

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO ALLOW DEVELOPMENT OF THE DOWNTOWN WEST MIXED-USE PLAN WITHIN THE DOWNTOWN WEST DC (PD) PLANNED DEVELOPMENT ZONING DISTRICT

FILE NO. PD19-029

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on October 10, 2019, Google LLC (“Project Sponsor” or “Google”) submitted an application to the City of San José for a Planned Development Permit (File No. PD19-029) to allow for the phased development of the Downtown West Mixed-Use Plan (the “Project” or “Downtown West”), including the demolition of certain existing buildings and the removal of approximately 537 existing urban street or landscape trees, on approximately 78 acres, on that certain real property situated in the Downtown West Planned Development Zoning District (“Downtown West PD Zoning District”); and

WHEREAS, the Project advances a plan that re-envision a significant portion of the Diridon Station Area Plan as a mixed-use area that includes development of: up to 7.3 million gross square feet (gsf) of commercial office space; up to 5,900 residential units; up to 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space); up to 300 hotel rooms; up to 800 limited-term corporate accommodations; up to 100,000 gsf of event and conference space; up to 4,800 publicly accessible commercial parking spaces and up to 2,360 unbundled parking spaces for residential use; a "District Systems" approach to delivery of on-site utilities, including designated infrastructure zones with up to two (2) on-site centralized utility plants totaling up to 130,000 gsf; one or more on-site logistics centers to serve the

commercial on-site uses that would occupy a total of about 100,000 gsf; a total of approximately 15 acres of parks, plazas and open space, including areas for outdoor seating and commercial activity (such as retail, cafes, and restaurants), green spaces, landscaping, mid-block passages, riparian setbacks, and trails; and various other improvements to the public realm to improve transit access and pedestrian and bicycle circulation and facilitate connectivity, both within the site and to and from surrounding neighborhoods; and

WHEREAS, On December 30, 2019, Governor Gavin Newsom certified the Project as an environmental leadership development project under Public Resources Code § 21178 *et seq.* the Jobs and Economic Improvement through Environmental Leadership Act of 2011 (Assembly Bill [AB] 900, as amended by Senate Bill 734 [2013], AB 246 [2017], and Senate Bill 7 [2021], which is currently pending approval); and

WHEREAS, the Project has complied with requirements related to AB 900 as of the date of adoption of this Ordinance and would comply with post-adoption AB 900 requirements if SB 7 is enacted; and

WHEREAS, community outreach and public review for the Project has been ongoing since 2018 and has included over 50 meetings with members of the Diridon Station Area Advisory Group (SAAG), and over 100 community outreach events consisting of in-person and digital engagement with residents, neighbors, business owners and employees, construction trades, and other stakeholders that included: public design workshops; booths at local and regional community events; presentations to and discussions with local neighborhood, business, and community/special interest associations and organizations; focus group discussions; engagement with faculty and students at local universities and schools; and other large and small events reaching communities within and around the Project site; and

WHEREAS, on May 25, 2021, the City Council adopted Ordinance No. [REDACTED], approving the rezoning of the Project site, which consists of approximately 80 acres of real property that is generally bounded by Lenzen Avenue and the Union Pacific Railroad (UPRR) tracks to the north; North Montgomery Street, Los Gatos Creek, the Guadalupe River, Barack Obama Boulevard (formerly South Autumn Street and Bird Avenue), and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain rail tracks to the west, to the Downtown West Mixed-Use Plan DC (PD) Planned Development Zoning District; and

WHEREAS, the Downtown West PD Zoning District consists of three (3) sub-areas, identified as Sub-Area 1, Sub-Area 2, and Sub-Area 3 in the General Development Plan (“GDP”), and generally depicted in the GDP; and

WHEREAS, the land use regulations and development standards for development within the Downtown West PD Zoning District are reflected in the Downtown West GDP which establishes the permitted uses, development standards, and use regulations applicable to development within the Downtown West PD Zoning District and guides the content of the Downtown West PD Permit; and

WHEREAS, the real property subject to the Downtown West PD Permit is more particularly described in Exhibit A and includes an approximately 78-acre area that consists of Sub-Area 1 and Sub-Area 3 as generally depicted in the GDP; and

WHEREAS, the Downtown West PD Permit consists of the following components: Downtown West Design Standards and Guidelines (“DWDSG”), including the Errata dated [REDACTED], Downtown West Improvement Standards (“DWIS”), Conceptual Infrastructure Plan Sheets, and the Conformance Review Implementation Guide (“Implementation Guide”) (collectively, these documents are referred to as the “Downtown West PD Permit”); and

WHEREAS, the DWDSG consists of objective and performance based standards and qualitative and subjective guidelines for the development of the Project; and

WHEREAS, the DWDSG standards and guidelines are separate from the Downtown Design Guidelines (“DDG”) adopted April 23, 2019, and the Complete Streets Design Standards and Guidelines (“CSDSG”), adopted May 2018; development of Downtown West shall be subject to the DDG and CSDSG standards and guidelines unless a DDG or CSDSG standard or guideline is expressly superseded by the DWDSG as identified in Appendix D and E of the DWDSG; and

WHEREAS, the DWIS describes the standards and specifications used to evaluate horizontal improvements within the Downtown West PD Zoning District including certain provisions of the Standard Details and Standard Specifications adopted by the City’s Public Works Department (July 1992) (“1992 Standards”) and provides that the DWIS supersedes other provisions of the 1992 Standard; and

WHEREAS, the Conceptual Infrastructure Plan Sheets are conceptual plan sheets that describe anticipated site elements such as floodplains, grading design, utility design, stormwater improvements, and utilidor encroachments based on standards provided in the DWIS; and

WHEREAS, development of the Project is intended to occur in phases and the GDP authorizes and establishes the Downtown West PD Zoning District Design / Conformance Review (“Conformance Review”) process, a subsequent review process for the design and development of vertical improvements, open space, and horizontal improvements within the Downtown West PD Zoning District; and

WHEREAS, the Implementation Guide sets forth the Conformance Review process, including but not limited to application submittal requirements and City review timelines for the City's review and approval of Conformance Review applications for vertical improvements, open space improvements, and horizontal improvements; and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A", entitled "Legal Description," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on the Project applications on April 28, 2021, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, the Planning Commission voted to recommend that the City Council adopt a resolution to approve the Downtown West PD Permit based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing 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

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Downtown West Planned Development Permit" dated _____, which consists of the DWDSG, DWIS, Conceptual Infrastructure Plan Sheets, and Implementation Guide, and said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

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

WHEREAS, this City Council of the City of San José has considered, approved, and certified the Final Environmental Impact Report for the Downtown West Mixed Use Plan ("FEIR") and adopted related findings, a Mitigation Monitoring and Reporting Program and a Statement of Overriding Considerations pursuant to the California Environmental Quality Act (CEQA) under separate Resolution No. [REDACTED] on May 25, 2021 prior to making its determination on this Downtown West PD Permit or any other Project approvals; and

WHEREAS, this Resolution approving the Downtown West PD Permit is a companion to the following approvals relating to Downtown West: an override of the Santa Clara County Airport Land Use Commission's Comprehensive Land Use Plan inconsistency

determination (Resolution No. [REDACTED]); amendments to General Plan (Resolution No. [REDACTED]); amendments to the Diridon Station Area Plan (Resolution No. [REDACTED]); the Development Agreement for the Downtown West Mixed-Use Plan (Ordinance No. [REDACTED]); Planned Development Rezoning, including a General Development Plan (Ordinance No. [REDACTED]); amendments to Title 20 of the San José Municipal Code (Ordinance No. [REDACTED]); approval of a Vesting Tentative Map (Resolution No. [REDACTED]); amendments to the landmark boundaries of the San José Water Company at 374 West Santa Clara Street and the Southern Pacific Depot Historic District (Resolutions No. [REDACTED] and [REDACTED]); an amendment to Historic Preservation Permit (HP16-002) (Resolution No. [REDACTED]); approval of Major Encroachment Permits (Resolution No. [REDACTED]); approval of the Construction Impact Mitigation Plan (Resolution No. [REDACTED]); and approval of partial vacation of certain streets within Downtown West (Resolution Nos. [REDACTED]);

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

After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject site consists of approximately 78 acres of real property that is generally bounded by Lenzen Avenue and the Union Pacific Railroad (UPRR) tracks to the north; North Montgomery Street, Los Gatos Creek, the Guadalupe River, Barack Obama Boulevard (formerly South Autumn Street and Bird Avenue), and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain rail tracks to the west.

The site is in an area of Downtown San José that accommodates manufacturing, light industrial, and business service land uses mixed with limited residential and commercial uses. The SAP Center and Diridon Station are located adjacent to the subject site. The Project site is located within the Diridon Station Area Plan and the General Plan Downtown Growth Area boundary.

2. **Project Description.** The project consists of up to 7.3 million gross square feet (gsf) of commercial office space; up to 5,900 residential units; up to 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space); up to 300 hotel rooms; up to 800 limited-term corporate

accommodations; up to 100,000 gsf of event and conference space; up to 4,800 publicly accessible commercial parking spaces and up to 2,360 unbundled parking spaces for residential use; a "District Systems" approach to delivery of on-site utilities, including designated infrastructure zones with up to two (2) on-site centralized utility plants totaling up to 130,000 gsf; one or more on-site logistics centers to serve the commercial on-site uses that would occupy a total of about 100,000 gsf; a total of approximately 15 acres of parks, plazas and open space, including areas for outdoor seating and commercial activity (such as retail, cafes, and restaurants), green spaces, landscaping, mid-block passages, riparian setbacks, and trails; and various other improvements to the public realm to improve transit access and pedestrian and bicycle circulation and facilitate connectivity, both within the site and to and from surrounding neighborhoods.

The Downtown West PD Permit includes real property in Sub-Area 1 and Sub-Area 3 of the Downtown West PD Zoning District as generally depicted in the GDP. The GDP identifies the maximum allowable development in each Sub-Area, subject to the allowable transfers and conversion established in the GDP. Up to 5,900 residential units are permitted within the real property subject to the Downtown West PD Permit pursuant to the allowable transfers and conversions under the GDP.

3. **General Plan Consistency.** The subject site consists of the Downtown and Commercial Downtown land use designations on the General Plan Land Use/Transportation Diagram (as amended by Ordinance No. [REDACTED]). The Downtown land use designation allows office, retail, service, residential and entertainment uses at very high intensities, unless incompatible with other major policies within the General Plan. The Downtown land use designation allows a density of up to 800 dwelling units per acre and FAR up to 30.0. The Commercial Downtown land use designation allows office, hotel, retail, service, and entertainment uses. Residential uses are not allowed in the Commercial Downtown designation. The Commercial Downtown land use designation allows FAR up to 15.0.

The project conforms to the General Plan goals and policies for the reasons set forth in Exhibit "B" to Resolution No. [REDACTED] approving the General Plan Amendment, which findings are incorporated herein by reference.

4. **Diridon Station Area Plan Consistency.** The subject site is within the boundaries of the Diridon Station Area Plan ("DSAP") as amended by Resolution No. [REDACTED].

The project is consistent with the following key DSAP goals:

- a) Create an urban district in the Station Area that maximizes height potential. The Station Area should accommodate a mix of uses including commercial and office, residential and active uses.

