



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jon Cicirelli

**SUBJECT: CAPITAL VISION
AND EIR FOR ST. JAMES PARK**

DATE: October 13, 2020

Approved

Date

10/15/2020

COUNCIL DISTRICT: 3

RECOMMENDATION

- (a) Adopt a resolution certifying the St. James Park Capital Vision¹ and Performing Arts Pavilion Project Environmental Impact Report (EIR) and make certain findings concerning significant impacts, mitigation measures, alternatives, and adopt a Statement of Overriding Considerations and a related Mitigation Monitoring and Reporting Program, all in accordance with the California Environmental Quality Act (CEQA).
- (b) Approve the St. James Park Updated Capital Vision (i.e., Master Plan) to guide future rehabilitation of this downtown park.

OUTCOME

Approval of these recommendations will provide a guide for the future rehabilitation of the 7.6-acre St. James Park.

EXECUTIVE SUMMARY

St. James Park is a historic 7.6-acre park in downtown San José. The capital vision was developed following council adoption of the St. James Revitalization Plan in 2015. The design was selected through a competition, with council selecting the winner in early 2017. Since that time, staff has worked with the selected consultant (CMG Landscape Architecture) to advance the vision and complete the required Environmental Impact Report.

¹ The term “capital vision” is used in this document for consistency with previous council direction. “capital vision” is interchangeable with the term “Master Plan.”

The capital vision (also called master plan) honors the historic nature of the park by providing Victorian style gardens around the edge. The center of park is proposed as a “contemporary core” with modern amenities that will draw a variety of users for both daily and episodic activities including a performing arts pavilion, playground, dog parks, concession building, restrooms, and the closure of Second Street. The two areas are tied together with a park paseo, or memorial walkway, that weaves together the existing historic markers in the park and will allow for the opportunity to add additional historical markers in the future.

An Environmental Impact Report was prepared in accordance with the California Environmental Quality Act. The report identified significant and unavoidable impacts associated with aesthetics, recreation, cultural resources and noise even with proposed mitigations. Council is being asked to approve a Statement of Overriding Considerations in support of the project as the public benefits of the project outweigh the impacts and the project aligns with policy goals in Envision San José 2040, ActivateSJ, and Climate Smart San José.

BACKGROUND

St. James Park is a historic 7.6-acre park. As noted in the 2002 Master Plan Update, it is historically one of the most important public spaces in downtown San José. The park boundaries date to at least 1848 and it appears that development of the park first began about twenty years later in 1868. The park history has been the site of speeches from presidents and presidential candidates, social gatherings, and civic events. The park is listed in the National Register of Historic Places as part of the St. James Square National Register Historic District. It is also listed as part of the City of San José’s St. James Square Historic District.

History of Council Actions

At its meeting on April 7, 2015 (Item 4.1) City Council: a) endorsed the concept of a Levitt Pavilion in St. James Park; b) endorsed formation of a Levitt Pavilion Steering Committee; c) directed the Steering Committee to complete a fundraising feasibility and preliminary business plan; and d) directed staff to work with the Steering Committee to develop preliminary design, complete environmental review and identify operation and maintenance funding.

Since that time, staff has worked with Levitt San José and with the Mimi and Mortimer Levitt Foundation to establish a Levitt San José Pavilion project. The Mimi and Mortimer Levitt Foundation is a non-profit organization that provides capital funding resources to support the construction of a multi-use structure that would have the capacity to host outdoor music events year-round at no cost to patrons.

At its meeting on November 10, 2015, (Item 5.2) the City Council approved the St. James Revitalization Strategy. The Revitalization Strategy included a multi-pronged approach to restoring this park, including: a) addressing homelessness and feeding programs; b) enhancing maintenance; c) providing activation to encourage park use; d) establishing an updated capital vision for the park; and e) establishing park governance and sustainable funding strategies. The

council action also called for establishment of a Community Advisory Committee to guide staff in implementing the strategy. The work of this Committee is ongoing and meetings occur monthly.

Staff of the Parks, Recreation and Neighborhood Services (the Department) have been working to implement the Revitalization Strategy and the following is the status of certain items:

- Addressing homelessness and feeding: A contract was executed to provide feeding of homeless at the nearby African American Community Center, which reduced the number of volunteer groups using the park for unauthorized food distribution. This program was relocated to an outdoor space in April 2020 to comply with County of Santa Clara Public Health Guidelines for COVID-19. The program is funded through October 2020.
- Enhancing maintenance: Maintenance services have been enhanced by expanding the services of GroundWerx to provide “eyes on the park” for more hours every day.
- Providing Activation: The Department’s Placemaking Team has implemented an extensive activation program encouraging use of the park for a diverse range of programs throughout the year. This work is currently on hold due to County Health orders but will be resumed as soon as allowed.

Development of Capital Vision

To select a consultant for the St. James capital vision, a design competition was held in the summer of 2016. The intent of the competition was to develop a plan for rehabilitation of the park with a total construction budget of \$50 million. Final presentations by four pre-selected consultant firms were delivered to a selection jury in October 2016. The jury had subsequent meetings to review and discuss the designs and request additional information.

On January 23, 2017, the City Council accepted the St. James Park Design Competition Jury’s recommendation to select CMG Landscape Architecture (CMG) as the winning firm after review and consideration of the presentations and design criteria. Following the selection, City Council authorized the City Manager to negotiate and execute a contract in the amount of \$2.5 million for supporting efforts of St. James Park. This amount included funding for community outreach, design development and preparation of the Environmental Impact Report.

David J. Powers was tasked through a Master Agreement to prepare the Environmental Impact Report (EIR) based on the 25% design for the proposed project that adheres to the California Environmental Quality Act (CEQA). On May 24, 2016, the City issued a Notice of Preparation (NOP) of a Draft EIR for the St. James Park Capital Vision and Levitt Pavilion project. On May 19, 2020, the Draft EIR was made available for public comment and comments were accepted until July 6, 2020.

