

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF TWO BUILDINGS, THE PARTIAL DEMOLITION OF ONE BUILDING, AND THE CONSTRUCTION OF AN APPROXIMATELY 75,285 SQUARE-FOOT RETAIL AND OFFICE BUILDING, WITH AN OFF-SITE PARKING ARRANGEMENT, ON AN APPROXIMATELY 0.34-GROSS ACRE SITE LOCATED ON THE SOUTHWEST CORNER OF EAST SANTA CLARA STREET AND SOUTH 4TH STREET (142-150 AND 130-134 EAST SANTA CLARA STREET AND 17 SOUTH 4TH STREET) (APN: 467-23-034, -035, -037)

FILE NO. H21-026

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on May 28, 2021, Matt Conti filed an application with the City of San José on behalf of property owners, Sunstone QOZB, LLC (“project applicant”), for a Site Development Permit (File No. H21-026) to allow the demolition of two buildings at 130-134 East Santa Clara Street and 17 South 4th Street, the partial demolition of one building at 142-150 East Santa Clara Street, and the construction of an approximately 75,285 square foot four- and six-story retail and office building, with an off-site parking arrangement (collectively, the “project”), on an approximately 0.34-gross acre site situated in the DC Downtown Primary Commercial Zoning District located on the southwest corner of East Santa Clara Street and South 4th Street (142-150 and 130-134 East Santa Clara Street and 17 South 4th Street), in the City of San José (the “subject property”); and

WHEREAS, a legal description of the subject property is attached as Exhibit "A" and incorporated by reference; and

WHEREAS, at a duly noticed public hearing on October 26, 2022, the Planning Commission considered public comments and all evidence and testimony received at the public hearing regarding the project and recommended that the City Council approve a Site Development Permit for the project, certify the Supplemental Environmental Impact Report, and consider staff's recommendation to approve an Historic Preservation Permit; and

WHEREAS, this City Council received and considered the reports and recommendations of the City's Planning Commission and City's Director of Planning, Building, and Code Enforcement and conducted a duly noticed public hearing on the project, giving all persons full opportunity to be heard and to present evidence and testimony; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "SuZaco Mixed Use Project," located at South 4th Street and East Santa Clara Street, San Jose, CA 95113, dated revised March 11, 2022, which is on file in the Department of Planning, Building and Code Enforcement and available for inspection; said plan is incorporated by reference; and

WHEREAS, this City Council has heard and considered the testimony presented at the public hearing and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

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

After considering evidence presented at the public hearing, the City Council finds the following are the relevant facts and findings regarding this proposed project:

- 1. Site Description and Surrounding Uses.** The subject property is comprised of three lots forming a U-shaped site. The approximately 0.34-gross acre site is located at the southwest corner of East Santa Clara Street and South 4th Street. Two of the three buildings on the site are within the Downtown Commercial National Register Historic District (Historic District). The two-story building on the corner parcel (142-150 East

Santa Clara Street) is a contributing building to the Historic District and an individual City Landmark built in 1913 (also known as the “State Meat Market” building). The interior of this building, two walls, and the roof would be demolished (approximately 11,400 square feet) and the two street facing façades would be retained and incorporated into the project.

The two-story building at 130-134 East Santa Clara Street is a non-contributing building to the Historic District, and the one-story building at 17 South 4th Street (built in 1939) is not an historic resource and is outside the Historic District. Both buildings would also be demolished (approximately 9,000 square feet), as part of the project.

The project’s U-shaped site surrounds a three-story mixed-use building (built in 1905) at 136 East Santa Clara Street that is not a part of the project and will remain in place.

The site is surrounded by a gas station and retail uses (site of the future Icon-Echo residential/commercial tower building) across East Santa Clara Street to the north, the newly constructed Miro Towers multifamily residential project across the North 4th Street and East Santa Clara intersection to the northeast, City Hall Plaza to the east across South 4th Street, the Hotel Clariana parking lot and multifamily residential uses to the south, and mixed uses to the west along East Santa Clara Street.

- 2. Project Description.** The project requires a Site Development Permit as it involves construction of a commercial building. The ground floor would provide 6,345 square feet of street-facing retail space and a 1,035 square-foot lobby entrance facing South 4th Street. The second through sixth stories would be occupied with office space, with a 994 square foot outdoor balcony at the third story, and smaller outdoor balcony spaces at the second, fourth, and fifth stories. Rooftop terraces would be provided for both the four- and six-story portions of the building. The building height at the intersection is approximately 85 feet to the rooftop and approximately 100 feet to the top of solar roof canopy.

The project provides three parking spaces accessed from South 4th Street. Pedestrian access is provided at multiple entrances along the two project frontages. Vehicular access via a 20-foot-wide driveway, for the two vehicle parking spaces, one loading space and bike parking would be from South 4th Street, with right-in/right-out turns only. Pedestrian access would be provided from both street frontages (East Santa Clara Street and South 4th Street). The project site is located approximately 500 feet from the Saint James VTA Light Rail Station, with service on the Blue Line and Green Line.

The project applicant is coordinating with the City’s Department of Transportation (“DOT”) on a parking agreement to provide the additional required 97 parking spaces for the project’s office space at the 4th Street Public Parking garage located at 88 South 4th Street and approximately 300 feet to the southeast of the subject property.

The draft parking agreement prepared by DOT is scheduled for consideration by the City Council later this year, and a condition of approval is included requiring the agreement to be executed before issuance of demolition permits for the building.

- 3. General Plan Conformance.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Downtown. The Downtown designation allows a floor area ratio ("FAR") of up to 30.0 (3 to 30 stories) and density of up to 800 DU/AC. The proposed commercial FAR of the project would be approximately 5.08, consistent with the General Plan Designation of Downtown.

The project is consistent with the following General Plan Goals and Policies:

1. Community Design Goal CD-4: Provide aesthetically pleasing streetscapes and new development that preserves and builds on the unique characteristics of the local area and contributes to a distinctive neighborhood or community identity.
2. Community Design Policy CD-4.3: Promote consistent development patterns along streets, particularly in how buildings relate to the street, to promote a sense of visual order, and to provide attractive streetscapes.
3. Attractive City Policy, CD-1.8: Create an attractive street presence with pedestrian building and landscape elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller footprints, to promote pedestrian activity through the City.

Analysis: The new commercial retail and office building would provide a mix of uses and retain and incorporate the two-story street-facing facades of the historic building. The existing three bays spacing of storefronts along Santa Clara Street would be retained, with installation of replacement storefront windows and retention of the recessed entrance with glazed doors and rectangular transoms for retail use to encourage and engage pedestrian activity. Two new openings would be added to the southern portion of the retained South 4th Street façade, a glazed entrance would access the commercial tenants' lobby space and another glazed entry would be to the utility room. A broad display window consisting of 11 large rectangular panels would also be added. Retaining the character-defining elements and adding modifications consistent with these elements preserves and builds on the unique design characteristics of the local area and contributes to a distinctive neighborhood, consistent with Goal CD-4 and Policy CD-4.3.

As described previously, the upper four stories of the proposed building are stepped back from the historic façade and use distinguishing complementary materials. The retained and added pedestrian entrances and new street trees would provide an engaging, safe, and diverse walking environment, in conformance with Policies CD-1.8 and CD-4.3.