The Project consists of a complementary mix of uses that create a vibrant, transit-oriented urban neighborhood and destination. The development program optimizes development density, which consists of up to 7.3 million gsf of commercial office space; up to 5,900 residential units; up to 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space); up to 300 hotel rooms; up to 800 limited-term corporate accommodations; up to 100,000 gsf of event and conference centers; a "District Systems" approach to delivery of on-site utilities, including designated infrastructure zones with up to two (2) on-site centralized utility plants totaling up to 130,000 gsf; one or more on-site logistics centers to serve the commercial on-site uses that would occupy a total of about 100,000 gsf; a total of approximately 15 acres of parks and open spaces. The DWDSG includes standards and guidelines that distribute land uses throughout the Project site in a manner that is compatible with adjacent uses, surrounding neighborhoods, and adjacent open spaces (DWDSG Chapter 3). Residential uses are generally located near existing residential neighborhoods and office uses are generally located along the existing rail track. DWDSG standards (Chapter 3) require certain land uses on certain development blocks, while allowing for flexibility on other blocks to promote the development of Downtown West into a mixed-use, transit-oriented site. The DWDSG also includes standards and guidelines that distribute active uses throughout Downtown West to create a vibrant public realm. Active use shall be required, at a minimum, along 30 percent of the ground floor frontage of certain blocks to activate streets and open spaces within Downtown West.

The Project also maximizes height potential within the Project Site. The City Council approved a policy to allow for greater height limits in Downtown, including within the DSAP, in March 2019. The Project proposes allowable building heights that range from 160 feet to 290 feet above ground level (AGL), contingent on required Federal Aviation Administration (FAA) review clearance. The DWDSG (Section 5.6) establishes standards and guidelines that establish maximum building heights throughout the Project site. The Project maximizes allowable building heights, while in certain blocks setting heights lower than the maximum height only as needed to establish variation in the skyline and to better respond to contextual adjacencies, including historic resources, existing single-family residential neighborhoods, and Los Gatos Creek and the open space program. For instance, the DWDSG establishes standards that limit building heights at Creekside Walk and on certain blocks to respond to contextual adjacencies.

- b) Establish and strengthen connections to surrounding districts and within the planning area for pedestrians, bicyclists, and motorists, with emphasis on east-west connectivity across SR-87 and the rail corridor.

The Project, located adjacent to Diridon Station, enhances connections to nature, surrounding neighborhoods, and the greater Bay Area region, by strengthening links to Downtown and surrounding neighborhoods. The Project includes improvements to the public realm, including maximizing space for active streetscape - which includes sidewalk, bike lanes and planting areas - to optimize connections to nearby regional transit services. Streets designed in Downtown West prioritize pedestrians and bicyclists with generous sidewalks, protected bike lanes, and traffic calming measures in alignment with the City's Complete Streets Design Standards and Guidelines ("CSDSG"). The Project's proposed street network extends the existing street network to enhance connections to the surrounding neighborhood and proposes mid-block passages to optimize walkability. The Project also proposes improvements to east-west connectors, including West Santa Clara Street, West San Fernando Street, Park Avenue, West San Carlos Street, West Julian Street, West St. John Street (new street), West Post Street (new street), and Auzerais Avenue, to provide pedestrian and bicycle priority streets to link neighborhoods east and west of the rail corridor.

The DWDSG (Chapter 6) includes standards and guidelines for the design and development of Downtown West streets that prioritize pedestrians and cyclists and support walking, biking, and public access and ridership. The DWDSG standards include requirements to extend the street network, including Cahill Street north of West Santa Clara Street to North Montgomery Street; Cahill Street south of West San Fernando Street to Park Avenue; West St. John Street to the Cahill Street extension; West Post Street between Cahill Street and Barack Obama Boulevard; North Montgomery Street north of Cinnabar Street to North Autumn Street; and North Autumn Street from the Union Pacific Railroad to Lenzen Avenue. The DWDSG also establishes standards and guidelines for the sidewalk, including minimum overall active streetscape widths and other requirements related to the various sidewalk zones (e.g. frontage zone, through zone, furnishing zones), that enhance pedestrian safety and support safe crossing. The DWDSG establishes standards and guidelines for east-west connectors that link Downtown West to adjacent neighborhoods. East-west connectors within Downtown West include West Santa Clara Street, West San Fernando Street, Park Avenue, West San Carlos Street, West Julian Street, Auzerais Avenue and new street extensions such as West St. John Street and West Post Street.

c) Prioritize pedestrian circulation and transit.

The Project prioritizes pedestrian space within streets to promote walkability. The street network supports walking, biking, and public transit access and ridership to and from Downtown West. The pedestrian network is enhanced with active street elements, protected bike lanes, and dynamic lanes. The DWDSG includes standards and guidelines for the various sidewalk zones to improve pedestrian experience and increase safety for people walking and biking within Downtown West and to adjacent neighborhoods. The DWDSG further enhances transit

access and ridership by leveraging the Project's proximity to Diridon Station, a regional transit hub. The DWDSG includes standards for anticipated transit access streets, shuttle routes, and shuttle stops to provide safe and convenient connections to and from the Project site.

- d) Provide a range of commercial and residential uses.

The Project provides a balanced mix of commercial and residential uses that create a vibrant, mixed-use transit-oriented neighborhood. Commercial uses include up to 7.3 million gsf of commercial office space; up to 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space); up to 300 hotel rooms; and up to 100,000 gsf of event and conference space. Other commercial land uses are distributed throughout the Project to be compatible with adjacent uses and the surrounding neighborhood.

The Project proposes up to 5,900 residential units. Residential uses are generally located near existing residential neighborhoods within areas with the Downtown land use designation as further set forth in the DWDSG. The Project also provides for a robust affordable housing program, as further set forth in the Development Agreement for the Downtown West Mixed-Use Plan. The Project's affordable housing program, which assumes development of 4,000 residential units, supports the production of up to 1,000 affordable housing units, and furthers Google's and the City's shared goal that development within the DSAP results in twenty-five percent (25%) of all residential units as affordable housing. The DWDSG (Chapter 3 Land Use) includes standards that intentionally distribute a mix of land uses throughout the site to relate to context and to create an active public realm. The DWDSG requires certain land uses on certain development blocks, while allowing for flexibility on other blocks to promote the development of Downtown West into a mixed-use, transit-oriented site. The DWDSG also includes standards and guidelines that distribute active uses - which include commercial, retail/restaurant, arts, cultural, live entertainment, community center, institutional, childcare and education, maker spaces, non-profit, and small-format office spaces - throughout Downtown West to create a vibrant public realm. Active uses are required, at a minimum, along 30 percent of the ground floor frontage of certain blocks to activate streets and open spaces within Downtown West.

- e) Enhance and expand access to open space and recreational opportunities in the Station area and establish an open space system integrated with Los Gatos Creek and Guadalupe River Park.

The Project will provide a total of approximately 15 acres of parks and open space, consisting of both City-Dedicated Open Space (Los Gatos Creek Multi-Use Trail and City-Dedicated Park) and Project Sponsor-Owned Open Space (Privately-Owned Public Park, Semi-public open space, Los Gatos Creek Riparian Setback, Los Gatos Creek Riparian Corridor, Mid-Block Passages).

The Project will enhance and expand access to open space as the Project's open space program includes a park or plaza at nearly every major intersection, near each neighborhood, and no more than one block away from any location in the Project. The open space program integrates with the surrounding communities and provides areas for outdoor seating and commercial activity (such as retail, cafes, and restaurants), green spaces, landscaping, mid-block passages, riparian setbacks, and trails. The open space network also improves access and connectivity along the riparian corridors and supports biodiversity within a high-density urban context through ecologically beneficial landscape design. As set forth in the DWDSG, the design character of open spaces ranges from natural to more urban, with each open space relating to its adjacent surroundings.

- f) Activate the streets, parks, and Station with art that engages visitors and residents alike. Integrate art into infrastructure to humanize and enliven standard features.

Art is encouraged throughout Downtown West to engage visitors and residents, help share gathering places, and to be used as a tool for learning about culture and history and the regional nature and creek ecology. The DWDSG includes standards, guidelines, and contextual considerations that promote the use of art as appropriate within the Project site. For instance, the Project includes mid-block passages to enhance pedestrian connectivity and optimize walking between neighborhoods. The DWDSG includes guidelines that encourage art in mid-block passages and contextual considerations to incorporate different forms of art into certain mid-block passages to further activate the space. The DWDSG also includes guidelines that encourage the use of art to add a sense of destination, inspire thought and dialogue, commemorate important individuals and events, and connect to the natural environment. Within Downtown West, art is intended to be used as a tool not only for activating streets, parks, and the Diridon Station area, but to engage visitors and residents by conveying information about the culture and history of the City. While art within Downtown West is encouraged, the DWDSG includes standards regarding art within the riparian setback to protect against environmental disruption within the riparian setback along Los Gatos Creek and Guadalupe River.

- g) Disperse parking in different locations in the planning area and beyond to ensure easy walking access to destinations.

The Project provides safe, convenient, and strategically located parking throughout Downtown West. Off-street parking is intended to support a walkable environment and Downtown West includes public, district-serving garages near entries to the site that service office, active use, and SAP Center events. Additional parking is located within individual residential buildings or clustered buildings. The Project allows up to 4,800 publicly accessible commercial parking spaces and up to 2,360 unbundled parking spaces for residential use. The GDP establishes residential parking standards and a Required Parking Ratio for commercial/public

parking as further described in Exhibit K of the Development Agreement. The DWDSG includes standards and guidelines for parking facilities within Downtown West to provide for vehicular access from adjacent streets, and to design parking garages as an integrated component of a building's overall design. The DWDSG also includes off-street parking standards that promote shared district parking that is accessible to the various mixed uses within Downtown West, nearby transit and the SAP Center.

- 5. Downtown West Planned Development Zoning Conformance.** The project includes the rezoning of the site to the Downtown West PD Zoning District, a DC(PD) Planned Development Zoning District (Ordinance No. [REDACTED]). The land use regulations and development standards for development within the Downtown West PD Zoning District are reflected in the Downtown West General Development Plan ("GDP"). The GDP establishes the permitted uses, development standards, and use regulations applicable to the Downtown West PD Zoning District and authorizes transfers of square footage and conversion of land uses between Sub-Areas subject to the conditions and criteria established in the GDP, including but not limited to compliance with CEQA.

The Downtown West PD Zoning District consists of three (3) sub-areas, identified as Sub-Area 1, Sub-Area 2, and Sub-Area 3 in the GDP, which are generally depicted in the GDP. Sub-Area 2 is included within the boundaries of the Downtown West PD Zoning District but is not included within the Downtown West PD Permit and represents land owned by the Santa Clara County Transit District. Development within Sub-Area 2 shall be subject to the requirements of the base zoning district and entitled with issuance of a subsequent Planned Development Permit for Sub-Area 2.

The Downtown West PD Permit is consistent with and implements the GDP. The DWDSG and DWIS establish design standards, guidelines, and specifications that apply to the design and development of vertical, open space, and horizontal improvements within Downtown West. The Implementation Guide establishes the process, submittal requirements, and City review timeframes for the Conformance Review process applicable to vertical improvements, open space, and horizontal improvements established and authorized through the GDP.

DWDSG standards are requirements, and compliance is mandatory, subject to the relief mechanisms established by and authorized in the GDP. Such relief mechanisms include, but are not limited to minor modifications (deviation of less than 10% from a numerical standard or minor deviation from a qualitative standard), exceptions (waiver of a DWDSG standard), deferrals (deferring compliance of a DWDSG standard), and amendments to the Downtown West PD Permit. DWDSG guidelines must be considered by the project sponsor, however, Conformance Review shall be approved notwithstanding that guidelines have not been implemented where the project sponsor provides information showing the

subject application achieves the applicable design intent set forth in the chapter of the applicable guideline. The project sponsor's decision not to implement a guideline shall not be grounds for disapproving a Conformance Review application if the project sponsor demonstrates that the application achieves the design intent set forth in the chapter of the applicable guideline. The project sponsor shall provide a narrative of how the subject application achieves the design intent in the chapter of the applicable guideline without implementation of the applicable guideline.