ANALYSIS

Capital Vision / Master Plan Development

CMG completed the 25% construction documents and submitted them to the City on October 3, 2018. The proposed plan is presented in Attachment A and project plans can be viewed here: <https://www.sanjoseca.gov/your-government/departments/parks-recreation-neighborhood-services/our-services-initiatives/st-james-park-revitalization>. The plan calls for rehabilitation and renovation of the park by adding a performing arts pavilion and lawn, restrooms, a picnic pavilion, dog parks, historic monument walk, playgrounds, water feature, perimeter gardens and a café. The plan envisions closing Second Street to through traffic, while maintaining light rail service.

The design presented by CMG honors and advances the strategy that was presented in the competition proposal by celebrating the historic edge, activating a contemporary core and integrating both through a park paseo. The design process focused on refining each element of the park program and working with City staff, such as park maintenance teams, to ensure the design met the operations and maintenance capacity of the City.

The Master Plan has been the subject of extensive planning and discourse since 2017. The design intentionally provides for vibrant daily activities (e.g., café space, playground, water feature, etc.), episodic activation (e.g., performance pavilion) and contemplative spaces (e.g., monument walk and historic edge). The resulting plan will guide future construction of a more vibrant urban park with activities for all age ranges and abilities.

Staff from the following departments reviewed the plans: Public Works, Department of Transportation, Police Department, Fire Department and Parks, Recreation, and Neighborhood Services Department (the Department). Various stakeholders have also reviewed the drawings such as Santa Clara Valley Transportation Authority and Friends of Levitt Pavilion San José. The design meets the goals of Envision San José 2040, ActivateSJ, the 2015 St. James Park Revitalization Strategy, and maintains the intent of the competition entry.

During development of the design, outreach and engagement activities provided an understanding of the community priorities for the park. Engagement by CMG included intercept events that helped staff prioritize which park amenities the public would most like. The outcome of this work resulted in the addition of features like a larger playground and the dog parks.

In August 2019, staff completed a broader survey to assess community goals for the park design. The survey asked for feedback in three topic areas: social goals, environmental goals and economic goals. These three areas are consistent with three focus areas used by nationally recognized organizations, such as Reimagining the Civic Commons (civiccommons.us/), for evaluating the success of public space activations. A total of 394 responses were received. Table 1 shows a summary of these results, with more detail provided in Attachment B.

TABLE 1 - Summary of August 2019 Community Survey

Topic Area (Ranked in Order of Community Preference)	Top Priorities for Topic Area
Social	<ul style="list-style-type: none">- Ensure a well maintained, clean and safe facility- Increase perception of safety- Create a park that is active daily
Environmental	<ul style="list-style-type: none">- Habitat: Increase biodiversity- Air: Increase tree canopy- Water: Treat stormwater on site and use drought tolerant plants
Economic	<ul style="list-style-type: none">- Optimize maintenance, operations and public services- Increase values of the park such as health, safety and property values- Provide opportunities for commerce such as cafés and food trucks

Based on the 25% construction documents, the estimate of probable costs for the renovation of the park is approximately \$63.9 million. Staff continue to evaluate options and will return to council in the future with an implementation strategy and funding plan.

Environmental Impact Report

The City of San José, as the lead agency for the proposed project, prepared a Draft Environmental Impact Report (DEIR) for the St. James Park Capital Vision and Performing Arts Pavilion Project. The DEIR provides environmental clearance for the project under CEQA. The DEIR analyzed the environmental impacts and discussed alternatives to the proposed project. As noted previously the DEIR was available for public review and comment from May 19, 2020 through July 6, 2020.

The City received 33 comment letters during the public comment period, and one comment letter after the end of the public comment period. Concerns raised in these comment letters include the following:

- Operation noise, specifically from future music events at the Performing Arts Pavilion;
- Project impact to historic resources;
- Methodology of historic resources analysis;
- Lack of alternatives analysis;
- Lack of transportation improvements and coordination with appropriate agencies (VTA);
- Lack of restrooms to handle large events;
- Inadequacy of mitigation measures for noise impacts to adjacent residents; and
- Need for potential construction phasing.

A First Amendment to the DEIR was prepared to provide responses to public comments and revisions to the text of the DEIR. The First Amendment together with the DEIR constitute the Final Environmental Impact Report (FEIR) for the proposed project. These documents, including additional comments beyond the EIR public circulation period, can be viewed on the City's website at: <http://www.sanjoseca.gov/ActiveEIRs>.

The FEIR found that even with mitigation measures the project would result in significant and unavoidable impacts related to aesthetics, cultural resources, noise, and recreation. Mitigation measures are proposed to address biological resources, cultural resources, construction noise, and temporary construction phase impacts in air quality.

As part of the analysis six alternatives were explored to reduce the significant unavoidable impacts. These alternatives were:

- No project;
- Enclosed pavilion for 5,000 attendees;
- Enclosed pavilion with alternative footprint;
- Pavilion with no concerts;
- Discovery Meadow as an alternative pavilion location; and
- Design alternatives.

While the design alternative was deemed environmentally superior to the proposed pavilion, it was rejected as it would not be consistent with five of the 12 major objectives of the project that were identified in the EIR. These five areas of inconsistency are:

- Work in partnership with non-profits and other organizations to construct a performing arts pavilion and build upon these private-public partnerships to ensure quality park stewardship;
- Develop a cultural asset conducive to creating a thriving destination and building community through music;
- Transform an underutilized neighborhood park into a prime destination where music concerts and other activities invigorate community life;
- Integrate arts and culture into the community to spark economic growth, drive community engagement, and enhance overall quality of life; and
- Provide infrastructure to support and facilitate music concerts, community festivals, and other park programs.

A Statement of Overriding Considerations will need to be adopted by City Council for this project. The draft CEQA resolution includes a Statement of Overriding Considerations and sets forth how the benefits of the project outweigh its environmental impact. As stated in the Draft City Council EIR Resolution, the project would achieve Envision San José 2040 General Plan Strategies, Goals, and Policies such as:

- Major Strategy #9 Destination Downtown and #11 Design for a Healthful Community;
- General Plan Policy for High Quality Facilities and Program (PR-1.6 through 1.8);
- General Plan Goal for Interconnected Parks System (PR-7.3 and 7.4); and
- General Plan Goal for Fiscal Management of Parks and Recreational Resources (PR-8.1).

The project would also align with the 2015 Saint James Park Revitalization Strategy, ActivateSJ Strategic Plan and provide potential economic benefits to the city through increase in property values, direct tax revenue, tourism, and rental events.