4. Land Use Policy LU-3.1: Provide maximum flexibility in mixing uses throughout the Downtown area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the vision of the *Envision General Plan*.
5. Transportation Policy TR-4.1: Support the development of amenities and land use and development types and intensities that increase daily ridership on the VTA, BART, Caltrain, ACE and Amtrak California systems and provide positive fiscal, economic, and environmental benefits to the community.

Analysis: The project would provide greater-intensity office and retail space in the Downtown core through the development of approximately 45,624 square feet of office space and approximately 10,500 square feet of retail space in a compact urban form to serve businesses and visitors. Public improvements that would be constructed as part of the project would increase walkability and pedestrian activity. The improvements include a 22-foot-wide sidewalk, 5-foot by 5-foot tree wells and raised bikeway along South 4th Street, reconstruction of the 16-foot-wide sidewalk with 4-foot by 6-foot tree wells along East Santa Clara Street, and a 3-foot-wide landscaped median island along the South 4th Street project frontage. The project supports intensive employment and a unique building form in Downtown, in conformance with Land Use Policy LU-3.1.

The project fronts East Santa Clara Street, which is designated as one of the seven Grand Boulevards per the Envision San Jose 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles. The development will contribute towards an increase in daily ridership, supporting intensive development adjacent to transit stations, including the planned Downtown BART station, in conformance with General Plan Transportation Policy TR-4.1.

6. Community Design Policy CD-3.5: Encourage shared and alternative parking arrangements and allow parking reductions when warranted by parking demand.

Analysis: The majority (97 parking permits) of the parking demand for the office use would be met with an off-site parking agreement with the City's DOT at the 4th Street garage consistent with Policy CD-3.5.

4. Zoning Ordinance Compliance.

Land Use

The subject site is located in the DC Downtown Primary Commercial Zoning District. Pursuant to Section 20.70.100, Table 20-140 of the Zoning Ordinance, office, retail, restaurant, and off-site parking arrangements are all permitted uses in the DC Zoning District.

Setbacks and Height

Pursuant to Section 20.70.210 of the Zoning Code, no setbacks are required for properties in the DC Downtown Primary Commercial Zoning District. The building would be constructed at the property lines with no setbacks. The project has an overall height of 85 feet which would conform with the allowable height limit as governed by the Federal Aviation Administration ("FAA").

Parking

Pursuant to Section 20.70.100 and Table 20-140 of the Zoning Code, office uses in Downtown require 2.5 parking spaces per 1,000 square feet of floor area. No parking is required for retail uses. However, Section 20.90.220 of the Zoning Code allows a parking reduction of up to 20% in Growth Areas. Parking is not required for retail uses in Downtown. Additionally, off-site parking arrangements are permitted by right in the DC Downtown Primary Commercial Zoning District.

Analysis: The approximately 45,624 square feet of office use would require 119 spaces or 97 spaces utilizing an 18 percent reduction. The project provides three parking spaces accessed from South 4th Street. The project applicant is coordinating with the City's DOT on a parking agreement to provide the required parking of 97 spaces offsite, for the office uses at the 4th Street Public Parking garage located approximately 300 feet southeast of the project site at 88 South 4th Street. The agreement has been prepared by DOT and is scheduled for consideration by the City Council later this year. A condition of approval is included requiring the agreement to be executed before issuance of demolition permits for the building.

Additionally, the project is required to provide 15 bicycle parking spaces. Consistent with this requirement, the project includes 15 bicycle parking spaces on the ground floor. Long term 13 bicycle parking spaces would be provided in one secure bicycle storage room on the ground floor and the bike rack on South 4th Street would provide two short term bicycle parking spaces.

5. Design Guidelines

The project is subject to the Downtown Design Guidelines and Standards, adopted by City Council on April 23, 2019.

Downtown Design Guidelines and Standards Conformance

- Guideline 4.4.1.a: Façade Pattern and Articulation: a. Design a harmonious, internally consistent, and unified facade using elements such as fenestration and horizontal and vertical scale definition that relate to human scale.
- Guideline 4.4.2.a: Windows and Glazing: Design the building's window size and location and the facade treatment to respond to nearby buildings and interesting elements of the ground level Public Realm.

- Guideline 4.2.4.d: Maintain streetwall continuity with Historic Context buildings that are on the same side of the same street by placing the street-side facade of a new building within 5 feet of the average Historic Context building streetwall distance from the front property line.
- Guideline 4.2.4.f.: Historic Adjacency: Use facade elements with a scale that creates visual correlation with nearby Historic Context building facades.

Analysis: The massing incorporates some of the elements enumerated in the guidelines such as horizontal and vertical mass timber elements, behind the glass, to create the horizontal and vertical interest and emphasis. Further articulation of the building façade design includes enhanced design at the street corner by providing a projecting rooftop trellis, building stepbacks starting at the third floor, and retaining a 5-foot by 10-foot-tall wall facing the alley to provide a better transition of mass and form where the historic façade ends at the new infill addition.

- Guideline 5.3.1: Mitigating Blank Walls:
 - a. Use architectural treatments such as reveals, small setbacks, indentations, or other means to break up a Blank Wall along Public Space. Avoid creation of blind spots that may feel unsafe to pedestrians when the street is less busy. Use these treatments for Blank Walls along property lines as well where they are exposed without an abutting building.

b. Use different textures, colors, or materials to break up a Blank Wall's surface.

Analysis: Architectural treatment is provided at the rear and end walls (northeast and south end of South 4th Street facade walls) to create visual interest, per the guidelines above.

- Guideline 4.4.3.d: Materials and Colors: Use high-quality and interesting facade materials such as stone at the building base to relate to the pedestrian, energize the street, and enhance the experience of building occupants and pedestrians.
 - e. Create a composition of solid and transparent materials with at least 15% non-glass materials on every facade.

Analysis: The project meets the above guideline through a composition of solid timber wood frame and transparent glazing materials. The street level pedestrian entries have tiled floors within painted metal panel storefront systems that would energize the street and enhance the experience of building occupants and pedestrians.

Additionally, the East Santa Clara Street elevation has 32% solid (non-glass) material, and the South 4th Street elevation has 25% solid (non-glass) material, which meets the above Guideline of at least 15% non-glass materials on every façade.

6. City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. On-site signs were posted on the project frontages. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.

A formally noticed Community Meeting with the Environmental Scoping meeting was held on Thursday, September 15, 2021, to introduce the project to the community. Approximately 10 members of the public attended the meeting. The questions and comments from community members included concerns related to the preservation and demolition of the potential historic resources and parking.

7. Environmental Review.

The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report ("SEIR") to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Notice of Preparation was circulated from August 24, 2021, to September 3, 2021, and the Draft SEIR was circulated for public review and comment from June 27, 2022, to August 11, 2022.

Summary of Environmental Impacts Reduced to Less than Significant with Mitigation

The Draft SEIR identified potential environmental impacts related to potential cumulative construction air quality, nesting migratory birds, disruption of hazards and hazardous materials due to historical use of the site, construction noise and vibration, and previously undocumented historic-era and Native American archaeological resources. With implementation of the mitigation measures specified in the Mitigation Monitoring and Reporting Program ("MMRP") prepared for the project, these impacts are reduced to less than significant levels. As part of the certification of the Final SEIR, the City Council will need to approve the associated MMRP for the project.

