would require elevating or flood protection measures per Section 11.2.2.

If neither of these improvements is implemented, buildings on fourteen (14) parcels located in Zone A would need to be elevated. The ground level of these buildings would be at an elevation of, at minimum, one foot above the base flood elevation levels determined to be adequate by flood modeling conducted for the Project or dry floodproofed to that same elevation.

All residential land uses will be elevated. Dry floodproofing will only be used for non-residential structures; i.e. commercial, office and mixed-use. Underground parking for structures in the floodplain shall only occur for mixed-use, office and commercial buildings. Mixed-use structures may include ground floor retail or office use with elevated residential uses above.

A separate floodplain memo will be submitted during detailed design establishing FEMA Zone A and AO base flood elevations (BFE's) for parcels touching an effective mapped SFHA. Proposed structures will be located outside of the FEMA mapped A Zone, floodproofed or elevated accordingly.

10.2. GRADING & EARTHWORK

10.2.1. Scope of Service

The Project proposes to maintain existing grades within existing roads to the maximum extent feasible. Grading outside of the development boundary is not anticipated. Some proposed buildings may need to be raised to meet flood-proof design standards.

10.2.2. Existing Site Conditions

The site is generally graded to fall from south to north, towards the San Francisco Bay, sloping at an average of 0.5%. Existing elevations range from approximately 79 ft to 103 ft.

10.2.3. Proposed Grading Requirements

Proposed site grading would provide Americans with Disabilities Act (ADA) accessible pathways throughout and adjacent to the parcels, meeting Building Code accessibility standards.

Per the City of San José Building Code, the lowest floor of development (FFE) within Flood Zone A must be elevated at or above the base flood elevations (BFE) as described in Section 10.1. San José has adopted the California Building Code (CBC) to require additional freeboard for a minimum FFE one foot above the BFE. Non-residential may be floodproofed to the same elevation.

The Project would provide for proper overland flow conveyance during peak rainfall/flood events to ensure that the 100-year design storm drains through the Project area and does not substantially worsen existing conditions within the larger DSAP area.

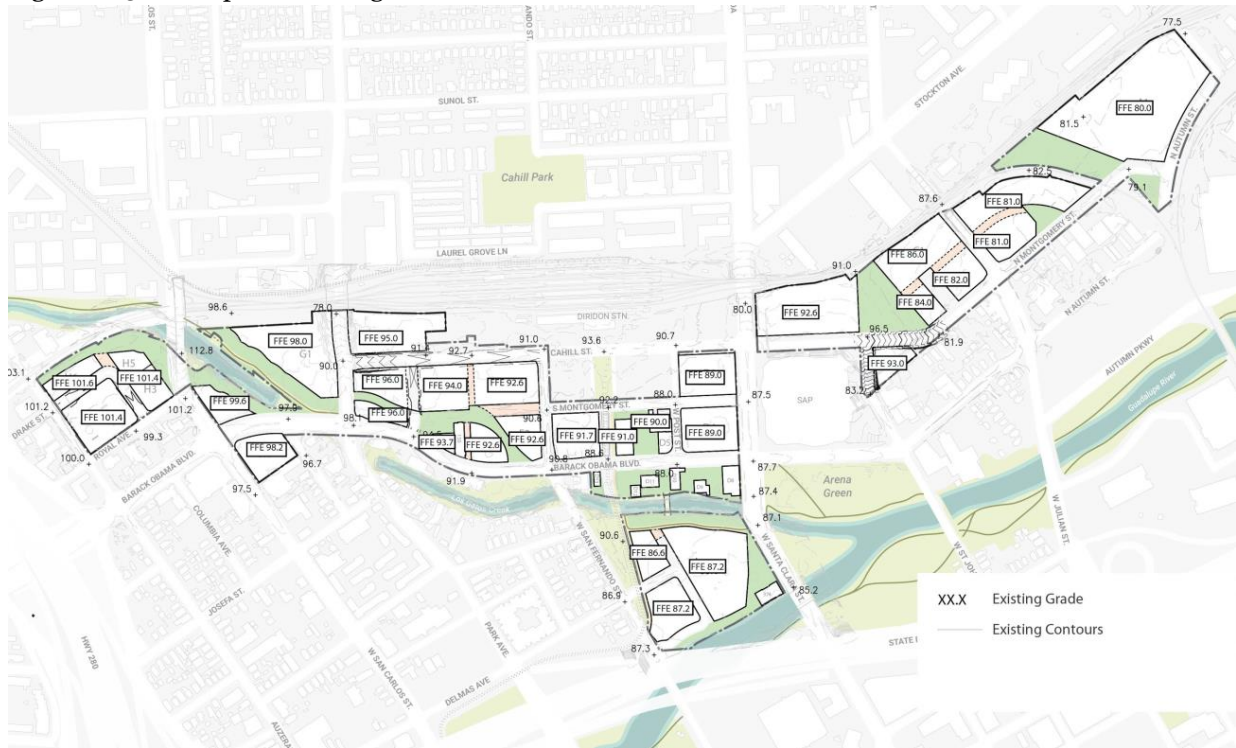
10.2.4. Proposed Site Grading Design & Conforms

The Project applicant would be responsible for the design and construction of the proposed grading plan for the Diridon Site. Proposed grading designs for the development would match the existing south to north drainage pattern of the existing site. Accessible paths of travel would be designed on a parcel-by-parcel basis to provide ADA access to all proposed buildings. Proposed grading and earthwork activities are anticipated to be limited to the development parcels and conform to existing grades at the edge conditions along the parcel boundaries and rights-of-way. Although improvements would be made to the streetscapes, the Project strives to minimize elevation changes within the existing ROWs.

Dependent on which Project alternative is chosen for the Project from Section 10.1.4, a different quantity of buildings may need their FFE artificially raised. Raising of grades can be done with either fill or by raising a subgrade parking garage to partially exposing the exterior structure. Additionally, any building with a raised FFE will require fill, ramps, and/or stairs to ensure there are accessible paths from the existing streets to entrances which meet ADA standards.

As an alternative to elevating structures by fill, flood barriers and floodproofing may be used. Buildings within Flood Zone A should be externally floodproofed up to the minimum FFE. The top elevation of any proposed floodgates must also reach the minimum FFE. Flood barrier design can be flexible to meet building design, spatial and aesthetic requirements. Barriers that may be considered include (but are not limited to) permanent standing barriers, automated barriers integrated into the ground or building walls, or removable barriers. Floodproofing may only be used for non-residential buildings, which includes mixed-use buildings where residential uses are elevated at least one foot above the BFE.

Figure 10.3. Conceptual Grading Plan



10.2.5. Phases of Site Earthwork

The Project applicant would grade the Project site based on the principle of adjacency and as needed to facilitate a specific proposed Development Phase. Interim grading may be constructed and maintained by the applicant as necessary to maintain existing facilities impacted by proposed development phases.

10.3. STORMWATER MANAGEMENT

10.3.1. Scope of Service

Proposed stormwater management will occur within the development boundary under three conditions: private parcels, public rights-of-way and public open spaces. Public open spaces are defined in the Vesting Tentative Map. The Project applicant will be responsible for maintenance of stormwater management facilities within private parcels. It is anticipated that the City would be responsible for maintenance of stormwater management infrastructure improvements installed by the applicant within the public ROW and within dedicated public open spaces upon acceptance.

10.3.2. Existing Conditions

The Project area currently serves mostly industrial and commercial development, with many large, asphalt parking lots and minimal existing landscaped areas, making it approximately 95% impervious. The existing developments do not treat stormwater runoff prior to discharge to the City's collection network.

10.3.3. Hydromodification

This Project is not subject to hydromodification requirements based on the “Classification of Subwatersheds and Catchment Areas for Determining Applicability of HMP Requirements” (SCVURPPP 2016).

10.3.4. Stormwater Management Requirements

The Project is pursuing an integrated approach to stormwater management which can provide multiple benefits and addresses both the quality and quantity of stormwater runoff. Properly designed and sized stormwater treatment facilities can reduce flooding within streets and sites, provide traffic calming benefits in roadway design, provide additional detention capacity to the existing storm drainage system, and prevent the most polluted runoff from entering the natural water systems. Additional potential benefits of stormwater treatment include infiltration and groundwater recharge, if existing soil conditions permit.

The Project will at a minimum comply with all stormwater management requirements for both quantity and quality as provided by the City of San José Green Stormwater Infrastructure Plan (GSI) dated September 2019. Runoff from public and private parcels is anticipated to be treated separately before entering the existing storm drain system. GSI facilities can be sized based on the water quality volume and/or water quality flow of runoff from all contributing impervious surfaces per the SCVURPPP GSI Handbook (as referenced by the San José GSI Plan).

10.3.5. Proposed Treatment in the Public ROW

Stormwater from all public street ROW improvements will be treated to meet the GSI Plan requirements. Stormwater calculations have been completed for each street in order to ensure that enough square footage is available within each proposed street section. Refer to the Mobility Chapter of the DWDSG for plans and sections which show additional detail for the proposed stormwater management strategy.

The Project will meet all treatment requirements by implementing green infrastructure strategies suggested by the City of San José Green Stormwater Infrastructure Plan which may include bioretention, flow-through planters and/or pervious paving. Typical standard details for these stormwater management strategies are provided in the SCVURPPP GSI Handbook (as referenced by the San José GSI Plan), and Typical standard details are provided as part of the Infrastructure Plan Sheets. Minimum indicative treatment areas assuming treatment is achieved through flow-through planters are shown in Figure 10.4 and Table 10.1.

10.3.6. Proposed Treatment on Private Parcels or within Public Open Spaces

All development within private parcels will design stormwater facilities on a parcel-by-parcel basis and will submit detailed stormwater management plans as part of site grading permit approvals. The impervious area percentages vary parcel by parcel as per the master plan. Preliminary calculations for the proposed development parcels range from 40% to 100% impervious. This percent imperviousness may be refined as each phase is developed during the detailed design. However, the intent is to increase the quantity of pervious surfaces from the existing condition to help promote infiltration and evapotranspiration, as well as further reduce stormwater runoff rates and volumes. Proposed natural

landscapes areas would be planted with a wide variety of native species with a focus on habitat creation and stormwater treatment functions.

A Stormwater Evaluation Form attached to the Infrastructure Plan Sheets serves as a high-level summary of the entire development area. Each parcel would be designed to meet the GSI Plan requirements and submit a Stormwater Evaluation Form and updated, detailed stormwater management plan as part of the grading permit application process. At the master plan level, each parcel is considered its own drainage management area (DMA). DMAs shown are schematic in nature and would be refined at the time of grading permit application to align with legal parcel boundaries. Refer to Sheet 3.19 for the Conceptual Stormwater Control Plan which includes the proposed DMAs, preliminary stormwater treatment facility areas, and notes on source control measures, site design measures, biotreatment soil requirements and stormwater controls.

Treatment area calculations are based on the “4% Rule” which represents a simplified sizing method based on runoff from 0.2 inches per hour intensity rainfall. Refer to Table 10.1 for an overall summary; detailed calculation tables are provided as part of the Infrastructure Plan Sheets. The Project will meet all treatment requirements by implementing green infrastructure strategies suggested by the SCVURPPP Green Stormwater Infrastructure Handbook which may include bioretention, flow-through planters, suspended pavement systems, pervious paving, and/or green roofs, and possibly rainwater harvesting or infiltration facilities. Typical standard details are provided as part of the Infrastructure Plan Sheets.

