

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SAN JOSE AND
THE CITY OF SANTA CLARA REGARDING
RESPONSIBILITIES FOR CONSTRUCTION PERMITS
AND INSPECTION ACTIVITIES FOR THE PROPOSED
COMMERCIAL OFFICE DEVELOPMENT ("COLEMAN
HIGHLINE PROJECT") LOCATED ON THE SOUTHWEST
CORNER OF COLEMAN AVENUE AND CHAMPIONS
WAY**

PREAMBLE

This Memorandum of Understanding ("MOU") is made and entered into this _____ day of _____, 2020 (the "Effective Date"), by and between the City of San José ("San José"), a chartered municipal corporation of the State of California with its primary business address located at 200 E. Santa Clara Street, San José, California 95113 ("San José"), and the City of Santa Clara ("Santa Clara"), a chartered municipal corporation with its primary business address located at 1500 Warburton Avenue, Santa Clara, California 95050. San José and Santa Clara may be referred to individually as "Party" or "City" or collectively herein as "Cities".

RECITALS

Whereas, Coleman Airport Partners Tranche 2, LLC ("CAP") proposes to complete Phase 1 of the Tranche 2 of the Coleman Highline project located on approximately 16.74 acres, City of San José and City of Santa Clara respectively, as shown on Exhibit A, which is attached hereto and incorporated herein ("Site"); and

Whereas, San José has approved a Planned Development Permit (File No. PD19-012) for the construction of Phase 1 of Tranche 2, which includes approximately 576,892 square feet of office building ("Building 7"); 48,930 square feet of amenities buildings ("Amenity 4" and "Amenity 4A"); one utility enclosure structure; various site improvements; 645,363 square feet of an unenclosed parking structure, of which 423,743 square feet is located within City of San José and 221,620 square feet is located within the City of Santa Clara boundaries ("Garage 4"); and private streets ("Champions Way" and "Champions Drive"), completing the circulation network, all as shown on Exhibit B ("Project"); and

Whereas, San José has approved a Planned Development Permit Amendment (File No. PDA19-012-01) to amend Phase 1 of Tranche 2, which includes increasing the entitled 508,296 square foot unenclosed parking structure to a total of 645,363 square feet, of which 423,743 square feet is located within the City of San José and 221,620 square feet is located within the City of Santa Clara boundaries; and

Whereas, the City of Santa Clara has received the Planning application (PLN2019-13977) and on February 5, 2020 obtained Architectural Committee review and approval of the 221,620 square foot portion of the parking structure and associated landscaping and site improvements to be located within the City of Santa Clara; and

Whereas, the Cities will consider taking additional actions related to the Project, and desire to outline their respective rights and responsibilities in regards to the planning and construction activities of the Project, including but not limited to plan check, permit issuance, inspections, fire safety inspections and the levy of and collection of fees for such activities.

NOW, THEREFORE, the Cities understand and agree as follows:

AGREEMENT

1. SCOPE OF AGREEMENT

This MOU applies exclusively to the construction phase of the Project administered by the Cities, including, but not limited to issuance of building, grading, stormwater, and related permits and approvals, plan check, inspections, fire safety inspections, and the levy of and collection of permit fees. Pursuant to the MOU, the City of San José will act as the approval authority administering the construction phase of the Project and provide all inspection services for the construction phase of the Project. This MOU is not intended to govern Planning permitting activity as part of the entitlement process of the Project, code enforcement activity, provision of emergency services or other activity by either Party on the Site.

2. DEFINITIONS

A. “Certificate of Occupancy” means a final certificate issued by either Party entitling occupation of any part of the Project on the Site.

B. “Cross-boundary Structure” means a structure within the Project which is built across the jurisdictional boundary line between San José and Santa Clara, specifically the “Garage 4” parking garage structure as shown on Exhibit B (“Parking Garage Structure”).

C. “Future Tenant Improvements” means any additional improvements to a portion of the completed Parking Garage Structure for which a certificate of occupancy has already been issued.

D. “San José Structure” means structures within the Project located entirely within the jurisdictional boundaries of San José, specifically Building 7, Amenity A and Amenity A4, and the Utility Enclosure as shown on Exhibit B.

E. "Building Permit" means any permit or associated activity, including inspections, conducted by the departments of each City, and which may include referral, review, and issuance of permits or approvals as part of the administration of the construction permit process, but which excludes separate entitlement permits directly administered by the Planning Division in each City.

3. APPLICATION, ISSUANCE, AND APPROVAL RESPONSIBILITIES RELATED TO CONSTRUCTION PHASE.

A. City of Santa Clara

1. Santa Clara hereby determines and agrees that the City of San José shall have administrative and approval authority for all Building Permits for the Project, including associated fire safety review for the Project.

2. Santa Clara shall require the real property owner(s) of the Project located in Santa Clara, either in whole or in part, to submit to San José any and all such Building Permit applications as are required under the Municipal Code of the City of San José.

3. Santa Clara shall maintain authority to review the Parking Garage Structure portion located in the City of Santa Clara's jurisdictional boundary for consistency with Santa Clara's land use ordinances, including any impact fees identified as part of a planning permit process.

4. For Future Tenant Improvements to the Cross-boundary Structure, as identified in Exhibit B, Santa Clara hereby authorizes San José to process any and all Building Permit applications and provide associated inspection services for, and on behalf of, Santa Clara pursuant to the provisions of the California Building Code, as amended by San José, as of the date such permit application is submitted and issued.