CONCLUSION

Certification of the EIR and approval of the St. James Park Master Plan will allow staff and stakeholders to seek funding for the construction.

EVALUATION AND FOLLOW-UP

Staff will return to City Council with an implementation and funding plan.

CLIMATE SMART SAN JOSÉ

The recommendation in this memo will enhance the Climate Smart San José energy, water, or mobility goals by increasing the tree canopy in the park, and by replacing grass with drought tolerant native plants.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, City Manager's Budget Office, Public Works, and Planning, Building, Code Enforcement.

COMMISSION RECOMMENDATION/INPUT

Parks and Recreation Commission

The Parks and Recreation Commission heard the St. James concept plan at its November 1, 2017 meeting. The commission had concerns about parking and transportation within the Park. Ultimately, Commissioner Mandair moved to accept the Concept Design, but requested that staff include an operation plan to address parking and transportation in the project development. The motion carried. (7-1-2). Noes: Dougherty Absent: Cron and Flores.

On September 2, 2020 the Parks and Recreation Commission reviewed the St. James Park Master Plan². A motion was made to recommend approval by City Council of the St. James Park Master Plan. The motion carried with unanimous vote of all commissioner present.

Historic Landmarks Commission

The Historic Landmarks Commission discussed the Notice of Preparation for the Draft EIR at its June 1st, 2016 meeting. The Commission authorized the chair to submit a comment letter on behalf of the Commission.

An informational update was provided to the Historic Landmarks Commission on February 6, 2019. No official comments were provided as this was an informational update only. Discussion included topics such as pedestrian safety surrounding the light rail; including references back to the park's history; conducting outreach for nearby neighborhood organizations for implementing stewardship program for park upkeep; and fostering temporary or seasonal activation of the existing park prior to its redevelopment to slowly acclimate park users to its new proposed uses.

City Staff presented to Historic Landmarks Commission's Design Review Committee on October 16, 2019 with generally positive feedback. The Committee was supportive of the materials of the support buildings, the location of memorials, and the layout of pathways. Concerns were raised regarding the impact of the project on the St. James Historic District. It was confirmed by City Staff that the Environmental Impact Report will provide an analysis of the impact to the district as well as the park itself.

City Staff presented to the Historic Landmarks Commission on October 7, 2020³ requesting a recommendation for approval of a Historic Preservation Permit for the St. James Park Master Plan. The Commission provided an affirmative recommendation with two conditions: 1) that staff return with 75% design plans to confirm the historic intent of the design is preserved during design development; and 2) that the project move forward with construction of all improvements in one phase.

Planning Commission

The Planning Commission heard the St. James Park Capital Vision and Performing Arts Pavilion Project Environmental Impact Report at its meeting on September 23, 2020⁴. Staff asked that the Planning Commission review and comment on the St. James Park Master Plan and recommend that City Council adopt a resolution certifying the St. James Park Capital Vision and Performing Arts Pavilion Project EIR.

² <https://www.sanjoseca.gov/Home/ShowDocument?id=63141> – Parks and Recreation Commission Memorandum

³ <https://www.sanjoseca.gov/Home/ShowDocument?id=64446>

⁴ <https://www.sanjoseca.gov/Home/ShowDocument?id=64007> – Planning Commission Memorandum

The commission asked questions focused generally on the performing arts pavilion with concerns about noise monitoring, funding, phasing, and overall operational logistics after the proposed pavilion is built. Staff addressed the questions raised. The Commission expressed concerns about the lack of funding, enforcement of the noise mitigation measures, but there were no comments regarding the adequacy of the EIR. Commissioner Oliverio moved to accept staff recommendation of the findings in the EIR, Statement of Overriding Consideration, and the Mitigation Monitoring and Reporting Program, but expressed that this project is a long-term project that would not be likely to be completed soon. Commissioner Bonilla seconded the motion. The motion carried. (7-0).

FISCAL/POLICY ALIGNMENT

Improvements to St. James Park align with the St. James Park Revitalization Strategy, and the public park and recreation goals of the *Greenprint 2009 Update*, *ActivateSJ* and the *Envision San José 2040 General Plan*.

CEQA

St. James Park Capital Vision and Performing Arts Pavilion Project Environmental Impact Report (EIR), File No. PP16-037.

/s/
JON CICIRELLI
Director, Parks, Recreation and
Neighborhood Services

For questions, please contact Nicolle Burnham, Deputy Director, at (408) 793-5514.

Attachments:

- A. St. James Master Plan
- B. August 2019 Survey Results
- C. CEQA Resolution, Statement of Overriding Consideration, and Mitigation Monitoring and Reporting Plan.

Attachment A



ST JAMES PARK
**REMEMBER
IMAGINE**

GOAL SETTING SURVEY REPORT QUIT

FEBRUARY 27, 2020



GOAL SETTING SURVEY

WHY A SURVEY?:

- » Clarify community goals for park including but not limited to the Capital Improvement Project
- » Have more extensive data to support decision making process
- » While there are many stated goals for the park in various City documents, this provides one clear set of goals that cross many citywide strategies

CHANNELS FOR COMMUNICATION:

- » St. James Park Mailing List: 27 responses
- » Social Media - Facebook and Twitter: 68 responses
- » What's Happening Newsletter: 76 responses
- » NextDoor App: 223 responses

Total: 394 responses

Which of these topics is most important to you? Rank 1-3

- » Social
- » Ecological
- » Economic

Which of these topics is most important to you? Rank 1-3

- » Social: 2.59
- » Ecological: 2.04
- » Economic: 1.37

Choose 2 of the goals that resonate with you:

- » A park for everyone
- » A sense of safety
- » A cultural asset
- » Sustainable and innovative park
- » Sustainable maintenance strategies
- » Financially sustainable model of park governance
- » Spark economic growth

Choose 2 of the goals that resonate with you:

- » A park for everyone: 46.19%
- » A sense of safety: 78.68%
- » A cultural asset: 28.93%
- » Sustainable and innovative park: 19.80 %
- » Sustainable maintenance strategies: 13.45%
- » Financially sustainable model of park governance: 7.36%
- » Spark economic growth: 5.58%

Social Goals



Choose 2 Social Goals that are *most* important to you:

- » Provide facilities and spaces that are inclusive and accessible
- » Create a park that is active on a daily basis
- » Create a destination park that draws people from all of the City and region
- » Engage community Support
- » Increase positive first impressions
- » Increase perception of safety
- » Ensure a well maintained, clean and safe facility
- » Successful performance venue with free public concerts
- » Support and facilitate music concerts, community festivals and other City programs
- » Reinforce a vibrant dynamic downtown

Choose 2 Social Goals that are *most* important to you:

- » Provide facilities and spaces that are inclusive and accessible: 12.2%
- » Create a park that is active on a daily basis: 20.3%
- » Create a destination park that draws people from all of the City and region: 15.2%
- » Increase community engagement and volunteerism: 5.6%
- » Increase positive first impressions: 10.4%
- » Increase perception of safety: 28.7%
- » Ensure a well maintained, clean and safe facility: 58.4%
- » Successful performance venue with free public concerts: 7.1%
- » Support & facilitate music concerts, community festivals & other programs: 16.2%
- » Reinforce a vibrant dynamic downtown: 13.9%

Environmental Goals



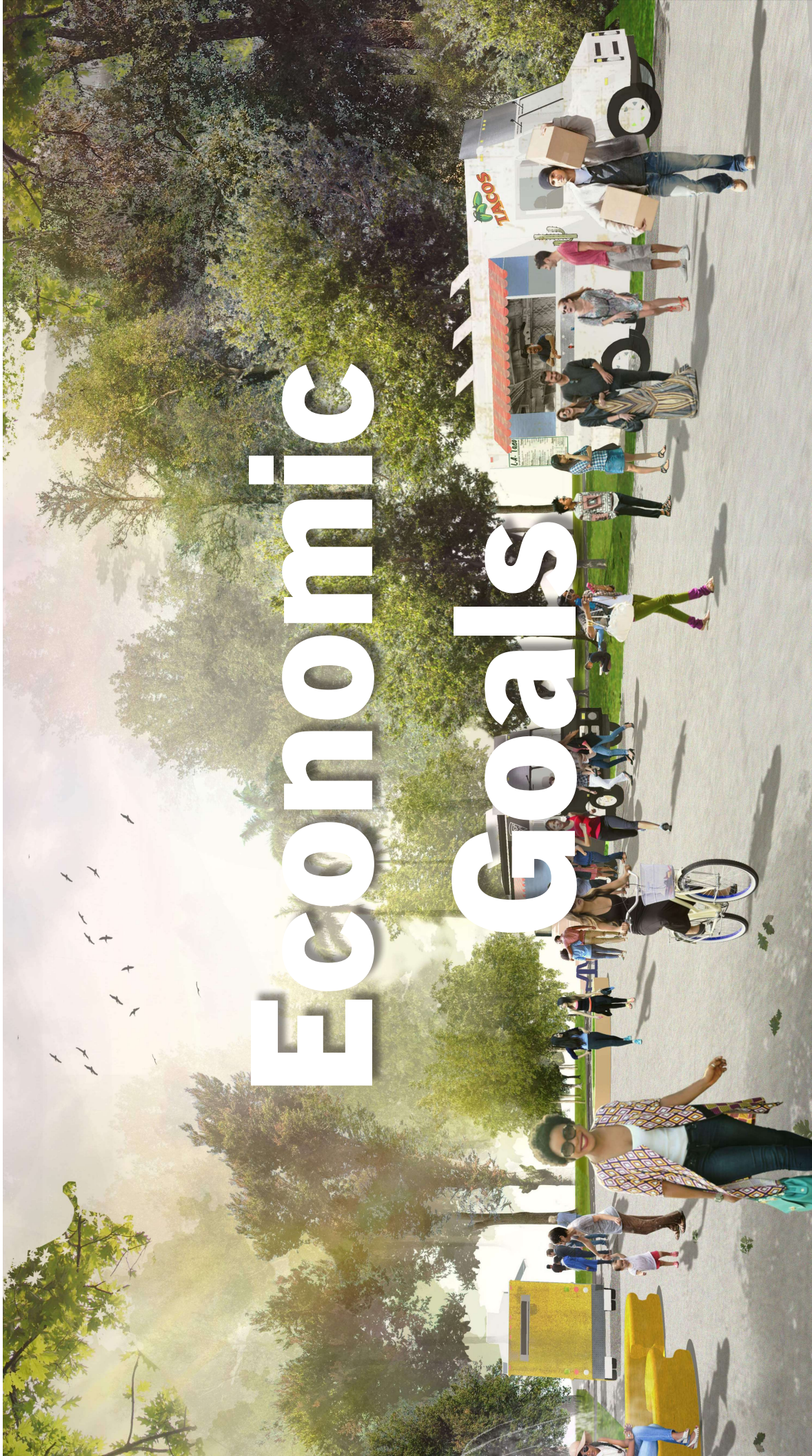
Choose 2 Environmental Goals that are *most* important to you:

- » Air: increase tree canopy and reduce air pollutants
- » Water: Treat stormwater on site, use drought tolerant plants
- » Habitat: Increase biodiversity, use plants that attract pollinators
- » Transportation: Prioritize clean mobility, provide bike racks
- » Education: Engage technology to educate the public on envt'l features
- » Maintenance: Use construction techniques that reduce maintenance
- » Technology: Use smart controllers, measure envt'l success with dashboards

Choose 2 Environmental Goals that are *most* important to you:

- » Air: increase tree canopy and reduce air pollutants: 55.3%
- » Water: Treat stormwater on site, use drought tolerant plants: 25.6%
- » Habitat: Increase biodiversity, use plants that attract pollinators: 56.6%
- » Transportation: Prioritize clean mobility, provide bike racks: 17.5%
- » Education: Engage technology to educate the public on envt'l features: 9.1%
- » Maintenance: Use construction techniques that reduce maintenance: 18.8%
- » Technology: Use smart controllers, measure envt'l success with dashboards: 17.0%

Economic Goals



Choose 2 Economic Goals that are *most* important to you:

- » Maximize public-private partnerships to ensure quality stewardship
- » Optimize maintenance, operations and other public services
- » Increase tourism and visitor spending
- » Create jobs within the park
- » Provide opportunities for commerce such as cafes and food trucks
- » Increase value of the park, such as health, safety, property value
- » Integrate arts and culture to spark economic growth