Table 10.1. Site Summary Treatment

Summary	
Total Development Area (sf)	3,439,250
Total Development Area (ac)	79
Overall Existing % Impervious	97%
Overall Proposed % Impervious	88%
Total Treatment Area (sf)	~ 121,060

Figure 10.4. Drainage Management Areas



10.3.7. Stormwater Management Phasing

The Project would design and install the new stormwater treatment facilities based on the principle of adjacency and as needed to facilitate a specific proposed Development Phase. These facilities would provide treatment in accordance with GSI standards. The Project will ensure that all treatment facilities must be fully operational prior to completion of private parcel developments and acceptance of public ROW improvements by the City. Stormwater runoff from private parcels and construction of treatment facilities would be managed on a parcel-by-parcel basis.

Schedule A

Downtown West Estimated Infrastructure Reimbursement Costs

Infrastructure Description	Reimbursement Estimate
Nexus Fee	\$0
San Fernando Bridge	\$11,087,280
Los Gatos Creek	\$2,771,820
Utilities – Storm drain outfall upgrades	\$6,372,000
Utilities - Upgrade of potable & fire water	\$1,780,000
Utilities - Upgrade of sanitary sewer	\$2,030,000
Utilities - Upgrade storm drain capacity	\$10,218,000
Street Upgrade - Raised bikeways	\$16,336,670
Street Upgrade - Double row of trees	\$830,375
Street Upgrade - Protected intersections	\$562,100
Street Upgrades - Larger trees	\$643,349
Non-Frontage improvements	\$47,625,238
High Voltage Undergrounding (from PG&E)	\$63,197,496
Affordable housing portion of shared infrastructure	\$10,286,082
TOTAL	\$173,740,410

Based on Downtown West Infrastructure Cost Overview presented to the City of San Jose in July, 2020.

Exhibit: Downtown West Maintenance Matrix
April 5, 2021
NOTES

1. Ownership signifies Acceptance for maintenance and liability (subject to footnote #2). City's maintenance commences at Acceptance of each respective project.
2. Maintenance may be obligated to other parties through an MEP or other mechanism as described in the GDP. Maintenance includes upkeep, repair, restoration, and life cycle replacement. O&M CFD may be required to provide liability insurance as condition to MEP.
3. MEP may be handled as MOU pending resolution by City Attorney
4. Where the item is to be City maintained but constructed by the Developer, a standard initial maintenance liability period will be applied before transfer of responsibility to the City.
5. Items shown in the Maintenance column denoted # may be assigned to a third-party (PBID, HOA etc.) for maintenance at the Developer's discretion.

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ID	Category	Sub-Category	Specific Improvement: real property underlying	General Description	Jurisdiction	Ownership Party	Party Responsible for Maintenance	Notes
1	Public Rights-of-Way	Street Elements	Standard Roadway up to edge of pavement, not including curb and gutter	City standard roadway including base paving, asphalt concrete wearing surface).	City	City	City	* Utility owner owns trench materials (backfill, bedding up to the bottom of the street pavement structural section.
2	Public Rights-of-Way	Street Elements	Non-Standard Roadway Treatment	Raised intersections; raised crosswalks, pavers, decorative paving, crosswalk art, flush curbs, valley gutters, and other non-standard materials in roadway (including planted mountable curb/buffer cycle track separator)	City	City	Developer	Maintenance of non-standard roadway treatments may be by Special District or PBID if allowed.
3	Public Rights-of-Way	Street Elements	Standard Streetscape Improvements from edge of pavement (including curb and gutter) to property line	Includes sidewalk streetscape / street furnishing zone including pavers, landscape, courtesy strip and curb and gutters	City	City	Developer	*Ownership, maintenance and funding will be equivalent for standard and non-standard sidewalks
4	Public Rights-of-Way	Street Elements	Streetscape Irrigation	Including piping, meter, and controls	City	City	Developer #	Whether the irrigation is by Developer-supplied recycled water or SJ Water, maintenance of streetscape irrigation is by Developer. May be by Special District or PBID if allowed.
5	Public Rights-of-Way	Street Elements	Standard Sidewalk Corner	Corner curb returns, curb ramps including the wings, sidewalk area at corners between extensions of the adjacent property lines	City	City	Developer	
6	Public Rights-of-Way	Street Elements	Sidewalk Bulb-outs	Sidewalk bulb-outs at corners within extensions of property lines and at mid-block locations, excluding the curb and gutter (including plantings).	City	City	Developer	
7	Public Rights-of-Way	Street Elements	Standard Green Stormwater Treatment Infrastructure	Permanent City stormwater infrastructure treating only public ROWs, including the treatment system, vegetation, soil media, aggregate matrix, underdrains, internal piping and fittings, overflow structures, clean outs, and laterals	City	City	City	Applies to stormwater management facilities located in public ROW that treat only runoff generated from public streets. City to maintain associated storm drain within ROW from curb line.
8	Public Rights-of-Way	Street Elements	Street Trees	Trees planted within the sidewalk landscape zone, fronting private property (including understory plantings in tree pits).	City	City	Developer #	
9	Public Rights-of-Way	Street Elements	Standard Bus Stop Pad	City standard bus stop pads including base paving, PCC surface, curb and gutter	City	City	City	* Subject to MOU between City and VTA
10	Public Rights-of-Way	Street Elements	Bike Lanes (within the roadway)	Class II or III bike facilities in the roadway, including pavement and striping	City	City	City	
11	Public Rights-of-Way	Street Elements	Bike Paths (behind the curb)	Class I or IV bike facilities in the public right-of-way, including pavement, delineators, signing, striping, and median separators up to back of curb adjacent to vehicular roadway	City	City	City	On the basis that bike paths would normally be City maintained when on road.
12	Public Rights-of-Way	Street Elements	Standard Roadway Signage and Striping	Traffic Routing signage and striping per State and Federal Guidelines, including but not limited to stop signs, speed limit signs, travel lane striping and crosswalk striping	City	City	City	* SJDOT will maintain striping
13	Public Rights-of-Way	Street Elements	Non-Standard Roadway Signage	Any additional signage for wayfinding, interpretive, art, etc.	City	City	Developer #	May be managed by Special District or PBID if allowed.
14	Public Rights-of-Way	Street Elements	Standard Street Lights	Standard street lights, roadway lighting and pedestrian lighting, including poles, luminaires, electrical cables, pull-boxes and conduit	City	City	City	
15	Public Rights-of-Way	Street Elements	Traffic Signals	Traffic signal heads, poles, cabinets, conduits and all related appurtenances (excluding street lights)	City	City	City	
16	Public Rights-of-Way	Street Elements	Dynamic Lanes	Traffic management of the Dynamic Lanes including reconfiguration, temporary signage, traffic control and the like.	City	City	City	
17	Public Rights-of-Way	Street Elements	Driveways	Driveway sidewalk aprons including the curb (Curb Cut) along width of driveway	City	City	Developer	
18	Public Rights-of-Way	Furnishings	Seating	Benches or seating within the public right-of-way (not a City improvement)	City	City	Developer #	May be managed by Special District or PBID if allowed.
19	Public Rights-of-Way	Furnishings	City Standard Trash/Recycling Receptacles	Trash and/or Recycling Receptacles per City Standards	City	City	City	Collection and maintenance responsibility is the City's Environmental Services Division.
20	Public Rights-of-Way	Furnishings	Non-Standard Trash/Recycling Receptacles	Any trash or recycling receptacles which does not meet City standards	City	City	Developer #	May be managed by Special District or PBID if allowed. Collection is the responsibility of the City's Environmental Services Division.
21	Public Rights-of-Way	Furnishings	Bollards (where allowed)	Various types at flush curb conditions or fire access terminus	City	City	City	*Bollards within the Public Right-of-Way must be approved by all affected City agencies.
22	Public Rights-of-Way	Furnishings	Non-Standard Furnishings	News racks, drinking fountains and bottle filling stations	City	City	Developer #	May be managed by Special District or PBID if allowed.
23a	Public Rights-of-Way	Furnishings	Bike Racks	Option A: City standard bike racks	City	City	City	
23b	Public Rights-of-Way	Furnishings	Bike Racks	Option B: Non-standard bike racks	City	City	Developer #	May be managed by Special District or PBID if allowed.
24	Public Rights-of-Way	Furnishings	Bike Rental and Bike Share Stations	Non-standard bike rental and sharing facilities within the public right-of-way or public parks	City	Bike rent/share Operator	Bike rent/share Operator	* Operator may need to apply for a permit with Public Works for the facilities themselves.
25	Public Rights-of-Way	Furnishings	Parking Meters (if applicable)	City standard parking meters	City	City	City	* If applicable, parking meters will be maintained by City * Muni Code 11.40.250 - Arena/Diridon Area Parking Meter District (existing parking meter district)
26	Public Rights-of-Way	Furnishings	VTA Bus shelters	If new bus shelters are required, VTA is to construct and maintain these.	VTA	VTA	VTA	
27	Public Rights-of-Way	Utilities	PG&E Power System	Vaults, conduits, pull-boxes, ground rods, transformers, switch gears and appurtenances in accordance with SJ Rules and Regulations Governing Electrical Service	PG&E	PG&E	PG&E	
28	Public Rights-of-Way	Utilities	PG&E Gas System	Existing gas system reticulated through the project site will be unchanged, and continue to be owned and maintained by PG&E. Any relocation or changes to the route will be negotiated with PG&E and carried out by PG&E. No new natural gas reticulation is planned for the development.	PG&E	PG&E	PG&E	Gas meeting and valve vaults and Christie Boxes are maintained by utilities service providers
29	Public Rights-of-Way	Utilities	Non-City Utility Systems (if applicable)	Fiber & communications facilities, vaults, conduits, cabinets and pull-boxes	Utility	Utility	Utility	Utilities not accepted by the City will be owned by private utility providers.
30	Public Rights-of-Way	Utilities	Non-City Combined Utility Corridors (Utilidors) or direct-buried Private Utilities within public ROW.	Utility corridors/utilidors utilizing buried concrete culverts or direct buried infrastructure that allow for multiple private utilities to be housed in a common pathway, or direct-buried private utilities within the public ROW.	City	Developer	Developer	Subject to Encroachment Agreement
31a	Public Rights-of-Way	Utilities	Sanitary Sewer System	Laterals including permanent gravity pipes, pipe fittings, manholes, cleanouts and other appurtenances that are not associated with the private sewer system feeding the on-site private waste water plant.	City	City	City	
31b	Public Rights-of-Way	Utilities	Sanitary Sewer System	Laterals including permanent gravity pipes, pipe fittings, manholes, cleanouts and other appurtenances that are connected to the private sewer system feeding the on-site private waste water plant.	City	City	Developer	

Exhibit: Downtown West Maintenance Matrix
April 5, 2021
NOTES

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2. Maintenance may be obligated to other parties through an MEP or other mechanism as described in the GDP. Maintenance includes upkeep, repair, restoration, and life cycle replacement. O&M CFD may be required to provide liability insurance as condition to MEP.
3. MEP may be handled as MOU pending resolution by City Attorney
4. Where the item is to be City maintained but constructed by the Developer, a standard initial maintenance liability period will be applied before transfer of responsibility to the City.
5. Items shown in the Maintenance column denoted # may be assigned to a third-party (PBID, HOA etc.) for maintenance at the Developer's discretion.