As described in the DWDSG, the DDG and CSDSG also apply to Downtown West unless a DDG or CSDSG standard or guideline is expressly superseded by the DWDSG.

The DWIS describes the standards and specifications used to evaluate horizontal improvements within the Downtown West PD Zoning District, including certain provisions of the 1992 Standards, and provides that the DWIS supersedes other provisions of the 1992 Standards. As authorized in the GDP, the project sponsor may request a modification from DWIS specifications. The DWIS shall also apply to street improvements, utility infrastructure, and utilidors that are located outside the Downtown West PD Zoning District but are necessary to serve property within the Downtown West PD Zoning District.

Downtown West shall be designed and developed in phases. The Conformance Review process, which is further detailed in the GDP and the Implementation Guide, ensures that the subsequent design and development of vertical improvements, open space, and horizontal improvements are consistent with the GDP, Downtown West PD Permit, and other applicable Project approvals and documents. As described in the GDP and the Implementation Guide, the Conformance Review process provides the Director of PBCE (vertical and open space improvements) and the Director of Public Works (horizontal improvements), each in consultation with applicable City departments, the authority to review, comment, and approve vertical, open space, and horizontal improvements as design progresses for the Project to ensure conformity with the GDP, Downtown West PD Permit, and other applicable project approvals and documents.

Based on the foregoing, the Council finds that the Downtown West PD Permit conforms with the Downtown West PD Zoning District, a DC(PD) Planned Development Zoning District (Ordinance No. [REDACTED]).

- 6. Downtown Design Guidelines (DDG) Consistency.** The DDG sets forth standards and guidelines that govern the planning and design of Downtown's public realm, building massing, architecture, ground floor treatment, transit access, parking, view corridors, pedestrian and bicycle connectivity, material and color, lighting, signage, façade treatment, bird-safe design, and transitions to existing lower intensity and historic buildings. The DDG provides that in connection with future development within the DSAP, new design solutions could be adopted that

take alternate approaches to achieve common goals for the DSAP. The DWDSG establishes standards and guidelines that are separate from and expand on the DDG standards and guidelines. Development of Downtown West shall be subject to the DDG standards and guidelines unless superseded by the DWDSG. DDG standards and guidelines superseded by the DWDSG are identified in Appendix D (DDG Standards and Guidelines That Do Not Apply to Downtown West) to the DWDSG. As such, the City approves exceptions to DDG standards identified in Appendix D of the DWDSG, for the reasons set forth in Appendix D of the DWDSG, which are here incorporated by reference. DDG standards and guidelines that are applicable to Downtown West are identified on the Vertical Improvement and Open Space Conformance Review Checklists and the Project Sponsor shall demonstrate consistency with applicable DDG standards and guidelines during the Conformance Review process.

- 7. Environmental Review.** The City of San José, as the lead agency for the proposed Project, prepared a Final Environmental Impact Report for the Project pursuant to and in accordance with CEQA. The Final Environmental Impact Report is comprised of the Draft Environmental Impact Report for the Project and all appendices thereto (the "Draft EIR"), the comments and responses to comments, and the revisions to the Draft EIR (collectively, all of said documents are referred to herein as the "FEIR"). On April 28, 2021, the Planning Commission of the City of San José reviewed the FEIR prepared for the Downtown West Mixed-Use Plan and recommended to the City Council that it find the environmental review for the proposed Project was completed in accordance with the requirements of CEQA. By Resolution No. [REDACTED], the City Council considered, approved, and certified the FEIR and adopted related findings, a Mitigation Monitoring and Reporting Program, and a Statement of Overriding Considerations prior to taking any approval actions on the Project. The following outlines the environmental impacts discussed in the FEIR.

Identified Significant Unavoidable Impacts. As part of the certification of the FEIR, the City Council adopted findings as required by CEQA and a Statement of Overriding Considerations for the Project in Resolution No. [REDACTED]. The City determined that the Project would result in significant unmitigated or unavoidable impacts, associated with project-specific and cumulative emissions of criteria air pollutants; project-specific and cumulative effects related to health risks from toxic air contaminants and fine particulate matter; project-specific and cumulative effects on cultural (historic architectural) resources associated with demolition of historic buildings; a project-specific impact due to incompatible alterations to the historic Hellwig Ironworks Building at 150 South Montgomery Street; project-specific and cumulative land use effects associated with a conflict with airport noise policies in the Comprehensive Land Use Plan for Mineta San José International Airport; project-specific and cumulative construction noise impacts; project-specific and cumulative impacts resulting from increases in operational traffic noise;

project-specific and cumulative effects associated with exposure of persons to airport noise; and a cumulative impact associated with a contribution to the jobs/housing imbalance identified in the 2040 General Plan EIR. The City Council has considered the public record of proceedings on the proposed project as well as oral and written testimony at all public hearings related to the project, and does hereby determine that implementation of the project as specifically provided in the project documents would result in substantial public benefits as described in the Statement of Overriding Considerations adopted in Resolution No. [REDACTED].

Environmental Impacts and Mitigation Measures. As part of the certification of the FEIR, the City Council adopted a MMRP for the Project in Resolution No. [REDACTED], which is incorporated herein by reference.

The City evaluated the Alternatives as described in the FEIR, and based upon the consideration of substantial evidence in the record, including evidence of economic, legal, social, technological, and other considerations described in Resolution No. [REDACTED] the City determined that these alternatives are infeasible, and the City rejected the alternatives as set forth in the FEIR, findings, and Statement of Overriding Considerations.

8. Riparian Setback Policy Findings / Santa Clara Valley Habitat Plan. Portions of the Project located within 300 feet of riparian corridors are subject to Section A of City Council Policy 6-34, Riparian Corridor Protection and Bird-Safe Design ("Policy 6-34"). In addition, the Project as a whole is subject to the Santa Clara Valley Habitat Plan ("VHP"). Based on the following findings, the Council has determined that the Project is consistent with Policy 6-34 and is conditionally consistent with the VHP, with final determination of VHP consistency to be made prior to issuance of grading permits for specific phases of development:

- a) Policy 6-34 permits riparian setbacks of less than 100 feet for projects that are located within the boundaries of the Downtown area, as is the Project (Section A.2.a). The City may require a report certifying that the reduced setback will not significantly reduce or adversely impact the Riparian Corridor and/or that the proposed uses are not fundamentally incompatible with riparian habitats (Section A.3.b & A.3.c.). Section 6.2 of the FEIR concludes, based on reports by qualified professionals, that with its 50-foot riparian corridor setbacks for new buildings and its 50-100-foot ecological enhancement zones, and with implementation of Standard Conditions of Approval SCA BI-1 and SCA BI-2 and Project Mitigation Measures BI-1a - BI-1c, BI-2a-, BI-2c , BI-2d, BI-3 and BI-4, which apply minimum requirements for construction practices and also require monitoring and corrective actions around biological resources, the Project will cause no significant impact to riparian corridors or riparian habitats. DWDSG sections 4.8, 5.5, 5.6, 5.17 and 6.8 prohibit new buildings, active outdoor uses and streets within 50 feet of riparian corridors; require native riparian plantings and increased pervious surfaces in riparian corridors and

riparian setbacks, and encourage both in ecological enhancement zones; impose special height limits on the portions of buildings that are permitted within the ecological enhancement zone; and prohibit replacement of existing buildings that are within riparian setbacks in their existing locations. Standard Conditions of Approval require compliance with the Santa Clara Valley Habitat Plan and with the City's tree replacement ordinance. Mitigation measures include fish and wildlife protection measures; a restricted in-water construction schedule; restriction of riparian corridor construction to the smallest possible areas; monitoring of shading and heat island effects during project operation.

- b) Policy 6-34, Sections A.4 - A.6, provide that material and lighting design should reduce light and glare impacts to Riparian Corridors; lighting should not be directed into Riparian Corridors; restoration and rehabilitation of Riparian Corridors are strongly encouraged; and erosion control should avoid soil erosion and minimize runoff. Sections 3.2 and 3.8 of the FEIR, as well as Standards S4.7.2, S4.8.1 - S4.8.7, S4.16.3 - S4.16.5, S4.17.1 - S4.17.3, S4.17.5, S4.18.5, S5.5.7 - S5.5.9, S7.4.1 - S7.4.7, and S7.5.2 of the DWDSG which regulates design features within riparian setback areas, demonstrate that the Project meets these requirements. Regarding light and glare, DWDSG standards prohibit lighting directed into riparian corridors, require dark-sky building lighting, and otherwise regulate building, trail, footbridge and art lighting to minimize impacts to riparian corridors. As described above, DWDSG standards require extensive riparian planting in riparian setbacks and EIR mitigation measures require restoration wherever the project causes impacts to the riparian corridor. Hydrology and Water Quality mitigation measures include construction Best Management Practices as well as revegetation and ongoing monitoring of the riparian corridor following construction; regulatory requirements include preparation and implementation of a stormwater control plan. These requirements ensure soil erosion will be avoided and runoff will be minimized.
- c) The VHP permits riparian setbacks of less than 100 feet, and no less than 35 feet, where the reduced setback does not preclude achieving the biological goals and objectives of the VHP or conflict with other applicable requirements of the VHP and local policies. Section 6.2 of the FEIR concludes, based on reports by qualified professionals, that with its 50-foot riparian corridor setbacks for new buildings and its 35-foot setback from the Guadalupe River channel wall for historic buildings, its 50-100-foot ecological enhancement zones, and with implementation of Standard Conditions of Approval SCA BI-1 and SCA BI-2 and Project Mitigation Measures BI-1a - BI-1f, BI-2a - BI-2d, BI-3 and BI-4, the Project will cause no significant impact to riparian corridors or riparian habitats. Accordingly, the Project appears to be consistent with the VHP. The City will assess final consistency with the VHP prior to issuance of grading permits for specific phases of development; to obtain such permits, the Project

Sponsor will be required, under SCA BI-1, to submit a VHP Coverage Screening Form to the Director of PBCE and comply with applicable VHP conditions and fees.

9. Transportation Demand Management and Neighborhood Traffic and Parking Intrusion Monitoring Plan.

- a. Consistent with Mitigation Measure AQ-2h: Enhanced Transportation Demand Management Program, the Project Sponsor prepared and submitted a Transportation Demand Management (“TDM”) Plan, dated _____, which was reviewed and approved by the Directors of PBCE and Public Works. The TDM Plan is incorporated herein by reference and is on file with the Department of PBCE.
- b. The Project Sponsor prepared a Neighborhood Traffic and Parking Intrusion Monitoring Plan (“Neighborhood Plan”), dated _____, which was reviewed and approved by the Directors of PBCE and Public Works. The Neighborhood Plan is incorporated herein by reference and is on file with the Department of PBCE.

10. Planned Development Permit Findings. Part 8 of Chapter 20.100 of the San José Municipal Code establishes evaluation criteria for the issuance of a Planned Development Permit. These criteria are applied to 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 proposed Downtown West PD Permit. The Council makes the following findings pursuant to Section 20.100.940 of the San José Municipal Code in support of issuance of the Downtown West PD Permit:

- a) *The planned development permit, as issued, is consistent with and furthers the policies of the General Plan.*

As described in Section 3 above, the Downtown West PD Permit is consistent with and will further the policies of the General Plan, as set forth in Exhibit B to Resolution No. _____ approving the General Plan Amendment.