Significant and Unavoidable Impacts and Statement of Overriding Considerations

The Draft SEIR found that the project would result in significant and unavoidable impacts to Cultural Resources due to the demolition of the interior, roof, and west and south walls of the building at 142-150 East Santa Clara Street, the project would cause a substantial adverse change in the significance of a designated City Landmark, and mitigation measures to be adopted for the proposed project would not reduce this impact to less than significant.

Significant and unavoidable impacts were also identified for Land Use and Planning in the Draft SEIR because the project would not comply with General Plan policies related to historic preservation, such as those for the preservation of City Landmarks

(General Plan Policies LU-13.2, LU-13.6, LU-13.7, and LU-13.8). Furthermore, the project is inconsistent with the 2003 Historic District Guidelines and Secretary of the Interior's Standards for Rehabilitation as they relate to the property located at 142-150 East Santa Clara Street, which is a designated City Landmark and listed in the National Register of Historic Places, California Register of Historical Resources, and the City's Historic Resources Inventory.

Pursuant to CEQA Guidelines Section 15093, a Statement of Overriding Considerations must be adopted with findings that the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a project outweigh the unavoidable adverse environmental effects if an environmentally superior alternative is not chosen. The Statement of Overriding Considerations, adopted concurrently with this Resolution, found that the economic and social benefits of construction of a commercial building with approximately 45,624 square feet of office space and 10,591 square feet of retail outweigh impacts associated with the demolition of the existing two buildings and partial demolition of the City landmark building (at 142-150 East Santa Clara Street); and given the scope of the project, the rehabilitation or reuse of any of the existing buildings on-site would not be feasible.

Project Alternatives

The Draft SEIR analyzed four project alternatives, including a No Project – No Development Alternative, Location Alternative, and two preservations alternatives: (1) Preservation Alternative 1: Relocation of 142-150 East Santa Clara Street Building and (2) Preservation Alternative 2: Complete Retention of the City Landmark Building at 142-150 East Santa Clara Street. Alternatives were crafted based on their ability to reduce the impacts summarized above and to identify an environmentally superior proposal and to inform decision-making. Preservation Alternative 1 was considered but rejected as it would not be feasible due to the lack of feasible sites available in the downtown core that could provide an appropriate setting to relocate the City Landmark while retaining the historic significance and integrity of the City Landmark. Therefore, relocation of the building was not considered further.

Beyond the No Project – No Development Alternative, Preservation Alternative 2: Complete Retention of the City Landmark Building at 142-150 East Santa Clara Street would be the environmentally superior alternative as it would avoid a significant impact a City Landmark building and would reduce the identified construction air quality and noise and vibration impacts due to the smaller size of the project and reduced demolition activities. In addition, potential impacts associated with exposure to soil and/or groundwater contamination and potential to encounter undocumented historic-era and Native American archaeological resources and tribal cultural resources would be lessened (and possibly avoided) due to the elimination of below-grade retail.

Summary of Comments Received

The City received five written comment letters and one verbal comment during the public circulation period of the Draft SEIR. Comments were submitted by six agencies, organizations, and individuals, which included the Santa Clara Valley Water District, Santa Clara Valley Transportation Authority, Paul Boehm, Santa Clara Valley Audubon Society, Preservation Action Council of San Jose, and Sally Zarnowitz. The main concerns raised by commenters are as follows:

- The lack of mitigation measures to minimize the identified impact to a designated City Landmark
- Impacts to the San José Downtown Commercial National Register Historic District
- Non-compliance with General Plan policies adopted for the purpose of protecting historic resources
- Cumulative impacts to historic resources
- Bird safety/potential collisions with building
- Pre-construction bird survey timing
- Balancing General Plan development goals with historic preservation
- Concurrent construction of Downtown projects and related coordination

None of the comments received address an issue of adequacy of the Draft SEIR; and the mitigation measures to be adopted as part of the Final SEIR will reduce the identified significant and unavoidable impact but not to a less than significant level. Therefore, these text amendments do not change the findings of the Draft SEIR. Additional SEIR text revisions were included in the First Amendment to the Draft SEIR to address clarifications to text of the Draft SEIR and other suggested text revisions from commenters.

Additionally, the City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. The First Amendment, taken together with the Draft SEIR, and the MMRP constitute the Final SEIR. The Final SEIR is available for review on the project page on the City's Active EIR website at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/SuZaCo-mixed-use-project/-fsiteid-1#!/>. A copy of the signed MMRP is available online.

EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the Draft SEIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after the Draft EIR is made available for public review but before certification. Information can include changes in the project or environmental setting as well as

additional data or other information. New information added to a Draft EIR is not significant unless the Draft EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect, including a feasible project alternative that the project's proponents have declined to implement (CEQA Guidelines Section 15088.5).

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft SEIR for the project includes written responses to all comments received during the public review period for the Draft SEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft SEIR address significant environmental points and comments on the content and adequacy of the SEIR. The responses and comments provide clarification and refinement of information presented in the Draft SEIR and, in some cases, correct or update information in the Draft SEIR. No significant new information requiring recirculation has been added to the SEIR since publication of the Draft SEIR, and the mitigation measures to be adopted with the Final SEIR would not result in a new significant environmental impact and feasible mitigation measures requested by commenters would be adopted as part of project approval. Therefore, the Draft SEIR does not need to be recirculated.

8. Site Development Permit Findings. Section 20.100.630 of the San José Municipal Code specifies the required findings for the approval of a Site Development Permit. Staff recommends the Planning Commission recommend that the City Council make the following findings:

- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies.

Analysis: As described above, the project is consistent with and would further the Land Use and Community Design policies of the General Plan designation of Downtown. As analyzed above, the project is consistent with Land Use and Community Design policies CD-1.8 and CD-4.3, supporting development that preserves and builds on the unique characteristics of the local area as well as providing attractive streetscapes. It is also consistent with Transportation Policy TR-4.1 supporting intensive development adjacent to transit stations, including the planned Downtown BART station, as well as Policy LU-3.1 supporting intensive employment and building forms in Downtown. While the project is not consistent with Policy LU-13.6 with regard to conforming to the Secretary of the Interior's Standards for Treatment of Historic Properties due to the demolition, the Economic Hardship report prepared for the project identified extensive improvements required to rehabilitate the building to meet current seismic requirements, that would not be economically feasible and result in changes to the building that are incompatible with

the Standards. Moreover, the project would retain and rehabilitate the two façades bearing the majority of character defining features, the proposed new construction would not obstruct the features of the historic façades, consistent with the Community Design policies above. Therefore, the project is consistent with policies of the General Plan. The commercial FAR would be approximately 5.08, consistent with the maximum allowable FAR of 30 for Downtown General Plan designation.

- b. The Site Development Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.

Analysis: As discussed in the Municipal Code Conformance section above, the project is consistent with all applicable development standards of the DC Downtown Primary Commercial Zoning District. The proposed office, retail, and offsite parking uses are all permitted in the DC Zoning District. The project would also provide the required number of vehicle parking spaces with an approximately 18 percent parking reduction and implementation of an off-site parking arrangement.

- c. The Site Development Permit, as approved, is consistent with applicable City Council Policies or counterbalancing considerations justify the inconsistency.