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ID	Category	Sub-Category	Specific Improvement: real property underlying	General Description	Jurisdiction	Ownership Party	Party Responsible for Maintenance	Notes
								Stormwater laterals are privately owned and maintained.
32	Public Rights-of-Way	Utilities	Storm Drain Conveyance System	Permanent gravity pipes; manholes, pump stations; pipe fittings, and catch basins/drain inlets, other appurtenances	City	City	City	Stormwater treatment systems are identified elsewhere in this document.
33	Public Rights-of-Way	Utilities	SJWC Water System	Permanent pipes, pipe fittings, valves, hydrants, laterals up to and including the meters in accordance with SJWC regulations	SJWC	SJWC	SJWC	Laterals and private fire water service lines are privately owned and maintained
34	City-owned or Dedicated Parks and Open Space	Park Facilities	Bike paths	Any bike paths that meander throughout the publicly-dedicated parks.	City	City	City	City will maintain bike paths that are of standard materiality. City will provide day-to-day custodial and maintenance services in City-dedicated Parks
35	City-owned or Dedicated Parks and Open Space	Park Facilities	Footpaths	Informal compacted dirt trails that meander throughout the publicly-dedicated parks. Compact and maintain as required.	City	City	City	City will maintain footpaths that are of standard materiality. City will provide day-to-day custodial and maintenance services in City-dedicated Parks
36	City-owned or Dedicated Parks and Open Space	Park Facilities	Los Gatos Creek Trail	Multi-use dirt and/or stabilized surfaced trails throughout the park, including the H20 loading rated access roads for Valley Water access to facilities	City	City	City	City will maintain the Los Gatos Creek Trail that are of standard materiality. City will provide day-to-day custodial and maintenance services on City-dedicated Trails
37	City-owned or Dedicated Parks and Open Space	Park Facilities	Urban park Plantings	Trees; understory plantings; seasonal vegetation; stabilized slope and bank protection (excluding street trees and riparian planting), includes irrigation	City	City	City	Special, non-standard vegetation to be maintained by O&M CFD. Re-vegetation of all planted and natural areas, irrigation, and landscaping will be handled by City-RPD. RPD responsible for standard landscaping, gardening and routine maintenance.
38	City-owned or Dedicated Parks and Open Space	Park Facilities	Dog Play Area	Off-leash dog area	City	City	City	City will be responsible for cleaning and maintaining the dog play areas on a daily basis (including maintenance of any bag receptacles and water bowl stations) in City-dedicated parks
39	City-owned or Dedicated Parks and Open Space	Park Facilities	Recreation Areas	Children's play areas; activity area (lawn); training circuit	City	City	City	* City-dedicated play areas will be maintained by the City-RPD. * City also responsible for all programming
40	City-owned or Dedicated Parks and Open Space	Park Facilities	Standard Parks and Open Space Elements	Standard furnishings; waste receptacles; drinking fountains/bottle filling stations; lighting	City	City	City	* City-RPD will be responsible for all standard fixtures and furnishings in City-dedicated Parks
41	City-owned or Dedicated Parks and Open Space	Park Facilities	Non-standard Parks and Open Space Elements	Non-standard furnishing; water features; stages/screens; public art / sculpture; shade canopy structures; stairs; waste receptacles; drinking fountains / bottle filling stations; lighting; bird paths; kiosks (provided that they are approved by the City)	City	City	City	City will be responsible for maintenance, repair, and replacement of all non-standard elements in City-dedicated Parks
42	City-owned or Dedicated Parks and Open Space	Park Facilities	Public Amenity Buildings	Public use pavilions, kiosks, and outdoor performance areas within publicly-dedicated parks.	City	City	City	City will maintain all City-owned amenity structures located within City-dedicated Parks
43	City-owned or Dedicated Parks and Open Space	Park Facilities	Retail	Concession stands and other small retail buildings	City	City	City	Concession stands within City-dedicated parks will remain City owned and maintained as per the City Charter.
44	City-owned or Dedicated Parks and Open Space	Park Facilities	Bathrooms	Public bathroom facilities for park and retail visitors.	City	City	City	City will be responsible for funding and maintaining the public bathrooms that are on public land and public accessible areas
45a	City-owned or Dedicated Parks and Open Space	Park Facilities	Park Irrigation - Alternative 1 (Developer-supplied recycled water)	including piping, meter, and controls	City	City	Developer #	
45b	City-owned or Dedicated Parks and Open Space	Park Facilities	Park Irrigation - Alternative 2 (City-supplied water)	including piping, meter, and controls	City	City	City	
46	City-owned or Dedicated Parks and Open Space	Park Facilities	Stormwater Facilities	Stormwater treatment controls in the Open Spaces; vegetation and soil media and aggregate matrix; underdrains, cleanouts, internal piping and fittings, overflow structures, and appurtenances. Storm drain piping in the Open Spaces; permanent gravity pipes; manholes, pump stations, pipe fittings, catch basins/drain inlets, other appurtenances	City	City	City	* Treats parcel and PROW stormwater. * City responsible for facility maintenance and repair. * Access agreement between HOA and Port or RPD
47	City-owned or Dedicated Parks and Open Space	Creek	Storm Drain Outfalls	Storm drain outfalls to Los Gatos Creek	Valley Water	City	City for pipe and outfall, VW for channel	* Generally Valley Water provides a maintenance easement to the City to access outfalls. City maintains outfall, but Valley Water maintains channel and is responsible for channel derived obstructions.
48	City-owned or Dedicated Parks and Open Space	Creek	Los Gatos Creek Restoration	Dead tree removal, log jam removal, invasive species removal, mitigation planting within channel banks, velocity refuge mitigation sites	Valley Water	Valley Water	Valley Water	* MOU needed with Valley Water for long term maintenance of the channel after capital project to ensure channel roughness is maintained to reduce flooding throughout development and surrounding parcels and maintenance of mitigation planting within channel.
49a	City-owned or Dedicated Parks and Open Space	Creek	Mitigation Planting	Mitigation planting for Los Gatos Creek restoration project located <u>within creek</u>	City	City	Valley Water	Valley Water to maintain after the initial establishment period.
49b	City-owned or Dedicated Parks and Open Space	Creek	Mitigation Planting	Mitigation planting for Los Gatos Creek restoration project located within the 50' setback from Creek, and within City-owned or Dedicated Parks.	City	City	City	City to maintain after Acceptance.
50	City-owned or Dedicated Parks and Open Space	Creek	Riparian buffer planting area	Planting areas within City-owned or Dedicated Parks and Open Space, that extends the riparian area within the 100' riparian setback zone but that is not mitigation planting. Includes irrigation.	City	City	City	
51	City-owned or Dedicated Parks and Open Space	Creek	Fencing	Wildlife-friendly fencing between the creek and Downtown West, where located in City-owned or Dedicated Parks and Open Space.	City	City	City	
52	City-owned or Dedicated Parks and Open Space	Creek	Bridges, boardwalks, and overlooks	Specific trail conditions and elements along the creek, where located within City-owned or Dedicated Parks and Open Space.	City	City	City	
52a	City-owned or Dedicated Parks and Open Space	Creek	Bridges, boardwalks, and overlooks	Private utilities integrated into bridge structure	City	Developer	Developer	Developer will own and maintain any private utilities that utilize a public bridge for crossing the creek.
53	Miscellaneous Public Improvements	Utilities	Sanitary Sewer Relocation within public easement in Parcel G1	Permanent gravity pipes, pipe fittings, manholes, other appurtenances	City	City	City	* Requires MOU to allow PWD access to pipes & appurtenances * PS location to be confirmed in subsequent design phases
54a	District Systems		Private Microgrid Alternative 1 - owned and operated by Developer	Sub station, 12/21 kV distribution, transformers, metering and ancillary equipment	City/State /Federal Agencies	Google	Google	Supplies to public infrastructure, Parks and streets will be secured from PG&E from existing networks.

Exhibit: Downtown West Maintenance Matrix

April 5, 2021

NOTES

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54b	District Systems		Municipal Microgrid Alternative 2 - owned and operated by City	Sub station, 12/21 kV distribution, transformers, metering and ancillary equipment	City	City	City	Substation and environs will be the responsibility of the City under this alternative. The City distribution network will be routed through the utilidor (with an option for direct buried distribution).
54c	District Systems		PG&E Electrical Distribution Alternative 3	Sub station, 12/21 kV distribution, transformers, metering and ancillary equipment	PG&E	PG&E	PG&E	* Requires MOU to allow PWD access to pipes, appurtenances & pump station * PS location to be confirmed in subsequent design phases
55	District Systems		PG&E Transmission upgrades	Permanent 112 kV transmission undergrounding	PG&E	PG&E	PG&E	* Requires MOU to allow PWD access to pipes, appurtenances & pump station * PS location to be confirmed in subsequent design phases
56a	District Systems		Private waste and recycled water system alternative 1 - owned and operated by Developer	Permanent gravity, pressurised pipes included where required direct buried systems and discharge sewer to private system; manholes, pump stations; pipe fittings, and catch basins/drain inlets, other appurtenances. Recycled water network.	City/State Agencies	Developer	Developer	* Requires MOU to allow PWD access to pipes, appurtenances & pump station * PS location to be confirmed in subsequent design phases
56b	District Systems		Public waste and recycled water system alternative 2 - owned and operated by City / SJWC	Permanent gravity pipes; manholes, pump stations; pipe fittings, and catch basins/drain inlets, other appurtenances. Recycled water network.	City / SJWC	City / SJWC	City / SJWC	* Requires MOU to allow PWD access to pipes, appurtenances & pump station * PS location to be confirmed in subsequent design phases
57	District Systems		Thermal Systems	Distribution pipework for heating and cooling within Utilidor or direct buried within the right of way	City	Developer	Developer	* Requires MOU to allow PWD access to pipes, appurtenances & pump station * PS location to be confirmed in subsequent design phases
58	District Systems		Automated Waste Collection Systems	Distribution - vacuum network for waste consolidation within Utilidor or direct buried within the right of way	City	Developer	Developer	* Requires MOU to allow PWD access to pipes, appurtenances & pump station * PS location to be confirmed in subsequent design phases

Exhibit J

Exhibit J

Framework for City Provided Electric Service to the Downtown West Project

This Exhibit provides a framework for Developer and the City to follow to first confirm the viability of an electrical Microgrid as a key component of the Project, and then, subject to their respective actions and approvals, enter into a Business Relationship addressing development, ownership and operation of the Microgrid as specified in Section 3.5 below. Any capitalized terms not defined below shall have the meaning assigned to such terms in the Development Agreement (“Agreement”).

1. Electric Microgrid Overview

- 1.1. Developer is developing district systems as a key tool to achieve the Project's environmental objectives and to increase the Project's resilience in the face of power and other system outages. One of the principal district systems is the electrical microgrid ("Microgrid"). The grid-tied Microgrid will be developed to supply electricity to the Project area. The Microgrid will be fed by a primary transmission level electricity supply – 115kV from PG&E – before transforming to 12kV or 21kV distribution supply via a dedicated Project substation. In the event of a failure of PG&E's primary supply, the system will be switched to island mode, meaning that it will operate in isolation from the PG&E network, and then utilize the Developer's embedded renewable energy systems, backup generation and storage to manage electrical supply to the Project. Implementation of a feasible Microgrid is a key component of the Project's District Systems strategy, and timely delivery and energization of the Microgrid is a key factor in the development of the Project's office component.

This Exhibit shall apply only if Developer elects to proceed with the scenario for development of the Microgrid that requires a Business Relationship with City, and not to other Microgrid development scenarios as described in Condition No. __ of Resolution No. _____.