- b) *The planned development permit, as issued, conforms in all respects to the planned development zoning of the property.*

As described in Section 5 above, the Downtown West PD Permit conforms in all respects to the Downtown West PD Zoning District, including in relation to land uses, design, setbacks, height, and parking.

- c) *The planned development permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency.*

Riparian Corridor Protection and Bird-Safe Design Policy 6-34 (Section A). As described in Section 8 above, the Downtown West PD Permit is consistent with Section A of City Policy 6-34 of the Riparian Corridor Protection and Bird-Safe Design Policy, including the reduction in the setback from 100 feet to 50 feet.

City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals. Under City Council Policy 6-30, the project is considered a large development proposal. Following City Council Policy 6-30, the applicant has posted 15 on-site signs throughout the project site to inform the neighborhood of the proposed project. The project held several formally noticed community meetings as well as several informal small community meetings hosted by the City or the applicants. Additionally, the project has been presented at various Station Area Advisory Group meetings. The City has presented before several commission bodies (Historic Landmarks, Planning, and Parks and Recreation Commissions) and City Council for study sessions or referrals of the application. Staff has received many comments in many forms, including verbally at community meetings, in online surveys, and in email correspondence and comments on the Project's EIR. The public hearing notices were mailed to a 1,000-foot radius. The staff report is also posted on the City's website. Additionally, current and previous version of the applicant's project materials have been updated on the project website. Staff has been available to respond to questions from the public.

LTA Council Policy 5-1: Local Transportation Analysis. Consistent with the City of San José Transportation Analysis Policy 5-1, the Local Transportation Analysis (LTA) demonstrates conformance with multimodal transportation strategies, goals, and policies in the General Plan. The LTA analyzes the effects of the Project on transportation, access, circulation, and related safety elements, providing additional information that supplements the VMT analysis. The LTA identified adverse effects and proposed transportation improvement projects in accordance with the City of San José's Transportation Analysis Handbook in coordination with the Santa Clara Valley Transportation Authority (VTA) which serves as the congestion management agency for Santa Clara County. The City will also require Focused LTAs as the project progresses in accordance with the Implementation Guide.

- d) *The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious.*

The interrelationship between the orientation, location, mass and scale of the building's volumes and elevations has been planned through the DWDSG to be appropriate, compatible, and aesthetically harmonious. The Project provides a complementary mix of uses that create a vibrant, transit-oriented urban neighborhood and destination. The DWDSG focuses on distributing land

uses throughout the Project site in a manner that is compatible with adjacent uses, surrounding neighborhoods, the open space program, and the street network. Residential uses are generally located next to existing residential communities, office uses are generally located along the existing rail, and active uses are distributed throughout the Project site to create a more vibrant public realm. The DWDSG promotes varied building form, height, and rooflines to create a compelling skyline. To respond to contextual adjacencies - historic resources, existing single-family residential neighborhoods, Los Gatos Creek and proposed open spaces - building heights on certain blocks are set lower than the maximum allowable height. The DWDSG further aims to integrate existing buildings, historic resources and new development within Downtown West to complement the surrounding neighborhood. The Project's ground floor design, including transparency, articulation, and high-quality materials, support activity along streets. Podium level and massing and architectural design of skyline level facades further create an aesthetically harmonious and positive visual impact on the public realm.

- e) *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 effect on adjacent property or properties.*

As discussed in Section 7 above, an Environmental Impact Report was prepared for the Downtown West Mixed-Use Plan in compliance with CEQA and the CEQA Guidelines. The Project's impacts are discussed in Section 7 above and Resolution No. [REDACTED], where City Council certified the FEIR and adopted related findings, a Mitigation Monitoring and Reporting Program, and a Statement of Overriding Considerations. Based on the findings of the EIR, the City determined that the project would result in significant unmitigated or unavoidable impacts associated with project-specific and cumulative emissions of criteria air pollutants; project-specific and cumulative effects related to health risks from toxic air contaminants and fine particulate matter; project-specific and cumulative effects on cultural (historic architectural) resources associated with demolition of historic buildings; a project-specific impact due to incompatible alterations to the Hellwig Ironworks Building at 150 South Montgomery Street; project-specific and cumulative land use effects associated with a conflict with a policy on airport noise in the Comprehensive Land Use Plan for Mineta San José International Airport; project-specific and cumulative construction noise impacts; project-specific and cumulative impacts resulting from increases in traffic noise; project-specific and cumulative effects associated with exposure of persons to airport noise; and a cumulative impact associated with the jobs/housing imbalance identified in the 2040 General Plan EIR.

The City adopted Statement of Overriding Considerations (Resolution No. [REDACTED]), finding that the Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant, unavoidable impacts of the project are acceptable in light of the economic, legal, environmental, social, technological or other considerations, because the benefits of the Project outweigh its significant adverse environmental impacts. The Project will not have an unacceptable negative effect on adjacent property as the Project will result in certain substantial public benefits as set forth in the Statement of Overriding Considerations adopted by Resolution No. [REDACTED].

11. Tree Removal Findings. Pursuant to Sections 13.28.330 and 13.32.080 of the San José Municipal Code, a Planned Development Permit may serve as a tree removal permit. Chapter 13.32 of the San José Municipal Code establishes required findings for tree removals which findings 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 this Permit. Pursuant to Section 13.32.100 of the San José Municipal Code, the City Council makes the finding in subsection (a) for the reasons described below:

- a) That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purpose of Chapter 13.32 as set forth in Section 13.32.010; or
- b) The condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal; or
- c) That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question.

The Project proposes the removal of all existing trees within the public right-of-way and on private property, which includes up to 254 ordinance size trees and up to 283 non-ordinance size trees. Approximately 2,280 new trees will be planted throughout Downtown West. The locations of trees within the existing public right-of-way have been verified by a surveyor and are generally depicted in the GDP. The project sponsor commissioned an Arborist Report (dated March 25, 2020), which included a tree inventory and determined that a significant number of trees were in declining health. Of the 537 trees inventoried, 254 of the trees are classified as Ordinance Trees under Section 13.32.020 of the San José Municipal Code. The removed trees would be replaced according to tree replacement ratios required by the City. The tree replacement ratios under the City's requirements would require a total number of 1,507 replacement trees. The Project proposes to provide 2,280 new trees, which exceeds the number of replacement trees required under the City's

requirements. The removal of the street trees would not frustrate the purpose of Chapter 13.32 which is to promote the health, safety, and welfare of the City by controlling the removal of trees since trees enhance the scenic beauty of the City, significantly reduce the erosion of topsoil, contributed to increased storm water quality, reduce flood hazards and risks of landslides, increase property values, reduce the cost of construction and maintenance of drainage systems through the reduction of flow and the need to divert surface waters, contribute to energy efficiency and the reduction of urban temperatures, serve as windbreaks and are prime oxygen producers and air purification systems. The Project will not frustrate the purpose of Chapter 13.32 as the project sponsor intends to provide approximately 2,280 new trees within Downtown West, which along with the approximately 15 acres of parks and open spaces, would improve pedestrian spaces and the public realm. The approximately 2,280 new trees will support biodiversity and complement the riparian corridor while contributing to energy efficiency and the reduction of urban temperatures. The DWDSG includes standards and guidelines related to streets trees and plantings within the public-right-of way that aims to avoid the use of non-native species and plants of low ecological value. Rather, the DWDSG encourages the use of native species that are appropriate for the site conditions to improve local and regional native biodiversity, facilitate wildlife movement, and reduce the need for irrigation after the plan establishment period.

12. Demolition Findings. Pursuant to Section 20.80.460 of the San José Municipal Code, the following criteria have been considered by the Director of PBCE to determine whether the benefits of permitting the demolition of the existing buildings on the Project site outweigh the impacts of demolition:

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

Figure 3.6 of the DWDSG generally depicts the locations of the existing buildings to be demolished on the site, which would include up to 7 residential units and approximately 755,000 gross square feet of non-residential uses. Demolition would occur in phases as each portion of the project is developed. Many of the existing buildings on the site are vacant. As generally shown on Figure 3.6 of the DWDSG, certain existing historic buildings will be retained, and other existing buildings may be relocated within the Project site. Certain existing buildings may be used for interim uses, special events and limited-term uses (as defined in the GDP) during the project's phased development, pursuant to the standards set forth in the GDP. The existing buildings proposed to be demolished 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;

As discussed above, the continued creation or existence of the existing buildings (as generally depicted in Figure 3.6 of the DWDSG) that the project sponsor intends to demolish would jeopardize public health, safety, or welfare. A number of the existing buildings on site were built more than 50 years ago and are in poor condition, creating public safety and health hazards. Removal of the existing buildings, many of which are vacant, is necessary to deter potential attractive nuisances, loitering, trespassing, and break-ins. Demolition of the existing buildings will mitigate potential blighting influences, including high vacancies, abandoned, deteriorated and dilapidated buildings, incompatible land uses, and inadequate or deteriorated public improvements, facilities and utilities. Removing the existing buildings will eliminate impediments to development of the Project, which will be a critical step in facilitating the development of a modern, integrated mixed-use transit oriented neighborhood with improved pedestrian and vehicular circulation within Downtown West and its vicinity and which will provide affordable housing and public benefits to the City, including approximately 15 acres of parks and open spaces.

- c) The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;

Demolition of the existing buildings would allow for the implementation of the Project. The existing condition of the site includes one and two-story buildings that cover portions of the existing lots, with the remaining portion consisting of unbuild area and/or surface parking. The total floor area of the existing buildings currently on the site is approximately 755,000 square feet. Many of the existing buildings on the site are vacant. Demolition of the existing buildings on the site would facilitate the development of the Project, which would implement the General Plan policies and DSAP goals of establishing Downtown San José as a vibrant, transit-oriented urban neighborhood and destination.

- d) The approval of the permit should maintain the supply of existing housing stock in the City of San José;

The project site currently contains 7 residential units, however, only one unit is occupied. The occupant has made arrangements to relocate prior to commencement of construction. The Downtown West PD Permit would increase the City's housing stock. The demolition of the existing buildings would facilitate the construction of higher- density residential uses, as the Project proposes to build up to 5,900 residential units. The Downtown West PD Permit includes real property within Sub-Area 1 and Sub-Area 3 as generally depicted in the GDP. The GDP identifies the maximum allowable development in each Sub-Area, subject to the allowable transfers and conversion established in the GDP. Up to 5,900 residential units are permitted within the real property subject to the Downtown West PD Permit pursuant to the allowable transfers and

conversions under the GDP. The Project's affordable housing program, which assumes development of 4,000 residential units, supports the production of up to 1,000 affordable housing units, furthers Google's and the City's shared goal that development within the DSAP results in twenty-five percent (25%) of all residential units as affordable housing.