The project was duly noticed per Council Policy 6-30: Public Outreach Policy for Pending Land Use and Development Proposals and on-site noticing/posting requirements. A joint Environmental Scoping and Community Meeting was held on September 15, 2021. An on-site sign has also been posted on the project frontages.

- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: The street-fronting components of the building are consistently oriented towards East Santa Clara Street, the street-facing historic façades would be retained, and would be consistent with the portion of the project further west along Santa Clara Street which includes matching datum lines. The new development designed with glazing and steel framing materials with painted metal surround, accentuated with interior timber framing visible through the curtain wall, is different in appearance but would still adhere to the principles and guidelines for infill development, discussed above, within the Historic District. The primary façade of the building would provide an appropriately proportioned commercial storefront and would respect the proportions of neighboring district contributing structures, especially to the form and character of the two-story brick and plaster (Edwardian style) historic façades, while providing a visually distinctive addition to the streetscape.

The rooftop trellis above the sixth-floor rooftop terrace would cap the corner and would align with the cornice capping the historic transom at the street corner and the U-shaped infill building would provide an overall harmonious street presence

when viewed from the intersection of East Santa Clara Street and South 4th Street as well as to the portion west along East Santa Clara Street (134-140 East Santa Clara Street). The project provides ample pedestrian entrances from sidewalk, and all uses on-site are mutually compatible and aesthetically harmonious.

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: The site is bordered by a gas station and retail uses (including retail uses in the future Icon-Echo residential/commercial tower building) across East Santa Clara Street to the north, the newly constructed Miro Towers multifamily residential projects diagonally across North 4th Street to the northeast, City Hall Plaza to the east, Hotel Clariana parking lot and multifamily residential buildings to the south and two-story mixed-use buildings to the west.

The appearance of the six-story height of the commercial building at the site of 142-150 East Santa Clara Street is a broadly glazed rectilinear structure designed to visually highlight the interior mass timber framing. At its third story, the proposed building would feature an approximately 12-foot-deep recess at its northwest façade and five-foot-deep recess at its northeast façade to provide a visual distinction between the historic and new portions of the building. The fourth- through sixth-story façades of the six-story building would be stepped back approximately five feet from the plane of the historic northwest façade, and two feet from the plane of the historic northeast façade. As visually permeable surfaces, the glass curtain walls of the upper four stories would allow the solidity of the historic brick façades at the first and second stories to remain visually prominent when observed from East Santa Clara or South 4th streets.

The four- and six -story infill façade would be distinguished from yet compatible with the neighboring buildings by its contemporary materials in the use of glass and wood. At four stories, it would be taller than neighboring mid-block district contributing buildings, though its simple, predominantly glazed primary façade would be stylistically different when compared with the more detailed brick and stucco façades of neighboring historic buildings. Overall, while visually distinct from the historic buildings, the infill façade meets the infill design goals of the Downtown San Jose District Guidelines, and elevation of the project buildings and structures and other uses on the site are compatible and aesthetically harmonious with adjacent development or the character of the neighborhood.

- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: The project development occurs in an urbanized area on a parcel that is fully developed with existing two- and three-story mixed-use buildings within and adjacent to a historic district in Downtown. A Supplemental Environmental Impact Report (SEIR) was prepared for the project and mitigation measures were identified for implementation during construction and operation to reduce potentially significant impacts. Storm water runoff for the project was reviewed by Public Works and a revised Final Memo issued on September 22, 2022. Construction activities will result in temporary noise, vibration, and air quality impacts, but these effects will be reduced by standard conditions and best management practices. The project overall will not have an unacceptable negative effect on adjacent property or properties.

- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: All mechanical equipment is located within the building and in the mechanical enclosure on the roof, not visible from the street or surrounding buildings. Retail uses are located at street level and besides pedestrians entering and exiting the building, no outdoor activities would occur on the ground floor of this project. The project would be conditioned to provide street trees on the sidewalk along street frontages. Therefore, the landscaping, irrigation systems, all walls and fences, exterior heating, ventilation, plumbing, utility, and trash facilities are sufficient to maintain and upgrade the appearance of the neighborhood.

- h. Traffic access, pedestrian access and parking are adequate.

Analysis: Pedestrian access is provided at multiple entrances along the two project frontages. Vehicular access via a 20-foot-wide driveway, for two vehicle parking spaces, one loading space and bike parking would be from South 4th Street, with right-in/right-out turns only. Pedestrian access would be provided from both street frontages (East Santa Clara Street and South 4th Street). The project site is located approximately 500 feet from the Saint James VTA Light Rail Station, with service on the Blue Line and Green Line. Numerous VTA bus routes serve the immediate area, including Routes Rapid 522, Rapid 523, Rapid 500, 17, 22, 23, 64A and 64B. Lastly, the project would be approximately 900 feet from the planned BART station on East Santa Clara Street between Market Street and 1st Street.

The project is located in an urbanized area and is served by all required utilities and services. Under an alternative parking arrangement agreement, the project applicant is providing the required number of 97 vehicle parking spaces in an offsite location (approximately 300 feet southeast of the project site) at 4th Street Public Parking garage, with an 18% parking reduction. The project, therefore, adequately meets the parking requirement. The Department of Transportation reviewed the local traffic

analysis to evaluate operational issues based on a net 44 AM and 71 PM peak hour trips and found the project to be in conformance with the City of San Jose Transportation Analysis Policy (Council Policy 5-1). With the inclusion of project conditions, such as provision of protected bikeway hardscape along project frontages and signal modification at the South 4th Street and East Santa Clara Street intersection, Department of Public Works provided a Final revised Memo dated September 22, 2022.

9. Off-Site, Alternating Use and Alternative Parking Arrangement Findings.

Pursuant to Section 20.90.200.B of the Zoning Code, the City Council, may approve off-street parking facilities arrangements only upon making the following findings:

- a. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in this Chapter 20.90 of this title;
- b. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and
- c. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

Analysis: A total of 97 parking spaces would be required for office use with the implementation of an approximately 18% parking reduction and utilization of an off-site parking arrangement, as permitted by Sections 20.70.100 and 20.90.200 of the Zoning Code.

The shared offsite parking spaces would be directly accessible with a key card to office employees at the 4th Street Parking Garage (88 South 4th street), located nearby within 300 feet southeast of the project site. The project applicant must record a private parking agreement with the City to permit the employees to park at the 4th Street Parking Garage and to ensure that adequate parking will be maintained for the next 10 years; the agreement will allow two five-year extensions to continue with the provision of parking in the foreseeable future per the parking agreement. This is also a condition of approval.

10. Demolition Permit Findings.

Chapter 20.80 of the Municipal Code establishes evaluation criteria for the issuance of a permit to allow for demolition. These criteria are made for the project based on the above stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Resolution.

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;

- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project that is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Analysis: The project includes the demolition of two existing buildings and partial demolition of the City Landmark building on site totaling approximately 20,000 square feet. The approval of the demolition permit would not result in the creation or continued existence of a nuisance, blight or dangerous condition as the two-story facades of the existing historic building at 142-150 East Santa Clara Street would be retained and the demolition of the existing two buildings (130-134 East Santa Clara Street and 17 South 4th Street) and partial demolition of the City Landmark building (142-150 East Santa Clara Street) would facilitate the construction of a commercial building with approximately 45,624 square feet of office space, and 10,591 square feet of retail. The failure to approve the permit would not jeopardize public health, safety or welfare as the buildings are currently vacant. The demolition permit would facilitate a project that is compatible with the surrounding neighborhood. As previously discussed, the project is consistent with and would further the Land Use and Community Design policies of the General Plan designation of Downtown. The project would also be consistent with the applicable zoning code requirements, and design guidelines, as analyzed above. Given the scope of the project, the rehabilitation or reuse of any of the existing buildings on-site would not be feasible.