- 1.2. The City and Developer are evaluating the option of City-provided electric service to all buildings and future customers within the Project area, subject to Council approval and applicable law.
 - a. Developer has funded a preliminary study and cost of service analysis by the City, to confirm the viability of the City-owned system. The results of this preliminary study indicate that City-provided electric service to the Project is viable.
 - b. Developer and the City have submitted applications for interconnection to PG&E.
 - c. Both parties acknowledge that City-provided electric service has potential mutual benefits, and have agreed to further develop the financial and legal basis for proceeding with the City ownership and operation of the Microgrid

following the issuance of Project entitlements, including negotiation of a Business Relationship.

2. Relationship to Project Approvals

- 2.1. The Microgrid is a component of the Project that was evaluated in the Project's Final Environmental Impact Report, and which is part of the Project's Infrastructure as reflected both in the Infrastructure Plan and in the Downtown West Planned Development Permit and its implementing components, including the Downtown West Improvement Standards, Conceptual Infrastructure Plan Sheets and the Downtown West Design Standards and Guidelines.
- 2.2. The City and Developer are evaluating the option of City-provided electric service, which may be effectuated through future City actions, approvals, and/or agreements with Developer or any of its successors or assigns under the Development Agreement, and which shall not require amendment to the Agreement, the Downtown West Planned Development Permit, or any other Approval.

3. Condition(s) Precedent

The City and Developer, prior to entering into a Business Relationship for City provided electric service to the Project area, shall satisfy the following conditions precedent:

- 3.1. City shall complete a preliminary cost of service analysis to determine economic feasibility of City provided electric service.
- 3.2. City and Developer shall make a determination whether to proceed with the City's Wholesale Transmission Interconnection Application to PG&E as reasonably practical and feasible, including any discussions, actions, approvals and/or agreements with PG&E regarding PG&E's System Impact Study, Facilities Study, interconnection facilities required to connect the Microgrid to the PG&E transmission grid, and/or Interconnection Agreement.
- 3.3. As soon as reasonably practicable and feasible, the City shall make a determination whether it will provide electric service to the Project, and shall take all steps necessary under applicable federal, state and local law to organize as an entity qualified to provide electrical energy service to meet the electrical loads of end-users within the Project, and to meet its other obligations under a prospective Business Relationship with Developer; City shall confirm completion of such steps in writing to Developer.
- 3.4. City and Developer shall negotiate and determine whether to execute the terms of a "Business Relationship", including but not limited to the following:
 - 3.4.1. Coordination and collaboration regarding Microgrid design and applicable design and performance standards for approval by the City.
 - 3.4.2. Development and installation of the Microgrid by Developer.

- 3.4.3. Ownership, operation and maintenance of the Microgrid, including but not limited to City acquisition of the Microgrid; necessary leases, easements, and licenses from the Developer for the City to operate and maintain the Microgrid on Developer-owned land; Developer ownership, and operation and maintenance of non-distribution system facilities such as behind the meter components.
- 3.4.4. Alterations and/or reconfigurations of the Microgrid, including but not limited to good faith efforts by the City to allow such alterations and/or reconfigurations determined to be mutually beneficial to end-use customers, the City and Developer.
- 3.4.5. Energy Services, including but not limited to the supply of energy to the Microgrid and establishment of fair and equitable cost-based rates.
- 3.4.6. Customer relations with the City, including but not limited to response to customer inquiries, adjudication of customer complaints, and billing.

Exhibit K

Exhibit K

Downtown West Parking Requirement

Downtown West Parking Requirements

Developer and the City anticipate the replacement of approximately 2,850 existing available surface parking spaces on property that will be redeveloped as part of the Downtown West project, and the development of at least 1,150 additional spaces (for a total of at least 4,000 publicly-available parking spaces) at full buildout of office space within the Downtown West project to ensure the long-term sustainability of the SAP Center. This does not include up to 2,360 residential parking spaces. Terms that are used but not defined in this Exhibit shall have the meanings given such terms in the body of the Development Agreement to which this Exhibit is attached. For purposes of this Exhibit K, a publicly accessible parking space is "Available" if it is unoccupied and accessible to SAP Center customers on weekends and after 6:30 PM on weekdays, on SAP Center event days.

1. **Overall Requirements:** Over the course of the development of the Project, Developer shall be required to provide publicly accessible off-street parking spaces serving new office development at a cumulative ratio between 0.5 and 0.645 spaces for each 1,000 square feet of Floor Area (which shall mean eighty-five percent (85%) of the total gross floor area) of such office buildings (the "Required Parking Ratio"). At the point of full build out of office space within the Downtown West project, the Required Parking Ratio shall be 0.645 spaces.
 - a. Once 4,000 publicly available parking spaces are operational and in compliance with these terms, the Required Parking Ratio will no longer apply provided that the 4,000 publicly available spaces shall be maintained as described herein.
 - b. Developer may construct up to 4,800 publicly available parking spaces at its discretion; this parking would be reviewed as part of the Conformance Review process.
 - c. The Required Parking Ratio represents a reduction from standard City parking requirements, which would require as many as 15,500 spaces at Downtown Commercial parking ratios (2.5 spaces per 1,000 square feet of Floor Area), or 6,600 spaces with application of available standard parking reductions (1.06 spaces per 1,000 square feet of Floor Area). The Required Parking Ratio of 0.645 spaces per 1,000 square feet of Floor Area is warranted given the area's rich transit and mixed-use environment, sustainability and air quality imperatives, traffic reduction and City's multimodal goals, the fact that this parking is available to the public, and transportation demand management requirements.
 - d. The Required Parking Ratio is critical to serve the needs of the Project, as well as to replace parking currently utilized by transit riders and SAP Center patrons. With this in mind, the commercial parking spaces will be publicly-available and priced to allow for maximum efficiency to support the SAP Center, as well as the multimodal goals of the City and Project.

- i. At 4,000 publicly available commercial parking spaces, the project targets 85% of such spaces to be Available for SAP Center event use.
 - e. If, over the course of the Development Agreement, some parking is found to be no longer warranted, the Director of PBCE may, in its sole discretion, reduce the Required Parking Ratio and/or overall amount without requiring an amendment to the Development Agreement or to this Exhibit.
 - f. The parking requirement must be satisfied in part through at least 2,850 publicly available commercial spaces within the Project Site; including existing parking spaces, 2,850 publicly available commercial parking spaces must be maintained within the Project Site at all times and through all phases of Project development.
 - g. As an option to satisfy the requirement for the 2,851 to 4,000 publicly available parking spaces set forth above, Developer may deliver this parking either within the 1/3-mile radius of the SAP Center or through an Alternative Parking Arrangement.
 - i. Alternative Parking Arrangement: If Developer determines that it will not provide any number of the remaining required parking spaces within the Project Site, then, in order to meet the Required Parking Ratio, the City shall have the right to designate additional land owned by the City and within 1/3 of a mile of the SAP Center (the "Additional Parking Property") for Developer to build additional parking spaces; Developer would then be required to build additional spaces on the Additional Parking Property, subject to obtaining appropriate environmental clearance and any discretionary approvals; provided, however, in no event would Developer be required to build parking spaces on the Additional Parking Property that, when aggregated with the publicly available spaces located within the Project boundary, would exceed the Required Parking Ratio or 4,000 total spaces, as described above.
 - h. The City's Department of Transportation will review the design of parking facilities as part of a Vertical Conformance Review Application and may require one or more future Focused Local Transportation Analysis (Focused LTAs) to provide building-specific analysis as defined in the Conformance Review Implementation Guide.
2. Phasing: The requirements below are to ensure that sufficient parking exists, at any given specific time, for the continued operational needs of the SAP Center, as well as the multimodal goals of the City and Project.
- a. Compliance with this requirement shall be evaluated during the Conformance Review process for each office Building, and verified prior to issuance of Building Permits for each office Building.
 - i. Proposed parking spaces included as part of a previously approved Conformance Determination shall be counted to determine whether the Required Parking Ratio will be satisfied upon construction of the office building that is the subject of a Conformance Review. Surface parking spaces in the Project also shall be counted during the Conformance Review process to determine whether the Required Parking Ratio will be satisfied.

For clarity, this means that, to determine whether the Required Parking Ratio will be satisfied, each Conformance Review for an office building shall account for (i) surface parking spaces in the Project, (ii) proposed parking spaces included in a previously approved Conformance Determination that have not yet been constructed, (iii) parking spaces already constructed as part of the Project, and (iv) the parking spaces included in the subject Conformance Review application. In the event a proposed office building or buildings would result in the elimination of existing surface parking spaces, the Conformance Review Application for that building shall not be denied for the temporary failure to satisfy the Required Parking Ratio during construction of the building or buildings if the Project would continue to provide a ratio of 0.5 spaces for each 1,000 square feet of Floor Area, and so long as the Required Parking Ratio is satisfied upon issuance of a Certificate of Occupancy for that office building or buildings.

- ii. During the Conformance Review process, the Project will be required to confirm that at least 2,850 Available parking spaces will be maintained in aggregate within the Project boundary and within one-third ($\frac{1}{3}$)-mile radius of the SAP Center.
- b. If the Project will result in a temporary failure to satisfy the Required Parking Ratio, as described in Section 2.a.i, for a single period that will exceed five (5) years, Developer shall develop and obtain agreement from the City for one or more interim parking management strategies as part of the Parking Delivery Plan during construction.
- c. To the extent the Option Agreement for Lots A/B/C is exercised prior to 2040, the Developer must be in compliance with the Required Parking Ratio, subject to Section 2(a)(i), prior to beginning vertical development on Lots A/B/C. To the extent the existing Second Amended and Restated Arena Management Agreement between the City and San José Arena Management, LLC is terminated earlier than 2040 or at its scheduled expiration in 2040, Section 1d.i. and Section 2a.ii shall no longer apply.

Exhibit L

Exhibit L

List of Approvals

1. Certification of Environmental Impact Report for Downtown West Mixed-Use Project (City Council Resolution No. ____) (includes Adoption of Mitigation Monitoring and Reporting Program, and CEQA Findings and Statement of Overriding Considerations)
2. Adopting Overriding Findings Regarding Santa Clara County Airport Land Use Commission's Determination of Inconsistency for the Project (City Council Resolution No. ____)
3. Amendment to Envision San Jose 2040 General Plan (City Council Resolution No. ____)
4. Amendment to Diridon Station Area Plan (City Council Resolution No. ____)
5. Rezone to Planned Development Zoning District and approval of Downtown West General Development Plan (City Council Ordinance No. ____)
6. Amendment to Title 20 of the City of San Jose Municipal Code (City Council Ordinance No. ____)
7. Approval of Downtown West Planned Development Permit, including the Downtown West Design Standards and Guidelines, the Downtown West Infrastructure Standards, the Conceptual Civil Infrastructure Plan Sheets, and Conformance Review Implementation Guide (City Council Resolution No. ____)
8. Development Agreement for Downtown West Mixed-Use Plan (City Council Ordinance No. ____)
9. Vesting Tentative Map for Downtown West (City Council Resolution No. ____)
10. Approval of Major Encroachment Permit(s) (City Council Resolution No. ____)
11. Construction Impact Mitigation Plan (City Council Resolution No. ____)

12. Amendment of Historic Preservation Permit (City Council Resolution No. ____)
13. Landmark Designation Approval for Adjustment to San Jose Water Building (City Council Resolution No. ____)
14. Landmark Designation Approval for Adjustment to Southern Pacific Depot (City Council Resolution No. ____)
15. Street Vacation for Portions of North Montgomery Street, Delmas Avenue, Park Avenue, Cinnabar Street, Cottage Lane, and Barack Obama Boulevard (South Montgomery Street) (City Council Resolution No. ____)
16. Any Subsequent Approval (as defined in Section ____ of the Development Agreement)

Exhibit M

Exhibit M

List of Applicable City Impact Fees

1. Commercial Linkage Fee as set forth in San José Municipal Code Chapter 5.11 as of the Effective Date;
2. Affordable Housing In-Lieu Fee (see Affordable Housing Program at Exhibit D above);
3. Construction Taxes on commercial and residential development pursuant to San José Municipal Code Chapter Chapters 4.46, 4.47, 4.54, 4.64;
4. Sanitary Sewer Connection and Storm Drainage Connection Fees pursuant to San José Municipal Code Chapter 15.16 which will be confirmed through the Conformance Review Process and as outlined in the Conditions of Approval; and
5. Utility Undergrounding Fees pursuant to San Jose Municipal Code Chapter 15.26.