Choose 2 Economic Goals that are *most* important to you:

- » Maximize public-private partnerships to ensure quality stewardship: 22.1%
- » Optimize maintenance, operations and other public services: 42.1%
- » Increase tourism and visitor spending: 11.2%
- » Create jobs within the park: 8.6%
- » Provide opportunities for commerce such as cafes and food trucks: 38.8%
- » Increase value of the park, such as health, safety, property value: 40.9%
- » Integrate arts and culture to spark economic growth: 36.3%

Summary:

- » A park for everyone
- » A sense of safety
- » Increase perception of safety
- » Ensure a well maintained, clean and safe facility
- » Create a park that is active on a daily basis
- » Increase tree canopy and reduce air pollutants
- » Increase biodiversity, use plants that attract pollinators
- » Optimize maintenance, operations and other public services
- » Increase value of the park, such as health, safety, property value

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CERTIFYING THE ST. JAMES PARK CAPITAL VISION AND PERFORMING ARTS PAVILION (ST. JAMES PARK MASTER PLAN) ENVIRONMENTAL IMPACT REPORT AND MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT IMPACTS, MITIGATION MEASURES AND ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING AND REPORTING PROGRAM, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED

WHEREAS, the proposed St. James Park Capital Vision and Performing Arts Pavilion (St. James Park Master Plan) includes physical and programmatic changes to the St. James Park located in Downtown, San José, that would 1) allow for the demolition, reconstruction, and new construction of major park features such a performing arts pavilion, café and restroom buildings, picnic pavilion and grove, dog parks, pedestrian walk, open space meadow and plaza, playgrounds, fountain, park office, new security lights; 2) allow opportunities for new music and performing arts events at the new performing arts pavilion and new commercial uses at the park; 3) allow for transportation and pedestrian improvements related to the operational changes to the project site; all on an approximately 7.5-acre site in the City of San José, California (collectively referred to herein as the “Project”); and

WHEREAS, approval of the Project would constitute a Project under the provisions of the California Environmental Quality Act of 1970, together with related state and local implementation guidelines and policies promulgated thereunder, all as amended to date (collectively, “CEQA”); and

WHEREAS, the City is the lead agency for the Project, and has prepared a Final Environmental Impact Report for the Project pursuant to and in accordance with CEQA,

which the Final Environmental Impact Report is comprised of the Draft Environmental Impact Report for the Project (the “Draft EIR”), together with the First Amendment to the Draft EIR (collectively, all of said documents are referred to herein as the “FEIR”); and

WHEREAS, on September 23, 2020 the Planning Commission of the City of San José reviewed the FEIR prepared for the Project, and recommended to the City Council that it find the environmental clearance for the proposed Project was completed in accordance with the requirements of CEQA and further recommended the City Council adopt this Resolution; and

WHEREAS, CEQA requires that, in connection with the approval of a project for which an environmental impact report has been prepared which identifies one or more significant environmental effects of the project, the decision-making body of a public agency make certain findings regarding those effects and adopt a mitigation or monitoring program and overriding statement of consideration for any impact that may not be reduced to a less than significant level.

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

1. That the above recitals are true and correct; and
2. That the City Council does hereby find and certify that the FEIR has been prepared and completed in compliance with CEQA; and
3. The City Council was presented with, and has independently reviewed and analyzed, the FEIR and other information in the record and has considered the information contained therein, including the written and oral comments received at the public hearings on the FEIR and the Project, prior to acting upon or approving the Project, and has found that the FEIR represents the independent judgment of the City of San José (“City”) as lead agency for the Project, and designated the Director of Planning, Building and Code Enforcement at the Director’s office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the

custodian of documents and record of proceedings on which the decision of the City is based; and

4. That the City Council does hereby find and recognize that the FEIR contains additions, clarifications, modifications, and other information in its response to comments on the Draft EIR or obtained by the City after the Draft EIR was issued and circulated for public review and does hereby find that such changes and additional information are not significant new information as that phrase is described under CEQA because such changes and additional information do not indicate that any of the following would result from approval and implementation of the Project: (i) any new significant environmental impact or substantially more severe environmental impact not already disclosed and evaluated in the Draft EIR, (ii) any feasible mitigation measure considerably different from those analyzed in the Draft EIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented, or (iii) any feasible alternative considerably different from those analyzed in the Draft EIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented; and
5. That the City Council does hereby find and determine that recirculation of the FEIR for further public review and comment is not warranted or required under the provisions of CEQA; and
6. The City Council does hereby make the following findings with respect to the significant effects of the environment of the Project, as identified in the FEIR, with the understanding that all of the information in this Resolution is intended as a summary of the full administrative record supporting the FEIR, which full administrative record should be consulted for the full details supporting these findings.

**ST. JAMES PARK CAPITAL VISION AND PERFORMING ARTS PAVILION
(ST. JAMES PARK MASTER PLAN) PROJECT
SIGNIFICANT ENVIRONMENTAL IMPACTS**

Aesthetic

Impact: **Impact AES-1:** Implementation of the Project would impact the visual character of the site because the design is not fully consistent with the Secretary of the Interior's Standards for Rehabilitation.

Mitigation: Mitigation measures identified for MM CUL-1.1 through MM CUL-1.5 (detailed below).

Finding: Implementation of the Project would result in reconfiguration the existing park to include new buildings and performing arts pavilion which would change the character of the existing park and square. As mentioned in Section 3.5 Cultural Resources of the Final EIR (FEIR), the change in setting and character of the project could result in significant impacts if the change would also result in a significant historic impact. Implementation of the Project would change the visual character of the site and the buildings and, as designed, would be constructed in a manner that would impact the historic significance of the park and the St. James Historic District and therefore, impact the visual character of the site. **(Significant Unavoidable Impact)**

Facts in Support of Finding: As discussed in Section 3.5 Cultural Resources in the Final EIR (FEIR), the project site is an existing park and is a part of the St. James Square Historic District which includes a mix of historic and modern buildings. Implementation of the Project would renovate the existing park with removal, reconfiguration, and addition of new buildings. While the project includes mitigation measures (MM CUL-1.1 through CUL-1.5, detailed below) to protect existing historic elements of the park from being damaged from operation of construction equipment, staging, and material storage, absent a redesign of the project that would be fully consistent with the Secretary of the Interior's Standards for Rehabilitation, the proposed mitigation measures would continue to reduce the visual character impact , but would still result in a significant unavoidable impact.