Implementation of the project will demolish or remove the existing eleven residential units. As the buildings slated to be demolished on the subject property are currently vacant and the project will not include any residential units, there will be no return of pre-demolition obligations under the City's rent control ordinance (Ellis Act Ordinance) due to the removal of eleven units. Re-use or rehabilitation of the buildings would not be feasible given the project objective to construct an office and retail development on the site. The removal of the eleven units would not significantly reduce the City's housing stock, as the housing stock has continued on an overall increasing trend over the past several years, with over 4,900 of new units currently under construction.

In accordance with the findings set forth above, a **Site Development Permit** to use the subject property for said purposes specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Site Development Permit ("Permit") within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement or their designee ("Director") may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Use Authorization.** Subject to all conditions herein, this Permit allows the demolition of the roof, interior side wall, rear wall, and building interior (street-fronting corner facades to remain) of a City Landmark building at 142-150 East Santa Clara Street and the construction of an approximately 75,285-square foot four-and-six story retail and office building, with an off-site parking arrangement. The Site Development Permit also includes the demolition of two buildings and partial demolition of the City Landmark, for an approximate total of 20,000 square feet, at 142-150 East Santa Clara street, 130-134 East Santa Clara Street and 17 South 4th Street on an approximately 0.34-gross acre site.
6. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Site Development Permit plans entitled, "SuZaco Project" South 4th Street and East Santa Clara Street, San Jose, CA 95113, dated revised March 11, 2022, on file with the Department of Planning, Building and Code Enforcement as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set."
7. **Conformance to Other Permit Conditions.** This Permit shall conform to and be subject to the conditions of approval of Historic Preservation Permit File No. HP21-005.
8. **Demolition Permit.** A demolition permit may be issued for the demolition of all existing buildings on-site only upon the issuance of a Building Permit for new construction, or a Public Works Grading Permit.

9. **Parking Agreement.** Prior to issuance of a Demolition Permit or Grading Permit, an off-site parking Agreement between the Permittee and the City of San José shall be executed, providing for the number of parking spaces required for the project by the Zoning Ordinance, at the 4th Street Parking Garage located at 88 South 4th Street, for a period of 10 years following project completion (issuance of Certificate of Occupancy) and two additional 5 years options at Permittee's discretion.
10. **Lot Line Adjustment.** Prior to the issuance of a Building Permit the Permittee shall secure approval and provide proof of recordation of a Lot Line Adjustment to consolidate the existing three lots to one lot.
11. **Shared Driveway Easement.** Shared Private Driveway Easement shall be maintained, and no building or structures shall be permitted in the easement area.
12. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
13. **Housing Requirements under the Ellis Act Ordinance.** The development is subject to the City's Ellis Act Ordinance for Projects with existing units subject to the City Apartment Rent Ordinance and each of the conditions below:
 - a. Ellis Act Requirements. The project is subject to the requirements of the City's Ellis Act Ordinance as it involves the demolition or repurposing of existing multi-family residential units built before September 7, 1979, or are otherwise subject to the City's Apartment Rent Ordinance. Prior to the issuance of the Final Map or any demolition permit, PBCE staff shall confirm with the City's Housing Department that the permittee has completed all noticing requirements, relocation assistance obligations, restricting future use of the property by requiring former tenants the right to return and all pre-demolition obligations under the Ellis Act Ordinance, including the requirement to provide notice of withdrawal for all rent stabilized units and recording Memorandum pursuant to San José Municipal Code Section 17.23.1145.

Property owners who own residential property subject to the Apartment Rent Control Ordinance (Parts 1-9 of Chapter 17.23 of the San Jose Municipal Code) must comply with the Ellis Act Ordinance requirements set forth under Part 11 of Chapter 17.23 of the San Jose Municipal Code. Residential property subject to the Apartment Rent Ordinance (Chapters 1-9 of Chapter 17.23 of the San Jose Municipal Code) include Rent Stabilized Units which are Rental Units in any Guesthouse or in any Multiple Dwelling building for which a certificate of occupancy was issued on or prior to September 7, 1979, or that was offered or available for rent on or before this date. Rent Stabilized Units are considered Covered Units under Section 17.23.1120C. of the Ellis Act Ordinance. In addition to all other requirements set forth in the Ellis Act Ordinance regarding the rights

of tenants of such Covered Units, additional requirements are set forth under San José Municipal Code Section 17.23.1180. Those requirements state the following:

- i. If a building containing a Covered Unit is withdrawn from the residential rental market and is returned by an Owner to the residential rental market within five (5) years, then that unit must be offered and rented or leased at the lawful rent in effect at the time the Notice of Intent to Withdraw was delivered to the City, plus any annual adjustments authorized by Title 17, Chapter 23 of this Code. This Section applies regardless of the occupancy status of each Covered Unit when the building was withdrawn from the residential rental market and regardless of whether a displaced Tenant exercises a Right to Return.
- ii. New Construction Subject to Rent Control. If the owner chooses to construct residential rental units, the City's Ellis Act Ordinance requires the re-control of new units built where prior rent-controlled unit existed. Former tenants who occupied the property at the time of withdrawal must be notified of their right to return to the property. The Ellis Act Ordinance provides that if a building containing a rent stabilized unit is demolished and new units are built on the same property and offered for rent or lease within five (5) years of the effective date of withdrawal of the building with rent stabilized units, the number of newly constructed rental units equal to greater of (i) the number of Covered Units or (ii) fifty percent (50%) of all newly constructed rental units located on the property where the Covered Unit was demolished shall be deemed Rent Stabilized Units subject to the Apartment Rent Ordinance.
- iii. Waiver from Re-control for Projects with On-Site Affordable Units. The re-control requirements discussed in above are waived if the owner chooses to provide 20% of the newly constructed units as on-site restricted affordable rental housing, under the standards consistent with the requirements of the City's Inclusionary Housing Ordinance. The affordability restrictions are based upon the Inclusionary Housing Ordinance requirements for 15% of the units, and the additional 5% of units are restricted to rents at 100% AMI. The Inclusionary Housing Ordinance requires for a period of no less than 99 years, that: 5% of the total project units be rented at 100% AMI, 5% of the total units be rented at 60% AMI, and 5% of the units to be rented at 50% AMI.

14. Commercial Linkage Fee. This development is a non-residential project subject to the Commercial Linkage Fee ("CLF").

- a. Conditions for projects with non-residential uses adding at least 5,000 square feet are as follows:
 - i. Permittee must strictly comply with each requirement of the approved CLF Satisfaction Plan Application (Plan), Processing Fee, and Agreement, and any other applicable requirements of the CLF.

- ii. No building permit may issue until an Agreement is recorded against the property. No building permit may issue except consistent with the requirements of the CLF and the proposed Plan to fulfill the CLF obligations.
- iii. No scheduling of the final building inspection will occur until all requirements of the Commercial Linkage Fee Ordinance and Guidelines are met.