The following Impact Fees are applicable to the Project, but Developer shall satisfy the obligations through actual construction or other methods, as indicated:

- Diridon Station Infrastructure Fee shall be satisfied in full through construction of in-kind infrastructure, as described in Exhibit I and will be confirmed by the City through the Conformance Review for Horizontal Improvements and specifically through the review of the applicable improvement drawings; and
- Parkland Dedication requirements pursuant to San Jose Municipal Code Chapter 19.38 shall be satisfied in full through a combination of methods as described in Exhibit E.

Exhibit N

Exhibit N

Form of Notice of Completion and Termination

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

[address]_____

Attn: _____

(Space above this line reserved for Recorder's use only)

THIS NOTICE OF COMPLETION OF BUILDING AND ASSOCIATED OBLIGATIONS (this "Notice") dated for reference purposes only as of this ____ day of _____, 20__, is made by and between the CITY OF SAN JOSE, a political subdivision and municipal corporation of the State of California (the "City"), and _____, a _____] ("Developer") .

1. The City and Developer entered into that certain Development Agreement dated as of _____, 20__ and recorded in the Official Records of the County of Santa Clara on _____, as Document Number _____ (Book No. ____, Reel No. _____) (the "Development Agreement"). Capitalized terms used in this Notice that are not defined shall have meaning given to such terms in the Development Agreement.

2. Under Section 7.1 of the Development Agreement, when one or more Buildings have been completed and all of the associated Base Requirements, Community Benefits, and Privately-Owned Publicly Accessible Open Space, and other obligations and requirements (collectively "Obligations") tied to those specific Buildings have also been completed, the City agreed, upon Developer's request, to execute and record a notice of completion as it relates to the applicable Building.

3. The City confirms that the Building known as _____, located on the property described in the attached Exhibit A (the "Affected Property"), together with all of the Obligations tied to that Building through the Development Agreement and any and all Approvals (including Subsequent Approvals) granted by the City for the Project, have been completed in accordance with the Development Agreement, which Obligations may, in part or in whole, run with the land, survive Building completion, and/or continue to be binding as to the Building and Affected Property and to any and all parties having or later acquiring any interest in the Affected Property even after recordation of this Notice. All parties with an interest in the Affected Property have the right to rely on this Notice.

CITY:

CITY OF SAN JOSE,
a municipal corporation

By: _____
Director of Planning, Building
and Code Enforcement

Approved as to form:

[_____] , City Attorney

By: _____
Deputy City Attorney

Exhibit O

Exhibit O

Form of Assignment and Assumption Agreement

RECORDING REQUESTED BY
CITY CLERK
OF THE CITY OF SAN JOSE
(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

AND WHEN RECORDED MAIL TO:

[_____]
City Clerk, City of San José
200 E. Santa Clara Street, 14th Floor
San José, CA 95113

ASSIGNMENT AND ASSUMPTION AGREEMENT

RELATIVE TO DEVELOPMENT AGREEMENT FOR [_____]

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "**Assignment**") is entered into this ____ day of _____, 20__, by and between _____, a _____ ("**Assignor**") and _____, a _____ ("**Assignee**").

RECITALS

A. _____, a _____ and the City of San José, a political subdivision and municipal corporation of the State of California (the "**City**"), entered into that certain Development Agreement (the "**Development Agreement**") dated as of _____, 20__ for reference purposes, with respect to certain real property owned by Assignor, as such property is more particularly described in the Development Agreement (the "**Project Site**"). The Development Agreement was recorded in the Official Records of the County of Santa Clara on _____ as Document No. _____.

[add recital to document any previous transfer of the Transferred Property, with recording information]

B. The Development Agreement provides that, subject to the terms and requirements set forth therein, including, without limitation, Section 12 (Transfer or Assignment) Developer (Assignor) has the right to: (i) Transfer all or a portion of the Project Site, (ii) assign all of its rights, title, interest and obligations under the Development Agreement to a Transferee with respect to the portions of the Project Site transferred to the Transferee, and (iii) upon the execution and delivery of an approved Assignment and Assumption Agreement, to be released from any prospective liability or obligation under the Development Agreement with respect to

those rights, duties, obligations or interests and real property so Transferred, except as otherwise provided in the Development Agreement.

C. Assignor intends to convey certain real property as more particularly identified and described on Exhibit A attached hereto (hereafter the "**Transferred Property**") to Assignee. The Transferred Property is subject to the Development Agreement.

D. Assignor desires to assign and Assignee desires to assume Assignor's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Transferred Property, as more particularly described below.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Defined Terms. Initially capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Development Agreement.

2. Assignment of Development Agreement. Assignor hereby assigns to Assignee, effective as of the later of (i) Assignor's conveyance of the Transferred Property to Assignee or (ii) the date on which City receives a copy of the fully executed Assignment and Assumption Agreement, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including any Community Benefits that are tied to Buildings on the Transferred Property [all as more specifically set forth on Exhibit B to this Agreement](the "Assigned and Assumed Obligations"). Assignor retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to (i) the Transferred Property that are not Assigned and Assumed Obligations and (ii) all other portions of the Project Site owned by Assignor.

3. Assumption of Development Agreement. Assignee hereby assumes, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the Assigned and Assumed Obligations with respect to the Transferred Property, including its associated Community Benefits, and agrees to observe and fully perform, and to be subject to, all of the Assumed and Assigned Obligations. The parties intend that, upon the execution of this Assignment and conveyance of the Transferred Property to Assignee, Assignee shall become the "Developer" under the Development Agreement with respect to the Transferred Property and the Assigned and Assumed Obligations.

4. Reaffirmation of Indemnifications. Assignee hereby consents to and expressly reaffirms any and all indemnifications of the City set forth in the Development Agreement, including without limitation Section ____ of the Development Agreement.

[Note: Include this paragraph 5 if Transferred Property may be developed with residential uses: 5. Housing Obligations. Assignee has read and understands the obligations set forth in Exhibit D (Affordable Housing Program) of the Development Agreement as they relate to the Transferred Property. Without limiting the foregoing, Assignee agrees (1) to the terms and provisions of such Exhibit D, including the indemnities, waivers and releases set forth

therein, and (2) that the Development Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because it is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of the California Government Code). Assignee understands that the City would not have been willing to enter into the Development Agreement without the provisions of such Exhibit D.]

6. Assignee's Covenants. Assignee hereby covenants and agrees that: (a) Assignee shall not challenge the enforceability of any provision or requirement of the Development Agreement; (b) Assignee shall not sue the City in connection with any and all disputes between Assignor and Assignee arising from this Assignment or the Development Agreement, including any failure to complete all or any part of the Project by any party; and (c) Assignee shall indemnify the City and its officers, agents and employees from, and if requested, shall defend them against any and all Losses resulting directly or indirectly from any dispute between Assignor and Assignee arising from this Assignment or the Development Agreement.

7. Binding on Successors. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

8. Notices. The notice address for Assignee under Section ____ of the Development Agreement shall be:

Attn: _____

With copy to:

Attn: _____

8. Counterparts. This Assignment may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.

9. Governing Law. This Assignment and the legal relations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

IN WITNESS HEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR:

[insert signature block]

ASSIGNEE:

[insert signature block]

Exhibit A to Assignment & Assumption Agreement -
Transferred Property

Exhibit B to Assignment & Assumption Agreement -
Detailed List of Assigned and Assumed Obligations

Obligations	Is this item Applicable for this Development Parcel Yes/No	Developer Retains Responsibility	Transferee Retains Responsibility	Comments
Affordable Housing & Fund				
Affordable Housing: Alternative Method IHO “Mixed Compliance Option” with land transfer for IHO fee credits				
Moderate Inclusionary Units (5% at 100% AMI inclusionary units and applicable fee payment, see above for IHO fee credits considerations)				
Community Stabilization and Opportunity Fund				
City-Dedicated Open Space: <i>Note and Attach Relevant Bonds, Certificates of Insurance, etc.</i>				
Los Gatos Creek Trail (E)				
Los Gatos Creek Trail (G)				
Los Gatos Creek Park				
Los Gatos Creek Trail Connector 1				
Social Heart (and Parking Garage Insurance)				
Northend Park				
Los Gatos Creek Connector 2				
St. John Triangle				

Privately-Owned Publicly Accessible Open Space				
Creekside Walk at South Autumn Street				
Gateway to San Jose				
Los Gatos Creek East				
The Meander				
Los Gatos Creek Park (H2)				
Los Gatos Creek Park (G)				
North Montgomery Pocket Park				
Northend Park				
Los Gatos Creek Riparian Setback adjacent to Los Gatos Creek Connector				
Semi-Public Open Space				
Impact Fees				
Commercial Linkage Fee				
Affordable Housing In-Lieu Fee				
Construction Taxes				
Sanitary Sewer Connection and Storm Drainage Connection Fees				
Utility Underground Fees				
Other				
Unallocated Community Benefit Commitment				
Required Parking Ratio				
LTCA Corporate Accommodations Housing Contribution				

LTCA Corporate Accommodations Parks Contribution				
Workforce, Learning, and Education Commitments (apart from Community Stabilization and Opportunity Fund)				
Public Improvements required to serve or applicable to Transferred Property				
Privately-Owned Improvements (other than Privately-Owned Publicly Accessible Open Spaces) required to serve or applicable to Transferred Property				
District Systems (Subject to Major Encroachment Agreement and Conditions of Approval)				
Other: _____				

Exhibit P

Exhibit Q

Schedule A

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: April 6, 2021

Approved



Date

4/6/2021

INFORMATION

**SUBJECT: STAFF-RECOMMENDED DRAFT DEVELOPMENT AGREEMENT FOR
GOOGLE'S DOWNTOWN WEST PROJECT**

PURPOSE

- Provide the public with an overview of the staff-recommended draft Development Agreement for the Downtown West project, including the process informing its preparation and other background context.
- Support the Station Area Advisory Group (SAAG) in their review and discussion of the Development Agreement.
- Highlight the range of public benefit commitments expressed in the Development Agreement and delivered by the project.

EXECUTIVE SUMMARY

The City has been working with Google since 2017 to develop a project for the Diridon Station Area. The release of staff's recommended Draft Development Agreement for the Downtown West project is a key milestone in this journey, following adoption of a Memorandum of Understanding (MOU) in 2018, application submittal in 2019, and release of the Draft Environmental Impact Report (DEIR) in 2020. The Development Agreement is subject to City Manager and City Council review and approval.

The Development Agreement addresses the top priorities expressed by the City Council in 2018, which were reinforced through extensive community engagement from 2018 through the present. The Development Agreement addresses these priorities (affordable housing, anti-displacement, and jobs/education) as "Community Benefits." The Development Agreement also addresses

other topics that are important to the community, including parks and open space, transportation, and environmental sustainability.