- e) Both inventoried and non-inventoried Buildings, Sites and districts of historical significance should be preserved to the maximum extent feasible;

Existing buildings identified as CEQA historic resources, including 374 West Santa Clara Street, 40 South Montgomery Street, and 150 South Montgomery Street, and 559, 563, and 567 West Julian Street, as well as the historic Stephen's Meat Product Sign, shall be retained. Some of these resources will be relocated on-site to facilitate their retention. In addition, 35 Barack Obama Boulevard, a Structure of Merit, shall be relocated along Barack Obama Boulevard south of the VTA tracks. In addition, the Project will fund off-site relocation of the eligible Structure of Merit at 91 Barack Obama Boulevard to a receiver site within the River Street City Landmark District. Pursuant to the conditions of approval to this Downtown West PD Permit, certain eligible Structures of Merit must be advertised for relocation prior to the issuance of a demolition permit. In the event that a property owner responds to the relocation advertisement of eligible Structures of Merit, the project sponsor will pay the equivalent in demolition cost in support of relocating the resource.

- f) Rehabilitation or reuse of the existing Building would not be feasible;

Certain existing buildings will be retained and integrated with new development within Downtown West. During the project's phased development, certain existing buildings on the site will be used for interim uses pursuant to the standards set forth in the GDP. The Project also provides for the expansion and adaptive reuse of certain existing buildings where feasible and appropriate as generally depicted on Figure 3.6 of the DWDSG. For instance, 150 South Montgomery Street will be expanded and reused to accommodate new arts and cultural use. The San José Water Company building (374 West Santa Clara Street) has previously been approved for adaptive reuse and is anticipated to be renovated for commercial use. Existing buildings along Creekside Walk shall also be rehabilitated or altered pursuant to standards set forth in the DWDSG. Existing buildings located at 559, 563, and 567 West Julian Street shall also be relocated within Creekside Walk pursuant to the applicable standards in the DWDSG. 35 South Autumn Street shall also be relocated along Autumn Street, south of the VTA tracks. Portions of the Sunlite Bakery building facade (145 South Montgomery Street) will be salvaged and re-incorporated into the Project onsite.

The rehabilitation or reuse of the existing buildings proposed for demolition is not feasible given the location and nature of the existing buildings. Rehabilitation or reuse of the existing buildings proposed for demolition would also be incompatible with the proposed Project, which proposes a high-density, mixed-use neighborhood consistent with the General Plan's strategy of focusing new growth capacity in the Downtown Growth Area.

- g) The demolition, removal or relocation of the Building without an approved replacement Building should not have an adverse impact on the surrounding neighborhood.

The demolition of the existing buildings would not have an adverse impact on the surrounding neighborhood. The proposed project would be compatible with the surrounding neighborhood and would implement the General Plan policies and DSAP goals of establishing Downtown San José as a vibrant, transit-oriented urban neighborhood and destination as further described above.

- h) The permit applicant has provided evidence that either the existing Building or Structure is not a Multiple Dwelling or Mobilehome Park or that the permit applicant has complied with all relocation obligations under state and local law, including but not limited to the obligations in Chapters 17.20, 17.23 and 20.200 of the Municipal Code.

The site does not contain multiple dwellings or mobilehome parks and the Project Sponsor has complied with any applicable relocation obligations under state and local law, including the obligations in Chapters 17.20, 17.23, and 20.200 of the Municipal Code.

13. Non-residential Condominium Findings. Chapter 20.175 of the San José Municipal Code establishes regulations and required findings for Commercial and Industrial Common Interest Development. Pursuant to Section 20.175.050 and 20.175.042 of the San José Municipal Code, to issue a special use permit for a commercial or industrial common interest development the City Council must determine that:

- a. Minimum unit size for nonresidential condominium units shall be seven hundred fifty square feet; and
- b. The proposed common interest development will not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity of the development, or in the city as a whole; and
- c. The proposed common interest development includes sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to ensure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development; and

- d. The proposed common interest development includes sufficient provisions for the retention of such common areas for the use of all owners of separate interests therein.

The Vesting Tentative Map, approved by Resolution No. [REDACTED], authorizes up to twenty commercial condominiums to be identified on future phased final maps and created through condominium plans. The Vesting Tentative Map includes a condition of approval that requires nonresidential condominium units to be a minimum of seven hundred fifty square feet. The Vesting Tentative Map (Resolution No. [REDACTED]) also includes a condition of approval that, if the subdivider of a future phased final map elects to create commercial condominiums subject to the Commercial and Industrial Common Interest Development Act, the Subdivider will submit the governing common interest development documents for review by the City to confirm that provisions for governance, funding, capitalization, and enforcement are properly addressed, to insure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development and that such common area shall be retained for the use of all owners within the development. Subdivider will also prepare and submit for review any required deeds for reciprocal easement rights, all as contemplated by Chapter 20.175 of the Municipal Code. As the project is proposing a significant amount of non-residential development on an approximately 80-acre site, 20 non-residential condominiums would not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity of the development, or in the city as a whole.

14. PG&E Property and Subsequent Actions

- a) The Downtown West PD Zoning District, as further described in Exhibit "A", of Ordinance No. [REDACTED], currently includes an approximately 0.18 acre-parcel, described as "Parcel #1" in the deed recorded November 25, 1926, in Book 797, page 336 of Santa Clara County Records, generally located at the intersection of Cahill Street and West San Fernando ("PG&E Property"), which is owned by Pacific Gas & Electric Company ("PG&E") and is subject to the jurisdiction of the California Public Utilities Commission ("CPUC") under California Public Utilities Code Section 851. If Ordinance No. [REDACTED], approving the Downtown West PD Zoning District, becomes effective as to the PG&E Property, this Resolution shall become effective as to the PG&E Property which shall automatically become subject to the Downtown West PD Permit.

If Ordinance No. [REDACTED], does not become effective as to the PG&E Property, the PG&E Property shall not be subject to the Downtown West PD Permit and the City shall not grant any Subsequent Approvals (as defined in the Development Agreement) over the PG&E Property. Google shall update the

Downtown West PD Permit to exclude the PG&E Property which may be administratively approved by the Director of PBCE.

- b) The City Council authorizes the Director of Planning, Building, and Code Enforcement in consultation with the City Attorney's Office to make minor changes to this Resolution and its attachments, such as the making of corrections including grammatical and typographical changes, minor additions or edits to ensure consistency across Project approvals and documents (e.g. correcting cross-references to other Project approvals or documents), updating the DWDSG to implement the changes described in the Errata, or other non-substantive changes, as necessary or appropriate, to implement this Resolution and to effectuate the City's performance thereunder.

In accordance with the findings set forth above, a Planned Development Permit to use the subject property for said purpose 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 San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this 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 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire pursuant to the terms of Section 11.3 of the Development Agreement after the date of issuance hereof by the City Council. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning 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. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved plans entitled, "Downtown West Planned Development Permit _____" dated _____, last revised on _____ on file with the Department of Planning, Building, and Code Enforcement ("Approved Plans"), and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes. The Approved Plans include the Downtown West Design Standards and Guidelines (DWDSG), Downtown West Improvement Standards (DWIS), Conceptual Infrastructure Plan Sheets, and Conformance Review Implementation Guide (Implementation Guide).
4. **Planned Development District Effectuated.** This Planned Development Permit effectuates the portion of the Downtown West Planned Development Zoning as reflected in the Permit's Approved Plan Set and the corresponding legal description.
5. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
6. **Construction Hours.** Construction outside of the City's standard construction hours of 7 a.m. to 7 p.m. Monday through Friday is permitted and shall be approved based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of adjacent uses. Because it is anticipated that certain construction activities (such as continuous pours of concrete foundations) may require work outside normally permitted construction hours (e.g., overnight), the project's Planned Development Permit would allow for such construction activities, subject to conditions of approval, including performance standards, imposed by the City to limit noise impacts.
7. **Vibration Reduction Plan.** All residential development with vibration exposure exceeding 72 VdB from operations on the Caltrain or Union Pacific tracks shall be designed to reduce vibration exposure from Caltrain and other rail operations to 72 VdB or less for residential uses. Before any building permit is issued for structures intended for residential occupancy within 100 feet of the mainline track, a qualified engineer shall complete a detailed vibration design study. The study shall confirm the ground vibration levels and frequency along the Caltrain or Union Pacific tracks and determine the appropriate design to limit interior vibration levels to 72 VdB for residences, if necessary. As part of the plan-check process, the San José Department of Planning, Building, and Code Enforcement shall verify that the recommended measures in the acoustical study have been incorporated into the project's design elements.
8. **Airport Conditions.** As required by City policies, the California Building Code, Project mitigation measures and City Council Resolution No. _____ ("ALUC Override Resolution"), Permittee shall:

- a. Obtain an FAA Determination of No Hazard to Air Navigation from the FAA prior to issuance of building permits for any building or structure that would exceed 200 feet in height above ground level
 - b. Implement FEIR Mitigation Measure NO-3 to ensure that interior noise levels in residences and hotel rooms do not exceed 45 dBA CNEL, prior to approval of construction-related permits. Within the Airport Influence Area of the Mineta San José International Airport, dedicate aviation easements to protect airport operations, as required by General Plan Transportation Policy TR-14.4, prior to approval of construction-related permits
 - c. Within the Airport Influence Area, and where noise associated with the Mineta San José International Airport exceeds 65 dBA CNEL, include in all residential rental/lease agreements with tenants a statement advising that the tenants are living within an exterior noise exposure area designed by the ALUC as greater than the 65 dBA CNEL, in a manner that is consistent with current state law including AB2776 (2002), to be submitted to and confirmed by the Director or delegee prior to issuance of certificates of occupancy
9. **Santa Clara Valley Habitat Plan.** The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The permittee would be required to submit, for each phase, the Santa Clara Valley Habitat Plan Coverage Screening Form 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.
10. **Structures of Merit.**
- a. The project sponsor shall comply with this condition prior to the issuance of a permit that would allow for the demolition of the following buildings:
 - i. 357 N. Montgomery Street
 - ii. 102 S. Montgomery Street
 - b. The project sponsor shall advertise the availability for relocation of each building proposed for demolition, as follows:
 - i. A dollar amount equal to the estimated cost of demolition of the building proposed for demolition, as certified by a licensed contractor, including any associated Planning Permit fees for relocation, shall be offered to the recipient of the building who is willing to undertake relocation and rehabilitation after relocation. All other costs and liability of the relocation and rehabilitation of the building shall not be the responsibility of the project sponsor.
 - ii. Advertisement and outreach to identify an interested third party shall continue for no less than 60 days. Advertisements shall include notification in at least one newspaper of general circulation and on online platforms as

appropriate, including at a minimum the San José Mercury News (print and online), and the City of San José Department of Planning, Building and Code Enforcement's Environmental Review website.

- iii. Noticing shall be compliant with City Council Policy 6-30: Public Outreach Policy and shall include posting of a notice, on each building proposed for demolition, that is no smaller than 48 x 72 inches and is visible from the public right-of-way.
 - iv. Satisfaction of the notification provisions shall be subject to review by the Director of PBCE or their designee following completion of the minimum 60-day public outreach period, before the issuance of demolition permits.
- c. If, before the end of the outreach period, an interested third party (or parties) expresses interest in relocating one or more of the resources to a suitable site under their ownership or control, they shall be allowed a period of up to [60] additional days to complete removal of the resource(s) from the project site. Following relocation, any rehabilitation of the buildings subject to this condition of approval shall not be required to comply with the Secretary of the Interior's Standards for the Treatment of Historic Buildings.