15. Affordable Housing Requirements. This Permit is subject to its Affordable Housing Compliance Plan as set forth by the Department of Housing, which includes the following conditions:

- a. The permittee must execute and record their City Affordable Housing Agreement memorializing the IHO obligations against the property and any contiguous property under common ownership and control prior to earliest of issuance of any building permits, or approval of any parcel or final map.
- b. Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO.
- c. No building permit may issue until the Affordable Housing Agreement is recorded against the property. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.
- d. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO and Affordable Housing Agreement are met.

16. Nuisance. This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.

17. Compliance with Local, State, and Federal Laws. The subject use shall be conducted in full compliance with all local, state, and federal laws.

18. Discretionary Review. The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.

19. Refuse. All trash and refuse storage areas are approved as designed and shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.

20. Outdoor Storage. No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.

21. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
22. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
23. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage.
24. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
25. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
26. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
27. **Required Vehicular and Bicycle Parking.** This project shall conform to the vehicular and bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
28. **Bird Safe Design:** Prior to issuance of a building permit, the permittee shall apply for and obtain a Permit Adjustment specifying the balcony glass to incorporate a bird-safe pattern. The pattern must have circular or square markers at least 0.25 inches in diameter, spaced at most 4 inches apart horizontally and 2 inches apart vertically.
29. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Changes in building colors and materials shall require a Permit Adjustment.
30. **Window Glazing.** Unless otherwise indicated on the Approved Plans, all windows shall consist of a transparent glass.
31. **Lighting.** new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, LED fixtures, unless otherwise approved with this project. Lighting shall be designed, controlled, and maintained so that no light source is visible from outside of the property.
32. **Street Trees.** Street trees shall be planted on the street frontages, as shown on the Approved Plans, unless otherwise approved by the Public Works Department. A permit for planting street trees shall be obtained from the City Department of

Transportation, Trees and Landscaping Section and by contacting City Arborist at (408) 794-1900.

33. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
34. **FAA Clearance.** Prior to issuance of any Building Permit for construction, the permittee shall obtain from the Federal Aviation Administration (“FAA”) a “Determination of No Hazard” for each building high point. The permittee shall initiate the regulatory FAA review by filing a “Notice of Proposed Construction or Alteration” (FAA Form 7460-1) for each roof-top corner and any additional highest point(s) of the proposed structure. The data on the forms should be prepared by a licensed civil engineer or surveyor at a “1-A” accuracy standard using NAD83 latitude/longitude coordinates out to hundredths of seconds, and NAVD88 elevations rounded off to next highest whole foot.
35. **FAA Clearance Permit Adjustment.** Prior to issuance of any Building Permit for construction, the permittee shall apply for and obtain a Permit Adjustment to incorporate any and all FAA conditions identified in the Determinations of No Hazard (if issued), e.g., installation of roof-top obstruction lighting or construction-related notifications.
36. **Avigation Easement.** Prior to the issuance of a Building Permit for vertical construction, the property owner shall grant an Avigation Easement to the City of San José. Contact the San José Airport Department (408-392-1193) to initiate the easement dedication process.
37. **Solar Glare Hazard Analysis.** FAA guidance requires solar panels (and any other reflective materials) placed on the roof of any structure to be designed to minimize glare and to incorporate bird-safe design. Any changes to the project inconsistent with the analysis shall require a revised glare analysis subject to Airport Department review.
38. **Salvage:** The building at 130-134 East Santa Clara Street proposed for demolition, shall be made available to salvage companies facilitating the reuse of historic building materials. The time frame available for salvage shall be established by the Director of Planning, Building and Code Enforcement or the Director’s designee, together with the City’s Historic Preservation Officer.
39. **Conformance to Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (“MMRP”) approved for this development by City Council Resolution No. [REDACTED].
40. **Standard Environmental Permit Conditions**

a. **Air Quality.** The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

- Water active construction areas at least twice daily or as often as needed to control dust emissions.
- Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

b. **Biological Resources**

The project shall be required to implement the following measures:

Tree Replacement. Trees removed for the project shall be replaced at ratios required by the City, as provided in the table below, as amended:

Tree Replacement Ratios

Circumference of Tree to be Removed	Replacement Ratios Based on Type of Tree to be Removed			Minimum Size of Each Replacement Tree**
	Native	Non-Native	Orchard	
38 inches or more	5:1*	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon

*x:x = tree replacement to tree loss ratio
Note: Trees greater than or equal to 38-inch circumference measured at 54 inches above natural grade shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.
A 38-inch tree equals 12.1 inches in diameter.
** A 24-inch box replacement tree = two 15-gallon replacement trees
Single Family and Two-dwelling properties may replace trees at a ratio of 1:1.

- Five trees would be replaced at a 4:1 ratio and two trees would be replaced at a 2:1 ratio, and five trees would be replaced at a 1:1 ratio. The project would be required to plant a total of 24 trees onsite per the City's tree replacement policy. The species of trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement or director's designee.
- If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement or director's designee. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment:
 - The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
 - Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance with the City Council Approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

Santa Clara Valley Habitat Plan. The project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The permittee shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form for private projects (https://scv-habitatagency.org/DocumentCenter/View/1367/PvtScreeningForm_v3_12_212020) to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can

be viewed at: <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

c. **Cultural Resources**

Subsurface Cultural Resources. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall: (1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

Human Remains. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The permittee shall immediately notify the Director of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission ("NAHC") within 24 hours. The NAHC will then designate a Most Likely Descendant ("MLD"). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.

- The MLD identified fails to make a recommendation; or
- The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

d. **Geology and Soils**

Seismic Hazards.

- To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- The project shall be constructed in accordance with standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

Dewatering. If dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.

Paleontological Resources. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement shall be notified, and a qualified professional paleontologist shall

assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The permittee shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement.

e. Greenhouse Gas Emissions

Proof of Enrollment in SJCE. Prior to issuance of any Certificate of Occupancy for the project, the occupant shall provide to the Director of the Department of Planning, Building, and Code Enforcement, or Director's designee, proof of enrollment in either the San Jose Community Energy ("SJCE") GreenSource program (approx. 60% renewable energy) or SJCE TotalGreen program (approx. 100% renewable energy). Program enrollment will be determined by the level assumed in the approved environmental clearance for the project in accordance with CEQA. If it is determined the project's environmental clearance requires enrollment in the TotalGreen program, neither the occupant, nor any future occupant, may opt out of the TotalGreen program.

f. Hazards and Hazardous Materials

Asbestos and Lead-Based Paint.

- In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
- During demolition activities, all building materials containing LBP shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing LBP or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
- All potentially friable ACMs shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
- A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.

- Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

FAA Clearance Required. Prior to issuance of any Building Permit for construction, the permittee shall obtain from the Federal Aviation Administration a "Determination of No Hazard to Air Navigation" for each building high point. The permittee shall abide by any and all conditions of the FAA determinations (if issued) such as height specifications, rooftop marking/lighting, construction notifications to the FAA through filing of Form 7460-2, and "No Hazard Determination" expiration date. The data on the FAA forms shall be prepared by a licensed civil engineer or surveyor, with location coordinates (latitude/longitude) in NAD83 datum out to hundredths of seconds, and elevations in NAVD88 datum rounded off to the next highest foot.

g. Hydrology and Water Quality

Construction-related water quality.