Air Quality

Impact: **Impact AIR-1:** Construction of the Project would result in toxic air contaminant emissions in excess of Bay Area Air Quality Management District's (BAAQMD) thresholds. Construction activities associated with the Project would expose infants cancer risk at the maximally-exposed-individual (MEI) of the construction zones and in proximity to the project site to temporary toxic air contaminant (TAC) emissions of 35.5 in one million, which is in excess of BAAQMD's significance threshold of 10 per one million for cancer risk.

Mitigation: **MM AIR-1.1:** The project proponent shall retain a qualified consultant to develop a construction operations plan demonstrating that the off-road

equipment used on-site to construct the project would achieve a fleet-wide average 72 percent reduction in diesel particulate matter (DPM) exhaust emissions or greater. To achieve the reduction on the project one or a combination of the following measures could be implemented:

- All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet EPA particulate matter emissions standards for Tier 3 engines that include CARB-certified Level 3 Diesel Particulate Filters or equivalent.
- Equipment that meets EPA Tier 4 standards for particulate matter
- Use of equipment that is electrically powered or uses non-diesel fuels.

The project proponent shall submit the construction operations plan and records to achieve a fleet-wide average 72 percent reduction to the Director of Planning or Director's designee prior to the start of any construction or ground-disturbance activities.

Finding: With the implementation of Mitigation Measures MM AIR-1.1, air quality impacts resulting from construction activities associated with the Project would be reduced to a less than significant level. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: Implementation of the City's standard project conditions for construction air quality, which incorporate Best Management Practices (BMPs) from the Bay Area Air Quality Management District (BAAQMD), would reduce exhaust emissions during construction. Based on the FEIR and associated Air Quality and Greenhouse Gas Assessment (Appendix B of the FEIR), combined with mitigation measures MM AIR-1.1, the maximum excess residential cancer risk from construction of the Project would be reduced to 3.9 cancer cases per million which is less than the BAAQMD threshold of 10 cancer cases per million. As a result, the required mitigation measures and BMPs would reduce the temporary construction emissions impact to a less than significant level.

Impact: **Impact AIR-C:** With both the project and cumulative community risk impacts at the construction MEI, the combined effect of all TAC sources in the project area could result in toxic air contaminant emissions in excess of Bay Area Air Quality Management District's (BAAQMD) thresholds of more than 100 cases per million for cancer risk, 0.8 microgram per cubic meter for particulate matter 2.5 concentration, and a hazard index of more than 10.

Mitigation: Mitigation measures identified for MM AIR-1.1 (detailed above).

Finding: With the implementation of Mitigation Measures MM AIR-1.1, the combined effect of all TAC sources in the project area (including the project with the implementation of the project conditions and mitigation measure MM AIR-1.1 identified under Impact AIR-1) would be less than significant as it would not exceed the Bay Area Air Quality Management District's (BAAQMD) thresholds of more than 100 cases per million for cancer risk, 0.8 microgram per cubic meter for particulate matter 2.5 (PM_{2.5}) concentration, and a Hazard Index of 10. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: Table 3.3-4 in Section 3.3.2.2 of the FEIR identified other air pollutant sources around the project area and its risks for the Maximally Exposed Individual (MEI). With these existing sources and the construction of the proposed Project, the project could result in significant TAC impacts. Implementation of the City's standard project conditions for construction air quality, which incorporate Best Management Practices (BMPs) from the Bay Area Air Quality Management District (BAAQMD), would reduce exhaust emissions during construction for the Project. With the same project conditions during construction periods, and combined with mitigation measure MM AIR-1.1 to select higher tier construction equipment, the maximum excess residential cancer risk from combined sources would be 20.8 maximum cancer risk which is less than the BAAQMD threshold of more than 100 cases per million, 0.22 microgram per cubic meter of particulate matter 2.5 which is less than BAAQMD threshold of more than 0.8 microgram per cubic meter, and Hazard Index of 0.12 which is less than BAAQMD threshold of more than 10. As a result, implementation of the required mitigation measure and BMPs would reduce the temporary construction emissions impact to a less than significant level.

Biological Resources

Impact: **Impact BIO-1:** Construction activities could result in the loss of fertile eggs, nesting raptors, or nest abandonment.

Mitigation: **MM BIO-1.1:** Tree removal and construction activities shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive.

If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of ground disturbance activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these ground-disturbance activities during the late part of the breeding season (May 1st through August 31st, inclusive).

During this survey, the qualified ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that would be disturbed by construction, the ornithologist shall designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.

The project proponent shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning or Director's designee prior, prior to the start of any construction or ground disturbance activities (e.g., tree removal).

Finding: Implementation of Mitigation Measure MM BIO-1.1 would reduce impacts to nesting raptors and other migratory birds to a less than significant level.
(Less than Significant Impact with Mitigation)

Facts in Support of Finding: Conducting pre-construction surveys and implementing a construction-free buffer zone around any migratory bird nests (if found) would ensure that raptor or migratory bird nests are not disturbed during Project construction, consistent with the federal Migratory Bird Treaty Act and the California Fish and Game Code. The size of the buffer zones would be determined by consultation between the qualified ornithologist and the CDFW, and based on scientific evidence and best management practices. Compliance with Mitigation Measure MM BIO-1.1 would avoid impacts to nesting birds.

Impact: **Impact BIO-C:** The project could result in a cumulatively considerable contribution to a significant biological resources impact.

Mitigation: Mitigation measures identified for MM BIO-1.1 above.