11. Demolition Permits. The project sponsor may request that the Director issue a demolition permit for the demolition of existing building(s) located within Downtown West identified in S3.4.1 and Figure 3.6 of the Downtown West Design Standards and Guidelines (DWDSG) as set forth below:

- a. The project sponsor may request that the Director issue a demolition permit for an existing building within Downtown West concurrent with the submittal of an application for a "Downtown West Permit" for property that is the subject of a demolition permit. A "Downtown West Permit" means a full structural building permit; a partial permit, such as a foundation-only permit or grading permit; site development permit; excavation permit; private street improvement permit; public street improvement permit; special use permit; [administrative permit]; historic preservation permit; Downtown West Use Certificate; Downtown West Use Permit; or any other ministerial or discretionary permit or approval authorizing a ground-disturbing activity or authorizing the use of property in connection with the Downtown West project.
- b. Notwithstanding section (1) above, the project sponsor may request a demolition permit prior to the issuance of a Downtown West Permit provided that any one of the following conditions is applicable:
 - i. Demolition of a building or structure or portion thereof is required to comply with the project sponsor's affordable housing or land dedication obligations under the Development Agreement. The project sponsor shall identify the existing building(s) it seeks to demolish under the development agreement

and the affordable housing or land dedication requirement necessitating the demolition activity;

- ii. A building or structure or portion thereof creates an endangerment to the life, limb, health, property, safety or welfare of the occupants of the building or members of the public necessitating demolition;
- c. A building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated by any cause or is in any stage that it becomes an attractive nuisance, a harbor for vagrants, criminals or other persons, or as to enable persons to resort thereto for the purpose of committing a nuisance or unlawful acts; or
- d. Demolition of a building or structure is required for construction staging, temporary parking, or to otherwise facilitate the phased development of Downtown West.
- e. If the project sponsor requests that the Director issue a demolition permit for the demolition of a historic building identified in Figure 3.6 of the Downtown West Design Standards and Guidelines (DWDSG), the project sponsor shall comply with all applicable mitigation measures for the demolition of historic buildings in the Mitigation Monitoring Reporting Program (MMRP).
- f. Notwithstanding section (a) - (c) above, if the project sponsor seeks to perform work, which includes demolition activity, on a city landmark that has not been contemplated through an existing Historic Preservation (HP) Permit Amendment, the project sponsor must obtain a separate Historic Preservation (HP) Permit or Amendment prior to the commencement of any work on the building or structure, as set forth in Muni Code Section 13.48.210.

12. Tree Removal. As authorized under the Municipal Code, the Downtown West Planned Development Permit serves as the Downtown West Tree Removal Permit. (Muni Code, §13.32.080.) During the Conformance Review process (as further set forth in the Implementation Guide), the project sponsor shall:

- a. Identify the street trees proposed to be removed as part of the Conformance Review application submittal and note if there are any proposed deviations from the Downtown West Tree Removal Permit; and
- b. If the project sponsor proposes removing a dead tree as defined in Muni Code Section 13.32.020, provide an arborist report, if requested, by the Director.
- c. The project sponsor shall not proceed with the removal of any street trees within Downtown West until the Director has approved the Conformance Review application that includes the subject trees. Prior to the removal of any street tree under the Downtown West Tree Removal Permit, the project sponsor shall post copies of the Downtown West Tree Removal Permit on the subject parcel as required under Title 13 of the Municipal Code.

- 13. Jobs and Economic Improvement through Environmental Leadership Act of 2011 (AB 900) Compliance: Prevailing Wage.** Provided that AB 900 certification for the Project is extended by SB 7 or other legislation, consistent with the Governor's December 30, 2019 certification of the Project under AB 900, the Project Sponsor shall, prior to the City issuance of construction permits, submit to the Director of PBCE or the Director's designee copies of all construction contracts for the work to be authorized by those permits. Each such contract shall include terms requiring that all construction workers employed in the execution of the project be paid prevailing wages as described in Public Resources Code section 21183(b).
- 14. Air Quality.** The following design features have been included in the modeling for the proposed project and are discussed in greater detail below. These features would be included as conditions of approval so that they will be enforceable by the City:
- a. Construction:
 - i. Certification of all diesel-powered construction equipment to Tier 4 Final emission standards; and
 - ii. Use of electric equipment for concrete/industrial saws, sweepers/scrubbers, aerial lifts, welders, and air compressors.
 - b. Operations:
 - i. LEED for Neighborhood Development (ND) Gold Certification (which requires that at least one building in each phase be certified LEED Gold), construction of all office buildings to meet LEED Gold standards, and compliance with the City's New Construction Green Building Requirements;
 - ii. Electrification (no natural gas use) of all buildings at the site, including all office space, all residential space, and all retail space;
 - iii. Constrained parking (less parking than required by the City code, based both on the base parking requirement and the Code-permitted reductions in parking for transit accessible and Downtown projects available in Municipal Code Section 20.90.220 and 20.70.330, respectively), with no more than 4,800 spaces for commercial uses (including potential access to a portion of the residential spaces that could be shared with office uses);
 - iv. On-site solar photovoltaic system achieving at least 7.8 megawatts of electricity production;
 - v. Installation of electric vehicle supply equipment for a minimum of 10 percent of parking spaces;
 - vi. Installation of Minimum Efficiency Reporting Value (MERV) 13 filtration for all new on-site buildings;
 - vii. Use of recycled water for all non-potable water demands for the project including toilet flushing, irrigation, and cooling; and

- viii. A potential district water reuse facility that would treat wastewater to California Code of Regulations Title 22 disinfected tertiary (unrestricted reuse) recycled-water standards.

15. **Biological Resources.** SCA BI-2: Tree Replacement. The removed trees would be replaced according to the following tree replacement ratios:

Circumference of Tree to be Removed ¹	Type of Tree to be Removed ²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
12 inches or more ³	5:1	4:1	3:1	15-gallon
6.0 to 12 inches	3:1	2:1	None	15-gallon
Less than 6.0 inches	1:1	1:1	None	15-gallon

¹ As measured 4.5 feet above ground level
² X:X = tree replacement to tree loss ratio
³ Ordinance-sized tree
Notes: Trees greater than or equal to 38 inches in circumference 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 Tree Removal Permit is required for removal of trees of any size.
A 38-inch tree equals 12.1 inches in diameter.
A 19-inch tree equals 6.1 inches in diameter.
One 24-inch box tree= two 15-gallon trees

16. **Cultural Resources and Tribal Cultural Resources**

- a. SCA CR-1: 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 of the Director’s designee shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall:
 - i. Evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and
 - ii. 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 Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

- b. SCA CR-2: 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 PRC Sections 5097.9 through 5097.99, as amended per AB 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 reasonable 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:

- i. 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;
 - ii. The MLD identified fails to make a recommendation; or
 - iii. 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.
- c. SCA CR-3: Vibration Impacts to Adjacent and Nearby Historic Buildings. The project permittee shall implement the following measures prior to and during construction:
- i. Prohibit impact, sonic, or vibratory pile driving methods. Drilled piles cause lower vibration levels where geological conditions permit their use.
 - ii. Limit other vibration-inducing equipment to the extent feasible.
 - iii. Submit a list of all heavy construction equipment to be used for this project known to produce high vibration levels (e.g., tracked vehicles, vibratory compaction, jackhammers, hoe rams) to the Director of Planning, Building and Code Enforcement or the Director's designee. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring.

17. Geology, Soils, and Paleontological Resources. SCA GE-1: Paleontological Resources. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee 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 PBCE or the Director's designee.

18. Hazards and Hazardous Materials

- a. Asbestos and Lead-based Paint. If asbestos-containing materials (ACM) or lead-based paint (LBP) are present and need to be removed during the demolition of structures, the permittee shall implement the following conditions:
 - i. Conduct a visual inspection/pre-demolition survey, and possible sampling in conformance with state and local laws, to determine the presence of ACMs and/or LBP prior to the demolition of on-site building(s).
 - ii. Remove all building materials containing LBP during demolition activities, in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code of Regulations (CCR) Section 1532.1, including employee training, employee air monitoring, and dust control. Dispose any debris or soil containing LBP or coatings at landfills that meet acceptance criteria for the type of lead being disposed.
 - iii. Remove all potentially friable ACMs in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines before demolition or renovation activities that may disturb ACMs. Undertake all demolition activities in accordance with Cal/OSHA standards contained in Title 8, CCR Section 1529, to protect workers from asbestos exposure.
 - iv. Retain a registered asbestos abatement contractor to remove and dispose of ACMs identified in the Asbestos survey performed for the site in accordance with the standards stated above.
 - v. Materials containing more than 1 percent asbestos are also subject to BAAQMD regulations. Remove materials containing more than 1 percent asbestos in accordance with BAAQMD requirements and notifications.
 - vi. Implement the following conditions in accordance with Cal/OSHA rules and regulations, to limit impacts to construction workers.
 1. Before commencement of demolition activities, complete a building survey, including sampling and testing, to identify and quantify building materials containing LBP.
 2. During demolition activities, remove all building materials containing LBP in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR Section 1532.1, including employee training, employee air monitoring, and dust control.

3. Dispose of any debris or soil containing LBP or coatings at landfills that meet acceptance criteria for the type of waste being disposed.

19. Noise and Vibration

- a. SCA NO-1: Construction-Related Noise. The permittee shall implement noise minimization measures that include, but are not limited to, the following:
 - i. Limit construction hours to between 7 a.m. and 7 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.
 - ii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
 - iii. Equip all internal combustion-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - iv. Prohibit unnecessary idling of internal combustion engines.
 - v. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining noise-sensitive land uses.
 - vi. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
 - vii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
 - viii. Notify all adjacent businesses, residences, and other noise-sensitive land uses of the construction schedule in writing and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
 - ix. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
 - x. Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

- xi. Limit construction hours to 7 a.m. to 7 p.m., Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses. Because it is anticipated that certain construction activities (such as continuous pours of concrete foundations) may require work outside normally permitted construction hours (e.g., overnight), the project's Planned Development Permit would allow for such construction activities, subject to conditions of approval, including performance standards, imposed by the City to limit noise impacts.
- b. SCA NO-2: Interior Noise Standard for Residential Development. The permittee shall prepare final design plans and incorporate building design and acoustical treatments to ensure compliance with state building codes and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that the design incorporates controls to reduce interior noise levels to 45 dBA DNL or lower within the residential units. The permittee shall conform with any special building construction techniques requested by the City's Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.

20. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of a phased Final Map (if applicable) by the Director of Public Works, or the issuance of Grading or Building permits, as applicable, the permittee will be required to have satisfied all of the following Public Works conditions. All improvements of the public streets shall be to the satisfaction of the Director of Public Works. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.

The Project is intended to be developed in a series of phases and the following Downtown West PD Permit conditions shall apply, as applicable, to the incremental development within each phase of the Project, and such conditions shall not apply if the project phasing does not trigger corresponding improvements as described below. This shall not apply to improvements that have a separately identified phasing and trigger schedule

- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of Construction Agreement(s) 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. Grading/Geology:

- i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - 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 2010 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10-year storm event.
 - iii. A haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. Because this project involves a land disturbance of one or more acres, the permittee is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - v. 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 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.
- c. **Sewage Fees:** The project sponsor shall pay a Sewer Connection Fee in accordance with the Development Agreement for the Project.
- d. **Stormwater:** At the Grading/Drainage Permit stage, provide detailed Stormwater Control Plan for each development parcel to include the following:
- i. Design stormwater treatment facilities using Low Impact Development (LID) treatment measures pursuant to the City's GSI Plan.
 - ii. Design stormwater conveyance by gravity flow. To the extent feasible, the use of pumps and mechanical devices shall be avoided.