The Downtown West project exceeds the Citywide requirements for affordable housing and supports the goal for 25% affordable housing in the Diridon Station Area through land dedication, use of commercial linkage and inclusionary housing in-lieu fees, and distributing affordable units amongst the market-rate housing. The equity-focused Community Benefits detailed in the Development Agreement also includes a first-of-its-kind “Community Stabilization and Opportunity Pathways Fund” that could generate up to \$155 million over 30 years, as Google builds out its 7.3 million gross square feet of office space. The Fund spans the interdependencies between housing, education, and jobs and is structured to involve community participation in the grant-making process.

Notably, the project would deliver over \$1 billion in infrastructure and project features with no subsidy from the City; an unusual feature for a project of this scale, leaving more General Fund money for the City to capture from the project. At full buildout, the total amount of Community Benefit contributions is expected to be \$200 million on top of the \$1 billion in infrastructure and project features proposed by Google. These project feature investments include 15 acres of parks, plazas, and green spaces; new walking and biking paths; historic preservation; ecological restoration; infrastructure improvements; year-round free entertainment programming and more. The Development Agreement details how the Downtown West project would provide well-maintained, activated, and publicly accessible private spaces and how the project would meet park and recreational requirements through building and dedicating 4.8 acres of turnkey parkland and trail connections.

Through an innovative district systems approach to utilities, LEED certification, and other environmental commitments, the project would set a new standard for climate action — generating zero net new greenhouse gas emissions during construction and 30 years of operations. The Development Agreement also facilitates ongoing coordination with the Diridon Integrated Station Concept Plan, in support of planned transit investments.

This memorandum provides background information, an overview of the Development Agreement, and next steps.

The City will hold a meeting of the Diridon Station Area Advisory Group (SAAG) on April 14 and a Community Meeting on April 17 to review and discuss the Development Agreement. Staff will provide all comments received at these meetings as well as from an online tool to the Planning Commission and City Council when they consider the full Downtown West project package later this spring. The website <https://www.diridonsj.org/> includes the upcoming engagement opportunities, project updates, background information, and the ability to sign up for email updates and submit comments.

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INITIAL PROJECT WORK (preceding the Development Agreement)

Phase 1 (Concept Development and Land Sale): In 2014, the City adopted the Diridon Station Area Plan (DSAP). In 2017, there was a need for an anchor use to replace the previously planned baseball stadium. Google expressed interest in developing office space near Diridon Station in Downtown San José, consistent with the vision set forth in the DSAP. In adopting the DSAP, the City recognized that realizing the vision of the DSAP would require a leading developer to assemble parcels. In June 2017, the City entered into an exclusive negotiating agreement (ENA) with Google for properties formerly owned by the Successor Agency to the Redevelopment Agency (totaling ~6 acres), the City-owned Fire Training property (~4 acres), and property next to SAP Center known as Lots A/B/C (~10 acres).

MOU: On December 4, 2018, City Council approved a [Memorandum of Understanding \(MOU\) with Google](#)¹ to guide collaboration on a mixed-use development project moving forward. The MOU outlined guiding principles and shared goals for a mixed-use, transit-oriented development to be proposed by Google. The MOU also affirmed the intent to negotiate a Development Agreement and the process for negotiating Community Benefits as part of the Development Agreement. The MOU was based on extensive community input and provided a foundation for the City’s review of Google’s application.

Land Sale: Also, at the December 4, 2018 meeting, City Council approved Purchase and Sales Agreements with Google for the former Redevelopment sites and the Fire Training property, as well as an Option/Negotiation Rights Agreement for Lots A/B/C. The December 2018 Council action completed staff’s work efforts from “Phase I: Concept Development and Land Sale” and launched “Phase II: Project Design and Review.” These 20 acres of land are in addition to the approximately 40 acres that Google purchased from private parties to assemble the project site.

Phase II (Project Design and Review): On October 10, 2019, Google submitted its application for a mixed-use development project (Downtown West Mixed-Use Plan) to the City. The project

¹<https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5c9114de652dea9c2028888a/1553011936239/Final+MOU.pdf>

site is approximately 80 acres (including approximately 20 acres of right-of-way) and is largely within the existing [Diridon Station Area Plan \(DSAP\)](#)² boundary of 250 acres. The project proposes approximately:

- Up to 7.3 million gross square feet (GSF) of office space;
- 4,000 units of new housing (Draft EIR clears up to 5,900 units);
- Up to 500,000 GSF of active uses (retail, cultural, arts, etc.);
- 100,000 GSF of event space, hotel use (up to 300 rooms), and up to 800 rooms of limited-term corporate accommodations;
- 15 acres of parks and open space; and
- Infrastructure and utilities.

City's Review Process: The Google application includes a General Plan amendment (including amending the DSAP), a Planned Development Rezoning, a Planned Development Permit, and other related permits and approvals.³ The City is reviewing the project in three parallel processes: development review, environmental review, and Development Agreement negotiation. Development review involves staff from multiple departments reviewing the proposal for consistency with City policies, objectives, and regulations. Environmental review involves preparation of an Environmental Impact Report (EIR) to analyze and disclose the potential impacts of the project, consistent with the California Environmental Quality Act (CEQA).

AB 900: On December 30, 2019, the State of California approved Google's application to participate in the AB 900 program (Jobs and Economic Improvement Through Environmental Leadership Act). The program encourages the development of large projects that create jobs and that meet a high standard of public benefits by offering the streamlining of the judicial review process under CEQA (see [Info Memo dated August 19, 2019](#)⁴). The AB 900 program expired at the end of 2020, but the State legislature is currently considering an extension through Senate Bill (SB) 7.

Related City Efforts and Timing: Concurrent with reviewing Google's application, staff initiated a process to amend the DSAP and prepare a Diridon Affordable Housing Implementation Plan (AHIP). The focus of these planning efforts is on non-Google sites, although staff has ensured coordination with the Downtown West project, as appropriate. Staff also continues to support coordination of the Downtown West project with the Diridon

²<https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/citywide-planning/area-plans/diridon-station-area-plan>

³ Refer to project website for all application documents and additional information about the review process: www.sanjoseca.gov/googleproject

⁴<https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5d5c5e61e1d5150001a6fdf2/1566334563522/DSA+Update+-+Info+Memo+-+081919.pdf>

Integrated Station Concept Plan (a partnership between the City, Caltrain, VTA, High-Speed Rail and the Metropolitan Transportation Commission), the Downtown Transportation Plan, and other separate but related projects.

Timing: Google's Downtown West project, along with the Amended DSAP and AHIP will all go to the Planning Commission and City Council for consideration later this spring (2021). Please refer to the City's project [webpage](http://www.sanjoseca.gov/GoogleProject) (www.sanjoseca.gov/GoogleProject) for the latest information on the public hearing process.

ONGOING COMMUNITY ENGAGEMENT

Central to all this work, staff is considering previous and ongoing community input in its evaluation and recommendation of the Development Agreement and other implementation documents.

2018: The first major milestone in the public process was the [Diridon Station Area Civic Engagement Report](https://www.diridonsj.org/s/FINAL-DiridonStationAreaCivEngagementReport10312018.pdf)⁵ (October 2018), which outlined a set of Desired Outcomes for the Diridon Station Area and Google project across six topic areas. It documented SAAG discussions and input from the general public. The SAAG was established in early 2018 to advise the City on issues affecting the Diridon Station Area, including the Google development project. Google began their own outreach in 2018 as well. The MOU with Google was based on the input gathered through the 2018 process.

2019-2020: Staff completed additional public outreach and community engagement before and after Google submitted its development application. The main objectives of this outreach were to increase understanding of the planning and development review processes and secure feedback on initial and draft concepts under consideration. This occurred over several rounds of Diridon Station Area outreach and engagement. In 2019, Google expanded its outreach and engagement efforts to understand community priorities and concerns, ultimately holding over 100 meetings and having conversations with thousands of local residents. This input informed the design and programmatic aspects of their application. In Spring 2020, the City conducted an online survey on draft concepts for the DSAP Amendment and trade-offs related to Community Benefits.

2020-2021: In Fall 2020, staff held or participated in more than 20 meetings about the Downtown West project and the related efforts, including six hosted by the City's community partners. This Phase was focused on collecting feedback on the draft plans made available in October 2020, including the Draft Downtown West Design Standards and Guidelines and updated application documents. In 2021, the City has continued with focused outreach and engagement to prepare for the public hearing processes. Google continued holding its own

⁵ <https://www.diridonsj.org/s/FINAL-DiridonStationAreaCivEngagementReport10312018.pdf>

design workshops (pre-COVID) and has continued hosting virtual engagements and sharing informational videos (post-COVID).

Broad Outreach and Engagement Efforts: A consistent goal of the City's engagement process for the Diridon Station Area has been to hear from the full range of the San Jose community. The City completed grant agreements with seven community-based organizations to help reach and involve under-represented populations in the engagement process. These community partners are African American Community Services Agency, Catalyze SV, Friends of Caltrain, Latino Business Foundation, San Jose Jazz, SOMOS Mayfair, and Trinity Episcopal Cathedral.

The COVID-19 pandemic in March 2020 curtailed in-person outreach. Staff adjusted to continue outreach and engagement using online methods — enhancing diridonsj.org, creating videos, implementing online surveys, and hosting virtual meetings.

Since the beginning of the coordinated Diridon Station Area engagement process in February 2018, the City has hosted 18 SAAG meetings, 14 SAAG small group discussions, 30 community meetings, and partner events, three online surveys (2,260 responses), nine pop-ups at community events, and five virtual office hours. There have been 93,000+ web page views and 36,000+ visitors on diridonsj.org.

Collectively, the initial and ongoing community input over the last three years has helped shape the overall vision, shared goals, and top priorities for the project and its Community Benefits. The SAAG has been instrumental in representing a variety of needs and interests — including the many San Jose residents struggling with the high cost of living who need more affordable housing options, protections from displacement, and educational, job training, and employment opportunities. The SAAG has also been a key venue for convening neighborhood leaders, who have put in many hours to understand the proposed Downtown West project and the City's proposals and to advocate for consideration of local impacts and benefits. Many of the SAAG organizations have convened their own events over the past three+ years to hear from their community members and have reflected their needs, aspirations, and ideas during the SAAG meetings.

Community input, including the work of the SAAG, has been instrumental in shaping the Development Agreement. Doing this work well takes time and effort. The City is grateful for the thoughtful civic contributions of these individuals and organizations. The City also recognizes the significant outreach and engagement effort that Google has led and their responsiveness to incorporating community feedback into the Downtown West project.

DEVELOPMENT AGREEMENT BACKGROUND

Purpose: A Development Agreement is a tool that provides a consistent regulatory framework (also known as “vesting rights”) for a large development project that will be built out over many

years. Development Agreements are negotiated as part of the entitlement process and are typically approved along with other City actions enabling the project. In exchange for this certainty, developers often provide Community Benefits that go beyond any benefits from meeting City requirements.

MOU Foundation: As described in the Background section, the MOU with Google provides a foundation for negotiating the Development Agreement. It anticipates that the Development Agreement will include vested project approvals and Community Benefits, including a framework for community benefit delivery.

Community Benefit Methodology: In determining the value of the Community Benefits, the MOU intent is for Google to share back a portion of the additional property value created through the City's actions (such as rezoning and increased height limits), while taking into account the financial feasibility of the project. According to the MOU, the total value of Community Benefits shall not include any costs associated with (1) City requirements, (2) environmental mitigations, or (3) discretionary project Features proposed by Google.

Community Benefit Priorities: In identifying the Community Benefits, Council directed staff to prioritize three categories:

- Affordable housing;
- Displacement prevention and community stabilization; and
- Education, job training, and employment opportunities (including support for small businesses).