B. City of San José

1. For each San José Structure, Cross-boundary Structure, Future Tenant Improvement, San José shall require the real property owners of the Project to submit to San José such applications as are required for the Project under the Municipal Code of the City of San José.

2. The City of San José shall not issue building permits for the Cross-boundary Parking Structure located within Santa Clara's jurisdictional boundary unless and until (1) the City of San José has provided the building permit plan check submittal to the City of Santa Clara for review; and (2) the City of Santa Clara has issued a written determination that the submittal is in conformance with the City of Santa Clara's Architectural Approval of the Cross-boundary Parking Structure and site improvements located within Santa Clara's jurisdictional boundary.

3. The City of San José officials designated under the City of San José Municipal Code with authority for review and issuance or approval of any applicable Building Permits for construction of the Project shall be the approval authority for such permit or approval required for the Project for the San José Structures, Cross-boundary Structures and Future Tenant Improvements.

4. In addition to the authorities delegated to San José elsewhere in this Agreement, San José shall be the entity responsible for the imposition, collection, and retention of all fees associated with the Project Building Permit applications. The City of San José shall verify that the developer has fully paid to the City of Santa Clara any development fees referenced in the Santa Clara planning entitlements prior to issuance of Building Permits for the Project.

5. In addition to the authorities delegated to San José elsewhere in this Agreement, San José shall be the entity responsible for all records according to San José retention policies and procedures for the San José Structures, Cross-boundary Structures, Future Tenant Improvements, Grading and Drainage, and Private Streets.

6. San José shall be the entity responsible for the issuance of Building Permits for Future Tenant Improvements to the Cross-boundary Structure, and for the imposition, collection and retention of all permits, plans and inspection fees related to such work.

4. NOTICES

All notices to Parties shall be in writing, unless otherwise specified, and shall be addressed as follows:

TO San José:

For Planning and Building Matters:
Director of Planning, Building and Code Enforcement
City of San José
200 East Santa Clara Street, Third Floor Tower
San José, CA 95113

For Building Matters:
Chief Building Official
City of San José
200 East Santa Clara Street, Third Floor Tower
San José, CA 95113

For Public Works Matters:
Director of Public Works
City of San José
200 East Santa Clara Street, Fifth Floor
San José, CA 95113

For Fire and Safety Matters:
Fire Marshall
City of San José
200 East Santa Clara Street, Second Floor Tower
San José, CA 95113

TO Santa Clara: For Planning and Building Matters:
Director of Community Development
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

For Building Matters:
Chief Building Official
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

For Public Works Matters:
Director of Public Works
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

For Fire and Safety Matters:
Fire Marshall
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Either City may change its notice contact person or address by providing written notice of the change to the other City, in the manner provided in this section of the MOU.

5. ADDITIONAL

A. Term. This MOU shall become effective on the Effective Date set forth in the Preamble of this MOU and shall remain in effect until completion of the Project (including any Future Tenant Improvements) or terminated by mutual written consent of the Cities hereto or by order of a court of competent jurisdiction.

B. Entire Understanding. This MOU contains all agreements, stipulations, understandings and conditions entered into and made by and between San José and Santa Clara as to the matters covered herein and may not be modified orally, or in any manner, other than by an agreement in writing signed by each City or their successors in interest.

C. Successors in Interest. This MOU and all of its terms, covenants and conditions, shall apply to and bind the successors and assigns of each City to the fullest extent allowed by law.

D. Exhibits. All exhibits referred to in this MOU are by such reference incorporated into this MOU and shall be deemed a part of this MOU as if fully set forth in this MOU.

E. Severability. In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions of this MOU which shall remain in full force and effect to the maximum possible extent.

F. Waiver. A waiver of any term, condition or covenant, or breach of any term, condition or covenant, of this MOU by either City shall not be construed as waiver of any other term, condition or covenant, or breach of any other term, condition or covenant, of this MOU by that City.

G. Interpretation; Enforcement. This MOU and the agreements embodied herein shall be governed and construed in accordance with the statutes and laws of the State of California. Any action brought to enforce or construe the provisions of this MOU shall be brought in the Superior Court of the State of California, Santa Clara County.

6. ACKNOWLEDGEMENT

The Cities acknowledge and accept the terms and conditions of this MOU as evidenced by the following signatures of their duly authorized representatives. It is the mutual intent of the Cities that, for the sake of clarity and convenience, this MOU shall become effective and operative as of the Effective Date first enumerated above, not withstanding the date that this MOU is executed by each City.

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CITY OF SAN JOSE, CALIFORNIA
A chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

By: _____

JOHNNY V. PHAN
Senior Deputy City Attorney

TONI J. TABER, CMC
City Clerk
200 East Santa Clara Street,
14th Floor Tower
San José, CA 95113
Telephone: (408) 535-1260
Fax: (408) 292-6207

APPROVED AS TO FORM:

Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

LAND OF THE CITY OF SAN JOSE
APN 830-48-044

LAND OF THE CITY OF SAN JOSE
APN 830-48-046

LAND OF THE CITY OF SAN JOSE
APN 830-48-048

SAN JOSE INTERNATIONAL AIRPORT



STATION	DATE

EXHIBIT B - SITE PLAN