- iii. Private treatment facilities must be located on private properties. The project may not use public areas for private stormwater treatment.
 - iv. Provide numeric sizing calculations for each drainage management area.
 - v. Provide maintenance and inspection information for private facilities on treatment control measures.
- e. Flood Zones D, X and AO and A:**
- i. For new structures in Zone D and X: There are no City floodplain requirements.
 - ii. For structures located within the Valley Water 100-year floodplain model, the Permittee shall:
 - 1. Submit a topographic survey, based on NAVD88, identifying the elevation of the existing highest adjacent grade to the existing structure or base flood elevation and the elevation of the existing finished floor.
 - 2. New structures in Zone A requires additional flood study to determine the base flood elevation.
 - 3. Elevate the lowest floor 1 foot above the base flood elevation (or depth of flooding plus one foot). Non-residential structures may be floodproofed to the same elevation.
 - 4. Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation (depth of flooding plus one foot) or protected from flood damage.
 - 5. Construction materials used below the base flood elevation (depth of flooding plus one foot) must be resistant to flood damage.
 - 6. An Elevation Certificate (FEMA Form 086-0-33) for each proposed structure, based on construction drawings, is required prior to issuance of a building permit. Consequently, an Elevation Certificate for each built structure, based on finished construction is required prior to issuance of an occupancy permit.
 - 7. If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 086-0-34) for each structure, floodproofing details, and if applicable, a Flood Emergency Operation Plan and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.
- f. Private Improvement Encroachments within Public Property:** All encroachments shall be consistent with City of San José Municipal Code Title 13

and California Building Code (CBC) Chapter 32 Section 3202 entitled Encroachments into the Public Right-of-Way. All proposed private improvements within public right-of-way, including, without limitation, utility infrastructure, will require an Encroachment Permit issued by the City pursuant to Chapter 13.37 of the Municipal Code.

- g. **Assessments:** Some of the parcels within the project boundary are located within the Basic Zone of the Downtown San José 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 2020-2021, commercial properties pay \$0.077775814 and residential properties pay \$0.052498379 per building and lot square footages. Future year assessments will be adjusted accordingly 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. The APN's within the project boundary that are located within the Basic Zone of the Downtown San José Property-Based Business Improvement District consist of: 259-38-128, 259-38-142, 259-38-148, 259-38-042, 259-38-041, 259-38-147, 259-38-146, 259-38-145, 259-38-040, 259-38-039, 259-38-110, 259-38-036, 259-38-132, 259-38-121, 259-38-030, 259-38-043.
- h. **Right-of-Way Work Permit (Street/Sidewalk Closures):** At the Implementation stage, Permittee shall apply for 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 Right-of-Way Work Permit application, but are not limited to:
1. **Letter of Intent:** This document should provide a detailed description of the reasons for the sidewalk/lane closures and why they are absolutely necessary (man lifts, baker tanks, staging area, concrete pumping activities, etc.) and reasons why covered pedestrian walkways will not be provided (ex. swinging loads over sidewalk not safe for pedestrians).
 2. **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:
 - 1. Implementing the closures at the time the onsite activities dictate the need for the closure.
 - 2. Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlines in condition h.i.1 above.
- iii. If proposed lane and parking closures are a part of the Right-of-Way Work 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/index.aspx?NID=3713>. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- i. **Electrical:** Existing electroliers within project boundary will be evaluated at the public improvement stage and street lighting requirements will be included on the public improvement plans.
- j. **Private Streets:** Per Common Interest Development (CID) Ordinance, all common infrastructure improvements shall be designed and constructed in accordance with the current CID standards.
- k. **Street Trees:**
 - i. Provide street trees at back of curb (where feasible) along project frontages.
 - ii. Incorporate street trees in accordance with the Downtown West Design Standards and Guidelines, and as approved by the City Arborist.

21. **Environmental Services Department Project Conditions:** The following items shall be included as Project Conditions:

- a. **Connection Fees and Use Charges:** Prior to issuance of Building Permits, remit all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits for existing connections. All fees and charges shall be calculated and charged in the same manner as fees charged to other property owners consistent with the San José Municipal Code and state law.
- b. **Rate Control:** The project shall comply with rate protections in the Resolution for the Project's Vesting Tentative Map pertaining to "Rate Control" for District Systems.

- c. **Submeters:** Each building shall have potable water and recycled water submeters. Wastewater meters must be installed prior to connections to the City's sanitary sewer collection and treatment system.
- d. **Wastewater Discharge:** Before approval of the issuance of Building Permits for any development for the parcel, the permittee shall demonstrate:
 - i. Discharge from the proposed development and use will be within the allocated capacity in compliance with the San José Municipal Code. Capacity may not be transferred between parcels
 - ii. compliance with a wastewater pretreatment program; and
 - iii. compliance with all permits for the onsite wastewater collection and treatment facility under federal, state and local laws and regulatory agencies.
- e. **Wastewater/Recycled Water Design Review:** Permittee shall obtain approvals from the State Water Board DDW through the SF Bay Regional Quality Control Board permit process, for review of the engineering report, and satisfy technical comments on tertiary filtration and disinfection unit processes. The Santa Clara County Department of Public Health (DPH) may act in an advisory or regulatory role.
- f. **Odor Controls:**
 - i. Permittee shall:
 1. Comply with Odor Mitigation Measures for Wastewater (AQ-5), including a Hydrogen Sulfide and Odor Management program (HSOM Program) at each water reuse facility (WRF).
 2. Include measures to mitigate and control odor in the site plans and drawings.
 3. Comply with Odor Mitigation Measures for Waste at Collection Terminals under SJMC §9.10.430(A), SJMC §9.10.430(D), SJMC §9.10.430(F), SJMC §9.10.450(C), SJMC §9.10.1395, and SJMC §9.10.840.
 4. Comply with CalRecycle requirements for an Odor Impact Minimization Plan (as applicable).
 5. Comply with BAAQMD regulations for an onsite wastewater treatment facility and any additional requirements if the project is within 1,000 feet of a school.
 6. Provide the Environmental Services Department Director the information necessary as part of the Central Utility Plant Downtown

West Conformance Review to coordinate review and approval of the requirements listed in subsections 1 through 5 above.

- ii. In addition to any other legal remedies, the City may require further measures to mitigate against future complaints of public nuisance based on odor during the Conformance Review process for subsequent phases of the development.
- g. **City Wastewater Discharge Permit:** The development connected to the district systems must be covered under a Wastewater Discharge Permit, updated at minimum annually or more frequently as described in the San José Municipal Code, and shall meet the following requirements:
- i. Proposed uses and estimated amount and characteristics of wastewater discharges for each phase will be identified during the Conformance Review process;
 - ii. Compliance with County permits - if the County exerts jurisdiction over the onsite wastewater/recycled water system - or City permit(s) - if the City adopts a wastewater/recycled permitting process in the future;
 - iii. Adopt a pretreatment program for all properties that would ensure compliance with the City's pretreatment program and NPDES requirements;
 - iv. Maintenance of records such as monthly flow, production changes, closures, and wastewater sampling records;
 - v. Notification to the City before a change such as ownership, discharge volumes, operator, use, tenancy; and
 - vi. Compliance with all other regulatory applicable permits as required by federal, state and local law.
- h. **Solid Waste Handling Plans:** permittee must provide a Waste Management Plan, for City review and approval for each building in the development including:
- i. The type of collection containers, service provider at the building and/or terminal collection (if serviced by the district system), commercial and residential premises waste management plan in the event of service reduction or termination, locations of, collection plans, and style of public litter cans that would be placed in the public right of way, and planned handling of special wastes (e.g. biosolids if applicable);
 - ii. Demonstrated compliance with onsite waste collection space and truck collection access in accordance with the applicable sections of the City's Solid Waste Enclosure Area Guidelines (2011 Version) <https://www.sanjoseca.gov/Home/ShowDocument?id=46404>;

- iii. Demonstrated compliance with City Council Policy 6-29, wherein drainage within a solid waste enclosure or solid waste room should be connected to the sanitary system;
 - iv. Demonstrated compliance with California law and regulations, such as those enacted to implement SB 1383 for organics handling/ diversion requirements; and
 - v. Demonstrated compliance with applicable San José Municipal Code and franchise agreements.
- i. **External Wastewater, Recycled Water, and Waste Permits:** District systems shall have the following:
- i. Onsite wastewater treatment and recycled water facility permits from applicable State and local agencies including the State Water Resources Control Board for the appropriate Class of wastewater treatment plant and, at a minimum, be subject to the applicable General Order(s) for domestic wastewater treatment plants, general waste discharge requirements for biosolids, and other regulations such as monitoring and reporting.
 - ii. Applicable permits as a waste transfer station in accordance with PRC 40200(a). The specific permit required from CalRecycle is based on the tonnage the inbound tonnages/day:
<https://www.calrecycle.ca.gov/swfacilities/permitting/facilitytype/transfer>.

22. Revocation, Suspension, Modification. This Planned 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, whenever, subject to the requirements of Sheet 4.02 of the GDP, 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 Planned 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.

The City and Project Sponsor are parties to that certain Development Agreement and agree to cooperate with each other and meet and confer in accordance with Section 9.2 of the Development Agreement prior to the initiation of any revocation, suspension or modification of the Planned Development Permit. A revocation, suspension or termination of the Planned Development Permit pursuant to this condition shall only affect the offending property in default. The Planned Development Permit shall remain

in effect as to all other portions of the property subject to the Planned Development Permit.

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

EFFECTIVE DATE

The effective date of this Permit (File No. PD19-029) shall be the effective date of the Planned Development Rezoning Ordinance for File No. PDC19-039, approved for publication on _____, 2021 (the "Downtown West Mixed-Use Plan DC(PD) Planned Development Zoning District") and shall be no earlier than the effective date of said Rezoning Ordinance.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

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.



May 7, 2021
 HMM 5719.00.270
 Page 1 of 6

EXHIBIT "A"
 PD PERMIT BOUNDARY

PARCEL 1

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

BEGINNING at the northerly corner of Parcel A as shown on that certain Parcel Map filed for record on December 3, 1986, in Book 567 of Maps, page 46, Santa Clara County Records;

Thence South 29°54'10" East, 122.40 feet;

Thence South 45°48'10" East, 13.33 feet;

Thence South 33°09'10" East, 79.65 feet;

Thence South 30°29'10" East, 89.01 feet;

Thence South 24°52'10" East, 14.03 feet;

Thence South 27°37'10" East, 195.26 feet;

Thence South 41°41'04" East, 37.79 feet;

Thence South 04°31'49" East, 142.32 feet;

Thence South 60°08'04" West, 5.24 feet;

Thence South 29°54'03" East, 10.98 feet;

Thence South 60°06'23" West, 125.37 feet;

Thence northeasterly, along a non-tangent curve to the left, having a radius of 240.11 feet, whose center bears North 29°53'42" West, through a central angle of 03°14'11" for an arc length of 13.56 feet;

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

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

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

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

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

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

Thence North 15°05'39" West, 8.91 feet;

Thence North 03°11'12" West, 52.47 feet;

Thence North 06°16'51" West, 43.04 feet;

Thence North 05°54'15" West, 19.38 feet;

Thence North 01°33'50" West, 113.38 feet;

Thence North 00°06'09" West, 110.80 feet;

Thence North 02°54'34" East, 54.23 feet;

Thence North 05°39'12" East, 17.86 feet;

Thence South 59°52'09" West, 1.02 feet;

Thence North 07°28'10" East, 51.95 feet;

Thence North 02°28'10" East, 93.01 feet;

Thence North 29°51'51" West, 30.65 feet;

Thence North $60^{\circ}06'24''$ East, 467.23 feet, to the POINT OF BEGINNING.

Containing 8.94 acres, more or less.