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust, as necessary.
- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be covered and all trucks would be required to maintain at least two feet of freeboard.
- All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- Vegetation in disturbed areas shall be replanted as quickly as possible.
- All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- The permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

41. Building Division Clearance for Issuing Permits. Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the

Chief Building Official:

- a. *Construction Plans.* This permit file number, H21-026 shall be printed on all construction plans submitted to the Building Division.
- b. *San Jose's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit www.sjenvironment.org/reachcode.
- c. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act.
- d. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- e. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
- f. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee shall submit an addressing plan for approval for the subject development. The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
- g. *Other.* Such other requirements as may be specified by the Chief Building Official.
- h. *Construction Related Noise.* Noise minimization measures include, but are not limited to, the following:
 - i. Limit construction hours to between 7:00 a.m. and 7:00 p.m., Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.

42. Green Building Requirements for Tier 2 Non-Residential Development (≥25,000 square feet). This development shall be subject to the City's Green Building Ordinance for Private Sector New Construction. Prior to the issuance of any shell or complete building permits issued on or after September 8, 2009, for the construction of buildings approved through the scope of this Permit, the permittee shall pay a Green Building Refundable Deposit applicable to the gross square footage of said buildings which are approved through this Permit. The project shall achieve the minimum green building certification of LEED Silver. The request for refund of the Green Building Deposit

together with green building certification evidence demonstrating the achievement of the green building standards indicated above shall be submitted within one year after the Building Permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

43. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the California Fire Code, or as may be amended or updated by the City.
44. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
 - b. **Assessment:** This project is located within the Premium Zone of the Downtown San Jose Property-Based Business Improvement District, which provides enhanced cleaning, information and safety services, beautification activities, and business retention and growth programs within the boundaries of the district. Benefiting properties within the district pay for services through annual assessments placed on the County property tax bills, which may be increased by up to 5% each year. The assessment is calculated based on the land use and its building and lot square footages. For 2021-2022, commercial properties pay \$0.134182419 and residential properties pay \$0.108146660 per building and lot square footages. The district is reaching the end of its ten-year term and there is a proposal to expand and renew the district. If the district renewal achieves voter approval, the assessment amount may change with future year assessments adjusted based on the terms of the new management plan and will continue to be collected through the County property tax bills listed under Tax Code 0916 "DOWNTOWN PBID". Any questions may be directed to Thomas Borden at (408) 535-6831.
 - c. **Transportation:**
 - i. This project is located in the expanded Downtown Core and is covered under the new San Jose Downtown Strategy 2040 EIR; therefore, no CEQA traffic

analysis is required. However, the project is required to perform a Local Transportation Analysis to identify any operational issues.

- ii. A Local Transportation Analysis has been performed for this project based on a net 44 AM and 71 PM peak hour trips. See separate Local Transportation Analysis Memo dated September 08, 2022, for additional information. The following conditions shall be implemented:
 - a) Provide a parking agreement for a minimum of 69 off-site parking spaces within the 4th Street parking garage.
 - b) Construct the protected bikeway hardscape south of the project frontage and continued along the adjacent Hotel Clariana frontage along 4th Street. See Street Improvement section for more information
 - c) Construct a signal modification at the Fourth Street and Santa Clara Street intersection that includes installation of striped bike lanes adjacent to all crosswalks, ADA ramps, a bulb-out on the southwest corner and corner islands per the City of San Jose 2025 Better Bike Plan.
- d. **Grand Boulevard:** This project fronts East Santa Clara Street which is designated as one of the seven Grand Boulevards per the Envision San Jose 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
- e. **Private Improvements within Public Property:** The permittee's encroachment of roof overhangs requires the issuance of an encroachment permit, which is subject to the discretionary approval of the City Council. Encroachment permits are authorized and issued in accordance with Chapter 13.37 of the Municipal Code. If the City Council does not authorize an encroachment permit for this project, the permittee shall apply for a Planning Permit Adjustment or Amendment, as applicable, to remove the encroachment(s). If the City Council authorizes an encroachment permit for this project that is not consistent with the encroachment proposed by this Permit, the permittee shall apply for a Permit Adjustment or Amendment, as necessary, to remove the encroachment(s) from the project or modify the encroachment(s) to conform to the approved encroachment permit. If an encroachment permit is authorized, the permittee shall execute an Encroachment Agreement, which shall be recorded against title to the property, prior to the City issuing any permit that would allow the installation or construction of the encroachment.
- f. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants

(sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.

- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- iii. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- iv. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to foundation, earthwork, utility trenching, retaining and drainage recommendations.

g. Shoring:

- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the permittee or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other permanent shoring will not be allowed to encroach more than 12 inches within the public right-of-way (i.e., soldier beams).
- iii. If tie-backs are proposed for use along the adjacent properties 467-23-033, 467-23-038, and 467-23-102 agreements between the permittee and the adjacent property owner(s) will need to be secured, executed and provided to

the Public Works Project Engineer prior to approval of the Grading Permit for this project.

- h. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices which includes site design measures, source controls and numerically-sized Low Impact Development stormwater treatment measures to minimize stormwater pollutant discharges.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iii. Media Filter Unit(s) located within Building footprints must conform to Building Division Directive P-005 located at the following:
<http://www.sanjoseca.gov/home/showdocument?id=27405>
- i. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- j. **Flood, Zone D:** The project site is not within a designated Federal Emergency Management Agency 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- k. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
- l. **Undergrounding:** The project's 4th Street frontage is in an underground district formed post-1988. Undergrounding fees are due whether wires exist or not. Percentage of the base fee will be determined at a later date. Currently, the 2022 base fee is \$574 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time Public Works Clearance is issued.
- m. **Street Improvements:**
 - i. Construct a 16 -foot-wide attached sidewalk with 6-foot by 4-foot tree wells at the back of curb along the East Santa Clara Street project frontage.

- ii. Construct a 22-foot-wide attached sidewalk section with a 12-foot-wide sidewalk with 5-foot by 5-foot tree wells, a 7-foot raised bike lane, and 3-foot-wide landscaped median island along the 4th Street project frontage.
- iii. Construct a 3-foot-wide raised median island along the 4th Street frontage of the southerly adjacent property if funds are available by the City for its construction cost. Design of the improvement will be finalized at construction drawing stage. Any modifications after PW permit approval shall release the permittee from the responsibility of constructing this improvement.
- iv. Reconstruct the existing driveway along the 4th Street project frontage to be a 20-foot-wide City standard driveway.
- v. Remove and replace the ADA ramps at the southwest corner of East Santa Clara and 4th Street per City standard detail R-11.
- vi. Perform a signal modification at 4th Street and Santa Clara Street intersection in order to implement the following:
 - a) Relocate existing signal equipment at the southwest corner conflicting with east-west ADA curb ramp.
 - b) Construct a half bulb-out at the southwest corner along the Santa Clara Street frontage and relocate the existing signal equipment.
- vii. Submit conceptual traffic signal plans for City review showing all existing components including all corners of the intersection in advance of a formal public street improvement application submittal.
- viii. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- ix. Remove and replace broken, uplifted curb and gutter as well as broken, uplifted or non-ADA compliant sidewalk along project frontage.
- x. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage. There is existing fiber cable along the Santa Clara Street frontage.
- xi. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- xii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