Subsequent community input has reinforced that these are the most pressing needs that should be addressed in developing the Community Benefits in the Development Agreement. Staff recognizes the interrelationship between affordable housing, community stabilization, opportunity pathways, and small business/employment opportunity. These are the pillars of Equitable Development — a shared goal in the MOU — and the collective investment in each can lead to better outcomes for San Jose residents, especially marginalized communities that too often bear disproportionate impacts.

In addition to these top priorities, community members also expressed interest in parks/open space, transportation (including transit, trails, bicycle, and pedestrian networks), environmental sustainability (including ecology and climate action), land use/design, and cultural and historic preservation. These topics are reflected in the shared goals for the project.

Distinction between Community Benefits and Public Benefits: Community Benefits are defined in the Development Agreement as contributions that go above and beyond standard City or State requirements and that are aligned with the Council priorities described in the MOU. The

Development Agreement and other project documents also provide other benefits. The broader term “Public Benefits” includes the Community Benefits, City requirements, environmental mitigations, and project features that Google has voluntarily agreed to implement and that support other goals articulated by the community, e.g., additional open space, trails, ecological enhancements, historic preservation, and sustainability features.

Process: Arriving at a staff-recommended Draft Development Agreement has required extensive analysis and ongoing community engagement. The release of the Draft Downtown West Design Standards and Guidelines and the Draft Environmental Impact Report in October 2020 marked major milestones. Since this time, the focus has been on preparing the Affordable Housing Plan and Parkland Agreement, and negotiating the other aspects of the Development Agreement, including the Community Stabilization and Opportunity Pathways Fund. The staff recommended Draft Development Agreement is now available at www.sanjosca.gov/GoogleProject, for public review and is subject to City Manager and City Council review and approval.

DEVELOPMENT AGREEMENT OVERVIEW

If approved, the Development Agreement for the Downtown West project would be legally binding and enforceable over a 30-year term. It would deliver on public benefits in four main ways:

- Establishes the vested project approvals that lock in how the project will fulfill City requirements including requirements related to affordable housing, parkland, transportation, and infrastructure;
- Includes \$200 million in Community Benefits that address the City's top priorities and supports ongoing community involvement;
- Secures commitments on project features, such as local hire, privately-owned publicly accessible parkland, and environmental features such as a district systems approach to utilities; and
- Provides incentives for the timely delivery of public benefits through performance measures.

As described further in the following sections, if approved, the Development Agreement and the project itself would:

1. Provide land and funds to meet the 25% affordable housing goal for the Downtown West project;
2. Provide funds and a community governance structure to address displacement and expand economic opportunities for underserved residents through a new **Community Stabilization and Opportunity Pathways Fund**;
3. Enhance the public realm through a mix of publicly accessible **parks and open spaces**;

4. Improve the **transportation** system;
5. Advance **environmental sustainability, climate action, and resiliency** through a District Systems approach to utilities and other infrastructure investments; and
6. Provide for **historic preservation** to enhance the identity of the neighborhood.

Affordable Housing (Requirements + Community Benefits)

The City Council and Community have consistently prioritized affordable housing production and preservation, as well as anti-displacement strategies, as the top issues to address when planning for the Google project and future of the Diridon Station Area. The affordable housing package supports the goal for 25% of new housing to be affordable at a mix of affordability levels, ranging from extremely low-income to moderate-income.

The Downtown West application includes General Plan amendments and zoning changes that significantly increase residential uses throughout the site, and the Development Agreement contemplates 4,000 new housing units as part of the project (note that the EIR analyzes a maximum of 5,900 units).

The project is subject to several City requirements related to affordable housing:

- The ***residential portion of the project*** must comply with City's Inclusionary Housing Ordinance (IHO). As documented in the Development Agreement, the project will comply with the IHO by:
 - Dedicating three pad ready sites to the City (to be used for the construction of approximately 600 units for extremely low to low-income households);
 - Paying IHO fees for residential development once the credit from the dedicated land sites is exhausted; and
 - Providing 5% of the units built on-site for moderate income households (170 total) — to be integrated with market-rate housing.
- The ***commercial office portion of the project*** will pay the required Commercial Linkage Fee for office construction, which could generate up to \$87.6 million for affordable housing as Google builds out the 7.3 million gross square feet of office space.

The Development Agreement specifies that the City, subject to City Council appropriation of funding, will use a good faith effort to direct CLF generated from commercial development within the project site to the production of affordable housing on land transferred from Google to the City for affordable housing development and then to affordable housing production within the DSAP.

In addition to these required fees, Google will provide the following Community Benefits to increase the supply of new affordable housing (valued at about \$15 million dollars):

- Early dedication to the City of an additional 0.8-acre site located in the DSAP, outside of the Downtown West project. The City is recommending rezoning this site and, if approved, could allow for potentially 200 units of affordable housing.⁶
- Provide an additional 30 moderate-income units, integrated on-site within market-rate housing.

Overall, the project exceeds the City's baseline inclusionary housing requirements and supports the goal for 25% affordability for the Diridon Station Area through land dedication, use of fees generated by the project, and integrating affordable units on-site. The target is to provide 1,000 affordable units in the Diridon Station Area, based on 25% of the 4,000 units proposed by the Downtown West project. Of these units, roughly 600 units will be built on three sites dedicated by Google within the project site, and 200 additional units may be built on a site dedicated by Google outside of the project site (see footnote 6). Land dedication by Google and early release of three of these four sites allows the City to leverage external funding sources to achieve lower income limits (i.e., deeper affordability). Through the City's use of land dedication and fees and ability to leverage additional resources, the City is targeting 40-45% of the units built on dedicated housing sites to be available to extremely low-income households earning under 30% of the Area Median Income (AMI).

The total investment in new affordable housing **production** would be approximately \$183 million. In addition to production, the project would address affordable housing goals through investments in **preservation** and **protection** through a new fund, as described in the following section.

For additional information about the Affordable Housing plan, please refer to Development Agreement Exhibits C (Community Benefits) and D (Affordable Housing Program)

Community Stabilization and Opportunity Pathways (Community Benefits)

Consistent with community feedback and Council direction, the staff-recommended Community Benefits include a new "Community Stabilization and Opportunity Pathways Fund" (Fund). The Fund is a resource to *minimize displacement from rising costs* (Community Stabilization) and to *maximize opportunities for youth and adults to participate in job opportunities* through training education and support (Opportunity Pathways). The Fund recognizes that these challenges are systemic and interrelated. It would provide grants that are aimed at a measurable impact on community stability and economic opportunity for communities that have historically been

⁶ The City is considering changing the land use designations and zoning of the Autumn Street site (located outside of the Downtown West project site but within the Diridon Station Area) to allow for residential uses and approximately 200 affordable housing units, subject to subsequent clearances and discretionary approvals.

affected by structural racism and where risk of displacement is the highest, including East San Jose and Greater Downtown.

Community Stabilization. In addition to producing new affordable housing, the Fund would apply to the following priorities articulated by Council and the community related to housing:

- Preventing displacement and homelessness through the preservation of existing affordable housing;
- Increasing services and shelter for people experiencing homelessness;
- Pursuing new models of community ownership; and
- Increasing protections for low-income renters.

Opportunity Pathways: Hand in hand with stabilizing housing costs, the City Council, SAAG, and public have generally agreed on the importance of helping San Jose residents of all skill and educational levels and diverse backgrounds to prepare for and secure good-paying jobs.

Accordingly, the Fund would support these priorities:

- Programs and services related to 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 support.

Contributions: The project would contribute \$21.20 per gross square foot of office to the Fund as office buildings are completed (up to \$154,760,00 million if the commercial office capacity of 7.3 million gross square feet is built out). For example, for a million square feet of office completed, the project would contribute \$21.2 million to the Fund.

Structure: The Fund structure emphasizes the importance of a decision-making process that:

- Balances technical expertise and lived experience;
- Amplifies local voices and empowers residents of impacted communities;
- Focuses on equity; and
- Provides a data-driven and transparent decision process.

The recommended structure features a third-party Fund Manager and a Community Advisory Committee, with City oversight and support. The Committee includes representation from local residents (representing the lived experience of impacted communities), direct service providers and other technical experts.

Following final approval of the Development Agreement, the City would need to adopt an ordinance to create the Committee. Next steps would be selection of Committee members and the Fund Manager. The Fund Manager would then work with the Committee to prepare a Five-

Year Strategic Plan for City Council approval. As contributions to the Fund come in, the Fund Manager would administer the grant-making process and recommend qualified grant recipients to the Committee for approval, consistent with the Strategic Plan. Putting decision-making authority in the hands of local residents and leaders to drive equity-focused outcomes is a unique model, compared to similar funds in the U.S.⁷

For additional information about the Community Stabilization and Opportunity Pathways, please refer to Exhibit H of the Development Agreement.

Early Payment (Community Benefit)

In addition to the Fund, as part of the Community Benefits, Google will make an early payment of \$7.5 million to the City for job readiness and community stabilization, in support of existing City strategies such as the City's Citywide Residential Anti-Displacement Strategies. Staff will make specific recommendations for the use of this early payment and Council will allocate the funds as part of the approval package.

The intent is to invest early in these two critical areas, ahead of office building completion (when the Fund will be set up and begin to receive contributions from the project).

For additional information about the Early Payment, please refer Exhibit C of the Development Agreement.

Additional Project Commitments to Jobs & Opportunity (Community Benefit)

In addition to improving opportunity pathways through education and job training through citywide programs, the MOU and community feedback encourage Google to directly advance economic opportunity through using progressive hiring practices, prioritizing the hiring of local residents, providing opportunities to local businesses, and offering programs that connect their employees to local youth. Accordingly, Google has committed to the following as discretionary project features in the Development Agreement:

- Prevailing wage for all on-site construction workers;
- 30% local hire goal for on-site construction positions;
- Ongoing collaboration with work2future and good faith efforts to hire local residents;
- Support for disadvantaged businesses through
 - Providing 10% business inclusion target for disadvantaged businesses, for commercial office building construction;
 - Working with vendors to secure ongoing service contracts for office buildings;
- Promotion of Google employee volunteer/mentorship programs;

⁷ This is based on research completed by Estolano Advisors, who worked with the City and Google to identify and evaluate potential fund structures.

- Career development workshops targeted for underserved communities; and
- Ongoing monitoring and reporting.

For additional information about Economic Opportunity, please refer to Exhibit G of the Development Agreement.

Parks and Open Space (Requirements/Project Features)

The community-driven goals for the public realm include a variety of publicly accessible amenities, including parks, open space, plazas, and trails; improving the connectivity of the open space and trail networks; activating public spaces through temporary and permanent programming; keeping new and existing spaces well-maintained, safe, and accessible; and ensuring spaces are welcoming to all.

Through a mix of discretionary project features and City requirements, at full buildout the project will provide up to 15 acres of open space, including 4.8 acres of improved public parks and trails (dedicated to, and operated and maintained by the City,) and approximately 10.2 acres of privately owned publicly accessible open spaces (where the ongoing maintenance and programming would be funded by the project applicant, rather than the City). These privately owned open spaces will have similar hours as City parks and will offer community rentals of reservable areas and year-round free programming.

The approach to open space emphasizes access and proximity across the Downtown West project, rather than concentrating all the open space in one area. This approach to public open space fits the urban context, provides safe and pleasant connectivity for bikes and pedestrians, and complements the other large open spaces in the vicinity.