PARCEL 2

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

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

Thence South $55^{\circ}49'47''$ East, 125.65 feet;

Thence along a tangent curve to the left, having a radius of 1,000.00 feet, through a central angle of $24^{\circ}33'10''$ for an arc length of 428.53 feet;

Thence South $80^{\circ}22'57''$ East, 99.66 feet;

Thence South $40^{\circ}12'37''$ East, 79.87 feet;

Thence South $49^{\circ}47'23''$ West, 233.38 feet;

Thence South $40^{\circ}09'41''$ East, 1,660.49 feet;

Thence South $41^{\circ}07'42''$ East, 61.23 feet;

Thence South $60^{\circ}22'40''$ West, 62.08 feet;

Thence North $40^{\circ}09'41''$ West, 7.74 feet;

Thence South $87^{\circ}34'04''$ West, 192.97 feet;

Thence South $02^{\circ}28'43''$ East, 515.24 feet;

Thence South $87^{\circ}38'19''$ West, 293.19 feet;

Thence North $13^{\circ}53'44''$ West, 162.78 feet;

Thence North $06^{\circ}00'51''$ West, 142.79 feet;

Thence North $14^{\circ}47'17''$ West, 144.81 feet;

Thence North $24^{\circ}39'40''$ West, 14.49 feet;

Thence North $49^{\circ}48'04''$ East, 37.34 feet;

Thence North $40^{\circ}08'37''$ West, 195.34 feet;

Thence North $33^{\circ}53'23''$ West, 190.26 feet;

Thence North $40^{\circ}10'41''$ West, 60.03 feet;

Thence North $34^{\circ}56'31''$ West, 120.52 feet;

Thence North $16^{\circ}45'52''$ West, 65.46 feet;

Thence North $33^{\circ}02'18''$ West, 161.30 feet;

Thence North $49^{\circ}40'11''$ East, 24.62 feet;

Thence North $40^{\circ}16'43''$ West, 88.06 feet;

Thence North $27^{\circ}31'59''$ West, 31.24 feet;

Thence northerly, along a non-tangent curve to the right, having a radius of 533.14 feet, whose center bears North $73^{\circ}24'52''$ East, through a central angle of $21^{\circ}21'03''$ for an arc length of 198.67 feet;

Thence North $06^{\circ}30'21''$ East, 32.39 feet;

Thence North $40^{\circ}09'42''$ West, 19.38 feet;

Thence North $49^{\circ}40'11''$ East, 15.18 feet;

Thence northerly, along a non-tangent curve to the right, having a radius of 538.14 feet, whose center bears South $79^{\circ}10'14''$ East, through a central angle of $05^{\circ}28'18''$ for an arc length of 51.39 feet;

Thence North 16°18'03" East, 157.35 feet;
 Thence North 40°09'41" West, 59.99 feet;
 Thence South 16°18'03" West, 190.49 feet;
 Thence along a tangent curve to the left, having a radius of 588.14 feet, through a central angle of 34°06'20" for an arc length of 350.09 feet;
 Thence South 49°47'53" West, 33.22 feet;
 Thence North 40°12'07" West, 489.49 feet;
 Thence North 40°01'48" West, 60.00 feet;
 Thence North 49°47'26" East, 31.00 feet;
 Thence North 40°10'53" West, 461.21 feet;
 Thence northwesterly, along a non-tangent curve to the right, having a radius of 1,313.90 feet, whose center bears North 62°38'11" East, through a central angle of 05°58'13" for an arc length of 136.91 feet;
 Thence North 49°47'16" East, 351.13 feet, to the POINT OF BEGINNING.

Containing 28.17 acres, more or less.

PARCEL 3

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

BEGINNING at the southerly corner of Parcel 1 as shown on that certain Parcel Map filed for record on August 22, 1980, in Book 469 of Maps, page 28, Santa Clara County Records;

BEGINNING

Thence northwesterly, along a curve to the right, having a radius of 1,395.47 feet, whose center bears North 51°07'40" East, through a central angle of 14°26'44" for an arc length of 351.83 feet;

Thence North 46°22'55" East, 15.00 feet;

Thence North 41°54'05" West, 44.50 feet;

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

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

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

Thence North 16°56'12" East, 64.61 feet;

Thence North 28°34'20" East, 18.65 feet;

Thence North 45°22'33" East, 156.65 feet;

Thence North 37°39'18" East, 43.69 feet;

Thence along a tangent curve to the left, having a radius of 30.00 feet, through a central angle of 72°50'16" for an arc length of 38.14 feet;

Thence North 35°10'58" West, 36.03 feet;

Thence along a tangent curve to the right, having a radius of 20.00 feet, through a central angle of 72°50'16" for an arc length of 25.43 feet;

Thence North 37°39'18" East, 166.61 feet;

Thence South 35°09'06" East, 6.81 feet;
Thence North 30°19'02" East, 50.95 feet;
Thence northeasterly, along a non-tangent curve to the left, having a radius of 718.68 feet, whose center bears North 52°20'42" West, through a central angle of 07°32'55" for an arc length of 94.69 feet;
Thence North 29°39'18" East, 59.96 feet;
Thence North 02°01'36" West, 9.64 feet;
Thence northerly, along a non-tangent curve to the right, having a radius of 678.00 feet, whose center bears North 88°22'49" East, through a central angle of 03°23'24" for an arc length of 40.11 feet;
Thence North 01°46'13" East, 102.39 feet;
Thence South 30°12'09" West, 43.87 feet;
Thence South 39°24'09" West, 67.85 feet;
Thence southwesterly, along a non-tangent curve to the left, having a radius of 80.66 feet, whose center bears South 39°39'12" East, through a central angle of 21°53'17" for an arc length of 30.82 feet;
Thence South 39°24'09" West, 164.53 feet;
Thence North 87°30'06" East, 23.16 feet;
Thence South 37°39'18" West, 199.56 feet;
Thence along a tangent curve to the right, having a radius of 20.00 feet, through a central angle of 80°24'15" for an arc length of 28.07 feet;
Thence along a reverse curve to the left, having a radius of 40.00 feet, through a central angle of 80°24'15" for an arc length of 56.13 feet;
Thence South 37°39'18" West, 29.98 feet;
Thence South 52°20'42" East, 29.94 feet;
Thence South 30°09'18" West, 79.72 feet;
Thence North 03°13'24" West, 554.12 feet;
Thence North 00°08'17" East, 27.80 feet;
Thence South 87°31'09" West, 59.00 feet;
Thence North 02°31'01" West, 65.48 feet;
Thence North 02°21'32" West, 145.50 feet;
Thence North 87°30'06" East, 7.50 feet;
Thence North 02°51'32" East, 175.70 feet;
Thence North 01°01'33" East, 158.87 feet;
Thence North 02°01'13" West, 63.18 feet;
Thence North 02°55'42" West, 61.74 feet;
Thence North 87°52'02" East, 92.48 feet;
Thence South 02°29'54" East, 102.19 feet;
Thence North 87°30'13" East, 58.39 feet;
Thence North 02°30'02" West, 101.82 feet;
Thence North 02°29'58" West, 105.22 feet;
Thence South 87°53'28" West, 27.35 feet;
Thence North 02°30'02" West, 40.00 feet;
Thence North 87°53'28" East, 50.00 feet;
Thence North 02°30'02" West, 110.48 feet;
Thence North 87°34'58" East, 69.50 feet;
Thence North 02°25'02" West, 204.22 feet;
Thence South 87°34'45" West, 30.00 feet;

Thence South 02°25'02" East, 155.77 feet;
Thence South 87°34'58" West, 24.90 feet;
Thence North 02°29'54" West, 205.77 feet;
Thence North 87°34'45" East, 285.33 feet;
Thence North 02°28'43" West, 935.38 feet;
Thence North 87°38'19" East, 548.46 feet;
Thence South 08°12'27" West, 60.98 feet;
Thence North 81°47'33" West, 7.38 feet;
Thence southerly, along a non-tangent curve to the left, having a radius of 1,556.00 feet, whose center bears South 79°43'21" East, through a central angle of 03°27'16" for an arc length of 93.82 feet;
Thence South 17°25'29" West, 47.05 feet;
Thence South 17°26'53" West, 18.99 feet;
Thence South 05°53'13" West, 69.38 feet;
Thence South 10°02'04" East, 94.06 feet;
Thence South 01°55'33" East, 25.02 feet;
Thence southerly, along a non-tangent curve to the left, having a radius of 1,556.00 feet, whose center bears North 87°36'49" East, through a central angle of 03°41'05" for an arc length of 100.06 feet;
Thence South 06°16'04" East, 48.71 feet;
Thence along a tangent curve to the right, having a radius of 405.33 feet, through a central angle of 07°23'17" for an arc length of 52.27 feet;
Thence along a compound curve to the right, having a radius of 402.61 feet, through a central angle of 07°03'20" for an arc length of 49.58 feet;
Thence along a compound curve to the right, having a radius of 406.46 feet, through a central angle of 03°59'46" for an arc length of 28.35 feet;
Thence along a compound curve to the right, having a radius of 54,390.06 feet, through a central angle of 00°01'28" for an arc length of 23.09 feet;
Thence South 12°11'03" West, 51.68 feet;
Thence South 87°32'05" West, 106.37 feet;
Thence southerly, along a non-tangent curve to the left, having a radius of 1,000.00 feet, whose center bears North 84°25'55" East, through a central angle of 01°45'13" for an arc length of 30.61 feet;
Thence along a reverse curve to the right, having a radius of 1,000.00 feet, through a central angle of 04°48'47" for an arc length of 84.00 feet;
Thence South 02°28'55" East, 117.24 feet;
Thence South 02°30'02" East, 228.27 feet;
Thence southerly, along a non-tangent curve to the right, having a radius of 571.94 feet, whose center bears South 87°29'50" West, through a central angle of 39°35'02" for an arc length of 395.13 feet;
Thence southerly, along a non-tangent curve to the left, having a radius of 450.00 feet, whose center bears South 52°55'16" East, through a central angle of 35°44'53" for an arc length of 280.77 feet;
Thence South 01°44'30" West, 270.74 feet;
Thence South 01°46'13" West, 63.60 feet;
Thence South 01°46'32" East, 118.56 feet;
Thence North 54°47'53" East, 125.01 feet;
Thence South 35°09'56" East, 240.05 feet;

Thence South 54°48'18" West, 178.14 feet;
Thence South 54°48'54" West, 401.93 feet;
Thence North 35°03'10" West, 2.03 feet;
Thence westerly, along a non-tangent curve to the right, having a radius of 323.50 feet, whose center bears North 24°34'12" West, through a central angle of 04°10'13" for an arc length of 23.55 feet;
Thence South 35°10'53" East, 7.21 feet;
Thence South 35°09'37" East, 610.07 feet;
Thence South 54°48'50" West, 120.00 feet;
Thence North 35°10'05" West, 5.00 feet;
Thence South 54°48'50" West, 270.61 feet;
Thence South 35°11'10" East, 5.00 feet;
Thence South 54°48'50" West, 75.00 feet, to the POINT OF BEGINNING.

Containing 40.97 acres, more or less.

PARCEL 4

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of Parcel # 1 described in the Deed recorded November 25, 1936, in Book 797 of Official Records, page 336, Santa Clara County Records.

Containing 0.18 acres, more or less.

Total combined area of Parcels 1, 2, 3 & 4 containing 78.26 acres, more or less.

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

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

Date: 5-7-21


Tracy L. Giorgetti, LS 8720