Finding: Implementation of Mitigation Measure MM BIO-1.1 would reduce cumulative impacts to nesting raptors and other migratory birds to a less than significant level. **(Less than Significant Impact with Mitigation)**

Facts in Support of Finding: The geographic area for cumulative biological resource impacts include the Project site and the adjacent parcels. Similar to the project-specific impact discussed above, the project could result in loss of raptor nests during construction activities. Therefore, consistent with the federal Migratory Bird Treaty Act and the California Fish and Game Code, conducting pre-construction surveys and implementing a construction-free buffer zone around any migratory bird nests (if found) would ensure that raptor or migratory bird nests are not disturbed during Project construction. The size of the buffer zones would be determined by consultation between the qualified ornithologist and the CDFW, and based on scientific evidence and best management practices. Compliance with Mitigation Measure MM BIO-1.1 would then also avoid cumulative impacts to nesting birds.

Cultural Resources

Impact: **Impact CUL-1:** Based on the analysis of the FEIR and associated documents, the project is not in substantial conformance with the general character and surface treatment (specifically fenestration, materials, detailing, and color) of the applicable *1989 St. James Square Historic District Guidelines* and is not in substantial conformance with the *Secretary of the Interior's Standards (Rehabilitation)* regarding the proposed structures and overall design. Construction of the Project could result in existing historic elements in the park being damaged and implementation of the Project would impact the historic integrity of St. James Park and the St. James Park Historic District.

Mitigation: **MM CUL-1.1:** Prior to the start of construction, a qualified arborist shall undertake a detailed assessment of the row of heritage palm trees (along North 1st Street) and other heritage trees to establish the baseline condition of the trees. The documentation shall take the form of detailed written descriptions and visual illustrations and/or photos, including physical characteristics. The documentation shall be submitted for review and approval by the City of San José's Historic Preservation Officer and the Director of Planning or Director's designee.

MM CUL-1.2: Prior to the start of construction, the project proponent shall retain a qualified historic architect who meets the Secretary of Interior's Professional Qualifications Standards. The qualified historic architect shall formalize the existing conditions through a visual study of the historic resources on-site, which would include preparation of preconstruction documentation of the historic resources that could be at risk from construction of the project, including the McKinley Statue and Monument, Kennedy Podium, and Naglee Monument. The purpose of the study is to establish the baseline condition of the resources prior to construction. The documentation shall take the form of detailed written descriptions and visual illustrations and/or photos, including physical characteristics of each resource that convey its historic significance and justify its eligibility as a contributing feature of the site. The documentation shall be reviewed and approved by the City of San José's Historic Preservation Officer prior to issuance of grading permits.

MM CUL-1.3: The historic architect shall prepare and implement a Historic Resources Protection Plan to protect the historic resources determined to be at risk from direct or indirect impacts during construction activities (i.e., due to damage from operation of construction equipment, staging, and material storage). The project proponent shall ensure the contractor follows the Historic Resources Protection Plan while working near these historic resources. At a minimum, the Historic Resources Protection Plan shall include:

- Guidelines for operation of construction equipment adjacent to historical resources;
- Requirements for monitoring and documenting compliance with the plan; and
- Education/training of construction workers about the significance of the historical resources around which they would be working.

The Historic Resources Protection Plan must be reviewed and approved by the City's Historic Preservation Officer prior to issuance of any ground disturbance activities.

MM CUL-1.4: Utilizing the visual study in MM CUL-1.3, the historic architect shall make periodic site visits to monitor the condition of the historic resources identified in the Historical Resources Protection Plan. The timing of the visits shall be specified in the Historic Resources Protection Plan.

MM CUL-1.5: In the event of damage to contributing features during construction, repair work would be completed in full compliance with the

Secretary of the Interior's Standards for the Treatment of Historic Properties and would restore the character-defining features of the park. Documentation illustrating how the repair work would be completed would be done in consultation with the City of San José's Historic Preservation Officer.

Finding: The project's implementation of mitigation measures MM CUL-1.1 through MM CUL-1.5 would document preconstruction conditions of historic resources on-site (e.g., the heritage trees and monuments), preparing and implementing a plan to protect historic resources during construction, monitoring historic resources during construction, and repairing any damage during construction to restore the character-defining features of the resource. However, these mitigation measures would only reduce construction impacts to cultural integrity of the park elements and park, but the implementation of the Project would continue to not be fully consistent with the Secretary of the Interior's Standards for Rehabilitation. Therefore, there are no feasible mitigation measures that would reduce the impact to a less than significant level. **(Significant Unavoidable)**

Facts in Support of Finding: The Project was analyzed against the St. James Square Historic District Guidelines and the Secretary of the Interior's Standards for the Treatment of Historic Properties 10 Rehabilitation Standards. Project effects were analyzed for any impact the Project would have on the park as a Candidate City Landmark and contributor to the City Landmark District and the National Register District and the local and National historic district as a whole under California Environmental Quality Act (CEQA). Based on the analysis of the DEIR and associated documents, the City's historic consultant concluded that the project is not in substantial conformance with the general character and surface treatment (specifically fenestration, materials, detailing, and color) of the *1989 St. James Square Historic District Guidelines* and is not in substantial conformance with the Secretary of the Interior's Standards (Rehabilitation) regarding the proposed structures and overall design. Pursuant to CEQA Guidelines Section 15064.5(b)(3), generally a project that follows the Secretary of the Interior's Standards is considered to have a less than significant impact on a historical resource. Furthermore, analysis of the Project concluded that if additional character-defining features of the park are lost, the park would no longer qualify under the NRHP as a contributing property. By removing or altering character defining features such as the north/south and east/west axis paths, diagonal cross axis paths, circulate features at four corners, undulating path around the perimeter connecting the circulate features, random placement of statuary and monument, flat ground plan with a lack

of topographic variation, and informal planting scheme, the Project would not substantial conformance with the general character and surface treatment of the *1989 St. James Square Historic District Guidelines* and with the *Secretary of the Interior's Standards (Rehabilitation)*. Therefore, the Project would affect the historic significance of the site, change eligibility, remove character-defining features, and/or compromise integrity of the Project site and the project would have a significant impact on the historic integrity of the park and the district.

Impact: **Impact CUL-2:** While there are no known archaeological resources on-site, the project site is located in an archaeologically sensitive area and unknown archaeological resources could be encountered during construction. Therefore, construction of the Project could disturb unrecorded subsurface cultural resources.