For additional information about Parks and Open Space, please refer to the main body of the Development Agreement, and the Parkland Agreement (Exhibit E of the Development Agreement).

Transportation (Requirements/Project Features)

The shared goals in the MOU and community feedback both call for the project and City to:

- Create attractive, vibrant, and safe experiences for pedestrians and bicyclists;
- Provide multimodal connections to Diridon Station, Downtown, adjacent neighborhoods, and the open space network (Guadalupe River, Los Gatos Creek);
- Contribute to ambitious citywide targets for reduced car travel;
- Proactively manage car parking to adapt to changes in travel patterns, minimize land dedicated solely to parking, and encourage shared parking across the district;
- Provide convenient access to the SAP Center;
- Support a functional, accessible, and seamless public transit system for all users;

- Allow adaptability (accommodate future mobility options); and
- Facilitate a safe, operational transportation system during construction work.

Consistent with these objectives, the project includes multimodal transportation improvements throughout the project such as efficiencies to the street network, expanded sidewalks, bikeway facilities, electric vehicle charging stations, and dynamic lanes — flexible space that can be used for multiple purposes over time. These project features are reflected in the infrastructure plans and Downtown West Design Standards and Guidelines.

As part of the development review process, the City required preparation of a Local Transportation Analysis (LTA) to evaluate the project against City policies and identify any necessary improvements to the transportation system. As required by the LTA, the project will provide about \$30 million in improvements, including: complete street improvements along Barack Obama Boulevard, support for transit projects recommended in the Diridon Station Area Plan, multimodal improvements to Auzerais Avenue, and \$10 million for local needs identified in future Focused LTAs. These will be documented as Conditions of Approval for the project.

Also consistent with City policies, the project will provide shared, publicly available parking in conjunction with commercial development (4,000 spaces at full buildout). Residential parking will be rented or sold separately to lower housing costs for those who choose to live without a vehicle.

As part of the environmental requirements, the project will prepare a Transportation Demand Management (TDM) plan to manage traffic and emissions, limiting solo occupancy vehicle trips to a maximum of 35%, with penalties up to \$5 million per year for non-compliance.

The Development Agreement also provides for coordination with the ongoing Diridon Integrated Station Concept Plan (DISC) effort. This includes:

- Reinforcing shared MOU goals and ongoing collaboration;
- Establishing a Transit Project Buffer Zone in anticipation of land that may be needed to construct rail improvements; and
- Including provisions on temporary construction easements, long-term park use, and community benefit implications.

For additional information about Transportation, please refer to the main body of the Development Agreement and Exhibit K.

Environmental Sustainability, District Systems, and Ecology (Project Features)

Community input for the project also included advancing the City's sustainability goals: supporting the "Climate Smart San Jose" Plan; reducing greenhouse gas (GHG) emissions;

adhering to LEED Gold or Platinum standards for green building; serving as a model for eco-district planning, design, and implementation; exploring a district systems approach; and restoring and enhancing the wildlife habitat, water quality, and flood protection of the creek corridors.

Consistent with the MOU, the City and Google have studied a district-wide program of shared utilities. As a voluntary project feature, the Google proposes a sustainable "District Systems" approach to the provision of certain utilities, such as energy (heating and cooling), electricity (microgrid), wastewater treatment, and recycled water.

The project documents subject to City Council approval will incorporate City goals related to District Systems to ensure proper design review, permitting, and oversight of the onsite wastewater treatment and electrical infrastructure; continuity of District Systems services; properly maintained and operated infrastructure, and rate equity.

In addition to District Systems and meeting existing City Green Building Codes, discretionary project features related to sustainability include:

- Zero net new greenhouse gas emissions during construction and 30 years of operations;
- Enhancements to the riparian habitat;
- Design for bird safety and night sky controls;
- All electric development;
- 2,200+ new trees;
- 100% native plant palette;
- Replacement of San Fernando Bridge to reduce flood risk;
- 7.8 megawatt of on-site solar energy production; and
- Designed to be eligible for LEED-ND Gold certification

Through these environmental requirements and commitments, the project would set a new standard for climate action and ecological enhancements.

Historic Preservation (Project Features)

The MOU and community feedback include the goal to preserve and integrate historic and cultural assets into the project design to reinforce the identity of the area. Discretionary features of the project include retaining, relocating on-site, or partially salvaging six of the nine historic resources under CEQA. The resources to be retained and repurposed include the San Jose Water Company Building (374 W. Santa Clara Street); Kearney Patternworks and Foundry building (40 S. Montgomery Street); and Hellwig Ironworks building (150 S. Montgomery Street). A grouping of three Victorian bungalows on Julian Street (559, 563, and 567 W. Julian Street) and the Stephen's Meat Products sign would be relocated on-site. Portions of the facade of the Sunlite

Bakery Building (145 S. Montgomery Street) would be salvaged and incorporated into the project.

As required by the EIR, the other three historic resources would be available for others to purchase and relocate. In addition to the CEQA historic resources described above, the project will also relocate the buildings at 35 S. Autumn Street on-site; support the relocation of the building at 91 S. Autumn Street (Poor House Bistro) off-site; and support the relocation costs of other on-site structures of merit (including eligible) to off-site locations, if property owners elect to receive them, up to the equivalent cost of demolition.

Community Benefits Valuation and Timing

In determining the valuation of the Community Benefits, the MOU intent is for Google to share back a portion of the additional property value created through the City's actions (such as rezoning and increased height limits), while taking into account the financial feasibility of the project. Consistent with the MOU framework, the following costs are not considered Community Benefits: costs required to mitigate impacts under CEQA; costs associated with project design, project elements, or other improvements proposed by Google as part of its development; and costs incurred to meet City standard requirements, conditions of approval, fees, or taxes.

The following table illustrates the value of the Community Benefits by category. One of the distinguishing factors of this agreement is that all Community Benefits are focused on equity and are directed at low-income individuals, in the form of related anti-displacement and opportunity components. Other Development Agreements tend to focus the Community Benefits on parks and sustainability. This Development Agreement achieves parks and sustainability goals, but as part of meeting baseline requirements or voluntary project features, not as Community Benefits. Some of the Community Benefits will be delivered early on, while others are tied to the development of office space and will be delivered over time.

	Community Benefit Value (at 7.3M GSF)	\$/per GSF of Office	Timing
Community Stabilization and Opportunity Fund	\$154.8 Million	\$ 21.20	As office gets built
Early Payment for Job Readiness and Community Stabilization	\$7.5 Million	\$ 1.03	120 days after Final Approval*

30 Additional Moderate-Income Units	\$7.0 Million	\$ 0.96	With market-rate residential development
Land Transfer to the City (0.8 acres for consideration of affordable housing) ⁶	\$8.4 Million	\$ 1.15	3 months after Final Approval*
Currently Unallocated Community Benefit Commitment	\$22.3 Million	\$ 3.06	As office gets built
TOTAL	\$200 Million	\$ 27.40	

* "Final Approval" means following City Council approval of the project documents and resolution of any legal challenge to those approvals.

At full buildout, the total amount of Community Benefit contributions is expected to be \$200M on top of more than \$1 billion in voluntary project features proposed by Google. As previously described, these project feature investments include 15 acres of parks, plazas, and green spaces; new walking and biking paths; historic preservation; ecological restoration; infrastructure improvements; year-round free programming; and more.

Oversight and Performance

The Development Agreement is legally binding and enforceable and requires an annual review of the performance and compliance by the Planning Director and a report to the Planning Commission. The City cannot force Google to build, but the Development Agreement includes requirements for performance to maintain Development Agreement rights, including milestones at 10 or 20 years, which respectively require completion of 2 and 4 million GSF of office *or* payment of Community Benefits on the equivalent amount of office. In addition, Google is limited to transferring office development rights/land to no more than 40% of constructed office square footage to ensure growth of jobs and tax base.

NEXT STEPS

The City released the staff-recommended Development Agreement to the public on April 6, 2021. The City will hold a meeting of the Diridon Station Area Advisory Group (SAAG) on April 14, 2021 and a Community Meeting on April 17, 2021 to review and discuss the Development Agreement. The public may also comment on the Development Agreement using

an online tool. Staff will provide all feedback received to the Planning Commission and the City Council, for their consideration. Visit <https://www.diridonsj.org/> for more information.

/s/

Nanci Klein

Director of Economic Development

For questions, please contact Nanci Klein at (408) 535-8184.

RESOURCES

Project Webpages

- [Google Project Website - Application Documents and City's Review Process for Downtown West Project](#)⁸
- [Google's Project Webpage](#),⁹ - Social Infrastructure Plan, video, and other information

Shortcuts to Project Documents

- Staff-recommended Development Agreement
- [Draft Environmental Impact Report \(DEIR\) for the Downtown West Project](#)¹⁰

Community Engagement Materials (2018-2020)

- [Diridon Station Area Civic Engagement Report \(2018\)](#)¹¹, including list of Desired Outcomes for the six topic areas
- [Fall 2020 Community Engagement Info and Summary of Feedback Received](#)¹²
- [Information about Google's Updated Submittal for the Downtown West Project, Including Background Presentations by the City \(Process\) and Google \(Design Standards and Guidelines\)](#)¹³
- [Video](#)¹⁴ (timestamp: 7:30 to 53:30): presentation from the Downtown West Community Meeting on Oct. 19, 2020
- [Downtown West Community Meeting \(October 19\) Materials](#)¹⁵
- Presentation for City Council Study Session (November 16, 2020)

⁸ www.sanjoseca.gov/GoogleProject

⁹ <https://realestate.withgoogle.com/sanjose/>

¹⁰ <https://www.bit.ly/GoogleProjectEIR>

¹¹ <https://www.diridonsj.org/s/FINAL-DiridonStationAreaCivEngagementReport10312018.pdf>

¹² <https://www.diridonsj.org/fall2020>

¹³ <https://www.diridonsj.org/fall2020-google>

¹⁴ <https://www.youtube.com/watch?v=ddmcFntNG7A&feature=youtu.be>

¹⁵ <https://www.diridonsj.org/general-events/community-meeting-downtown-west-fall2020>

HONORABLE MAYOR AND CITY COUNCIL

April 6, 2021

Subject: Staff-Recommended Draft Development Agreement for Google's Downtown West Project

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- [Summary of the City's 2018 Community Engagement Process](#)¹⁶

Related Plans

[Citywide Residential Anti-Displacement Strategy](#)¹⁷

[Draft Amended Diridon Station Area Plan](#)¹⁸

[Draft Diridon Affordable Housing Implementation Plan](#)¹⁹

General

[Background Information](#)²⁰

[FAQs, Info Memos, and Other Resources](#)²¹

[Station Area Advisory Group \(SAAG\) Webpage](#)²² with past meeting materials

¹⁶ <https://www.diridonsj.org/archive>

¹⁷ <https://www.sanjoseca.gov/your-government/departments-offices/housing/resource-library/housing-policy-plans-and-reports/citywide-anti-displacement-strategy#:~:text=By%20focusing%20attention%20on%20Production,greatest%20asset%20%2D%20its%20existing%20residents>

¹⁸ https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5f9783e6506bd2232c50f52e/1603765259907/20201026_D_SAP_Report_web.pdf

¹⁹ <https://static1.squarespace.com/static/5c38bcfdcc8fedd5ba4ecc1d/t/5fa9c16b09511e6a4e5a07b4/1604960644280/Draft+Diridon+Affordable+Housing+Implementation+Plan.pdf>

²⁰ <http://www.diridonsj.org/diridon-station-area-plan-google-project>

²¹ <https://www.diridonsj.org/resources>

²² <http://www.diridonsj.org/saag>