- n. **BART Phase II:** The project will be required to submit structural and shoring plans to the VTA for coordination with the future BART tunnel to ensure no conflicts or impacts to the proposed BART project. Tie-backs may not be acceptable at certain locations and/or elevations depending on the project's design.
- o. **Downtown Construction:** This project is located within the General Plan Downtown Growth Area and will be required to comply with the Downtown Construction Guidelines ("DCG"). The DCG is for all work in the Public Right-of-Way to support the safe and orderly movement of people and goods by providing standards. The DCG serves as a guideline related to permits, coordination, and traffic control devices to entities performing work in downtown streets. A copy of the DCG can be found at: <https://www.sanjoseca.gov/home/showdocument?id=56303>.
- p. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, permittee shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
 - i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
 - a) **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (i.e., swinging loads over the sidewalk are not safe for pedestrians).
 - b) **Multi-Phased Site-Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
 - ii. Permittee shall minimize the potential impact to vehicular and pedestrian traffic by:

- a) Implementing the closures at the time the onsite activities dictate the need for the closure.
- b) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in the conditions above.
- iii. If the proposed lane and parking closures are a part of the Revocable Permit Application, permittee shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/?navid=1629>. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- q. **Strong Neighborhoods Initiative (SNI):** This project is located within the University SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
- r. **Sanitary:** The project is required to submit plan and profile of the sewer lateral locations for final review and comment prior to construction.
- s. **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San Jose Downtown Streetscape and Street and Pedestrian Lighting Master Plans.
- t. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- u. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. If street tree locations conflict with existing utilities, permittee shall be solely responsible for relocating or adjusting utilities as necessary to resolve conflict. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
 - i. The recommended street trees on East Santa Clara are *Laurus nobilis* 'Saratoga' spaced approximately 25 feet on center.
 - ii. Protect existing street trees on South 4th Street.
- v. **Referrals:** This project should be referred to Santa Clara Valley Transportation Authority and the Bay Area Rapid Transit.

45.Revocation, Suspension, Modification. This Site Development Permit may be

revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

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ADOPTED this ____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO

Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

EXHIBIT A
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Being a portion of Lot 1, Block 1, Range 4 North of the City of San Jose, Santa Clara County Records, described as follows:

Beginning at a point on the Westerly line of Fourth Street distant thereon 97.50 feet, Southerly from the point of intersection of the Westerly line of Fourth Street with the Southerly line of Santa Clara Street; thence Westerly and parallel with the Southerly line of Santa Clara Street, 102.84 feet to the Easterly line of land conveyed by Louis Henning by deed recorded on May 29, 1901, in [Book 242 of Deeds, Page 170](#); thence Southerly and along said Easterly line 40.38 feet to the Southerly line of Lot 1 in Block 1, Range 4 North of the base line of the City of San Jose; thence Easterly and along said line of Lot 1, 102.84 feet to the Westerly line of Fourth Street; thence Northerly 40.38 feet to the Point of Beginning.

[APN: 467-23-034](#)

EXHIBIT A
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel One:

Portion of Lot 1, in Block 1 Range 4 North, as shown upon that certain Map entitled, "City of San Jose, copies from the original Map drawn by Sherman Day, Civil Engineer", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, in [Book A of Maps, at Page 72](#) and 73, and more particularly described as follows:

Beginning at the intersection of the Southerly line of Santa Clara Street with the Westerly line of Fourth Street; thence Westerly and along the Southerly line of Santa Clara Street, 60.93 feet to the Northeasterly corner of Parcel conveyed by Emil G. Levy, et al, to A.F. Woodsum, by Deed Recorded May 23, 1905 in [Book 295 of Deeds, page 526](#); thence at right angles Southerly and parallel with the Westerly line of Fourth Street, 97.50 feet; thence at a right angle Easterly and parallel with said line Santa Clara Street, 60.93 feet to the Westerly line of Fourth Street; thence at right angles Northerly and along said line of Fourth Street, 97.50 feet to the point of beginning.

Parcel Two:

A right of way as and for a roadway over the following described tract of strip of land, to wit;

Commencing at a point on the Westerly line of Fourth Street 97 ½ feet Southerly thereon from where said line intersects the Southerly line of Santa Clara Street; thence Southerly and along said line of Fourth Street 10 feet; thence at right angles Westerly and parallel with said line of Santa Clara Street 102.84 feet to the Easterly line of Lot now or formerly of Louis Henning; thence right angles Northerly and along last named line 10 feet; thence at right angles Easterly and parallel with Santa Clara Street 102.84 feet to the point of commencement, and being a part of Lot 1 Block 1 Range 4 North of the base line, as shown upon Map of said City of San Jose, of record in the Office of the County Recorder of the County of Santa Clara, State of California, in [Book A of Maps, Page 72](#), records of said County.

[APN: 467-23-035](#)

EXHIBIT A
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel One:

BEGINNING at a point on the Southerly line of Santa Clara Street, distant thereon 6 inches Easterly from the point of intersection of said Southerly line of Santa Clara Street with the dividing line between Lots 1 and 2 in Block 1 Range 4 North of the base line of the City of San Jose; thence running Easterly and along said Southerly line of Santa Clara 34.50 feet; thence running Southerly and parallel with the Westerly line of Fourth Street 137.50 feet to a point on the dividing line between Lots 1 and 4 in said Block 1 Range 4 North; thence at right angles Westerly and along said dividing line between said Lots 1 and 4, 35 feet to the common corner of Lots 1, 2, 3 and 4 in Block 1 Range 4 North; thence running Northerly and along the dividing line between Lots 1 and 2 in Block 1 Range 4 North 68.94 feet to a point in the Southerly line of that 6 inch strip of land conveyed by Louis Henning to Emil G. Levy and M.C. Harris by Deed dated July 20, 1905 and recorded July 20, 1905 in [Liber 292 of Deeds, Page 122](#), Santa Clara County Records; thence at right angles Easterly and along the Southerly line of said strip 6 inches to the Southeasterly corner thereof; thence at right angles Northerly and along the Easterly line of said 6 inch strip 68.96 feet to the point of beginning, being a part of Lot 1 in Block 1 Range 4 North of the base line of the City of San Jose.

Parcel Two:

The right to pass and repass on foot, with vehicle or team and generally for any and all purposes over, upon and along the land described as follows, to wit:

COMMENCING at a point in the Westerly line of Fourth Street 97.50 feet Southerly thereon from where said line intersects with the Southerly line of Santa Clara Street; thence Southerly and along said Westerly line of Fourth Street 10 feet, thence at right angles Westerly and parallel with said Southerly line of Santa Clara Street 102.84 feet to the Easterly line of said premises of second party thence Northerly and along the Easterly line of second party to the Southerly line of lands now or formerly of Mrs. A. F. Woodsum; thence Easterly and along the Southerly line of lands now or formerly of Woodsum, Bradlee and said Levy and Harris to the Westerly line of Fourth Street, the point of beginning as said right of way was granted by Emil G. Levy and M.C. Harris to Louis Henning by instrument dated July 20, 1905 and recorded July 20, 1905 in [Liber 293 of Deeds, Page 253](#), records of Santa Clara County, California.

[APN: 467-23-037](#)