Mitigation: **MM CUL-2.1:** Prior to any ground disturbance, the project shall implement the following measures:

- A qualified archaeologist shall be on-site to monitor the initial excavation. After monitoring the initial excavation, the archaeologist shall make recommendations for further monitoring if it is determined that the site has cultural resources. If the archaeologist determines that no resources are likely to be found on site, no additional monitoring shall be required. If no resources are discovered, the consulting archaeologist shall submit a report to the City's Environmental Principal Planner verifying that the required monitoring occurred and that no further mitigation is necessary.
- If evidence of any archaeological, cultural, and/or historical deposits is found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. In the event that human remains are found, the project shall comply with the procedures set forth by Health and Safety Code § 7050.5 and Public Resources Code § 5097.94 of the State of California.
- The archaeologist shall submit a report(s) describing the testing program and subsequent results, to the satisfaction of the City's Environmental Principal Planner. The report(s) shall identify any program mitigation that the City shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources).

- A final report verifying completion of the mitigation program shall be submitted to the City's Supervising Environmental Planner for review and approval prior to release of the project acceptance. This report shall contain a description of the mitigation programs and results of the mitigation, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources.

Finding: Implementation of mitigation measure MM CUL-2.1 would reduce potential impacts to archaeological resources to a less than significant level (**Less than Significant Impact with Mitigation**)

Facts in Support of Finding: Construction of the Project could potentially unearth and disturb non-recorded archaeological resources at the project site.. Implementation of MM CUL-2.1 would require monitoring of subsurface construction activity by an archaeologist and if resources are found, the archeologist would recommend next appropriate steps to manage and properly handle the resource. Therefore, the mitigation measure would reduce potential risk to archaeological resources to a less than significant level.

Noise

Impact: **Impact NOI-1:** Operation of the proposed performing arts pavilion portion of the Project would result in interior noise levels above the City's residential interior noise standard of 45 dBA DNL.

Mitigation: **MM NOI-1.1:** Amplified music events at the performing arts pavilion shall end by 10:00 PM.

Finding: The proposed project would construct a performing arts pavilion in the northwest corner of the project site. A schedule of events for the performing arts pavilion is unavailable at this time. The FEIR assumed that the project would host between 50 and 300 events annually. The results show that with mitigation measures and project conditions to restrict operations of the proposed performing arts pavilion portion of the Project, the project would reduce music event noise to the area and overall exterior noise, not causing a permanently increase the ambient exterior noise level of the project area, consistent with General Plan Policy EC-1.1 and 1.2. However, even with the measures and conditions, the operation of the pavilion would still result

in interior noise levels of 45 to 50 dBA within the residences along St. James Street. **(Significant Unavoidable Impact)**

Facts in Support of Finding: Noise generation from the performing arts pavilion would vary significantly depending on the nature of the event, sound amplification needs, and the size of the crowd. In addition, reactions from nearby residents would vary depending on the time of day, duration of the event, and frequency of events. The project would incorporate project conditions and designs such as sound system technology to limit spillover of music in the community. Also, other project features will reduce noise impacts, such as large concerts (define) ending by 8:00 PM, limits on sound system outputs, continuous noise monitoring during operations of certain sized (specify size) events, retrofitting the most sensitive noise receptors such as the Trinity Church, and requirements for PRNS to work with local law enforcement for investigation of legitimate noise concerns. Furthermore, the MM NOI-1.1 would further reduce the usable timeframe and events proposed in the pavilion. However, as previously mentioned, it does not ensure that the project would not result in a substantial increase in interior noise levels at the nearest noise-sensitive receptors. As discussed above, the proposed pavilion component of the overall Project would result in operational noise to the City's residential interior noise standards, even with the limitation of usable hours.

Recreation

Impact: **Impact REC-1:** The proposed changes to St. James Park would impact the visual character and historic integrity of the park and would result in an operational noise impact.

Mitigation: Mitigation measures identified for MM CUL-1.1, MM CUL-1.5, NOI-1.1 (detailed above).

Finding: As discussed in Sections 3.1, 3.5, and 3.13 of this document, even with the implementation of identified mitigation, the visual, cultural, and noise impacts resulting from the project would be significant and unavoidable. The project would have a significant unavoidable impact on the visual character of the park (Section 3.1, Aesthetics) and the historic integrity of the park (Section 3.5, Cultural Resources). In addition, the proposed performing arts pavilion would have a significant and unavoidable operational noise impact (Section 3.13, Noise). Therefore, the project would be a recreational facility that would result in adverse physical effects to the environment. **(Significant Unavoidable Impact)**

Facts in Support of Finding: The Project site is an existing park and is a part of the St. James Square Historic District which includes a mix of historic and modern buildings. While most identified physical construction and operational impacts would be less than significant, the overall physical changes to the park is connected with the significance in change in visual character of the Park. As the project was found to have significant unavoidable impacts to Cultural Resources, Aesthetics, and Noise such as described above, the proposed recreational facility would also result in an adverse physical effect to the environment overall.

FINDINGS CONCERNING ALTERNATIVES

In order to comply with the purposes of CEQA, it is important to identify alternatives that reduce the significant impacts that are anticipated to occur if the Project is implemented and to try to meet as many of the Project's objectives as possible. The CEQA Guidelines emphasize a common sense approach -- the alternatives should be reasonable, should "foster informed decision making and public participation," and should focus on alternatives that avoid or substantially lessen the significant impacts.

The alternatives analyzed in the FEIR were developed with the goal of being at least potentially feasible, given Project objectives and site constraints, while avoiding or reducing the Project's identified environmental effects. The following are evaluated as alternatives to the proposed Project:

1. No Project Alternative
- 2A. Enclosed Pavilion Alternatives for 5,000 Attendees,
- 2B. Enclosed Pavilion Alternative with Project Footprint,
3. Pavilion with No Concerts Alternative,
4. Discovery Meadow Alternative Pavilion Location, and
5. Design Alternative

1. No Project Alternative

- A. Description of Alternative:** The No Project Alternative would retain the existing park site as it is. If the project site were to remain as is, there would be no new impacts.
- B. Comparison of Environmental Impacts:** The No Project Alternative would avoid all of the project's environmental impacts.
- C. Finding:** The No Project Alternative would avoid the Project's construction and operation impacts as there would be no ground disturbance activities and

no new sources of noise (i.e., proposed pavilion). The No Project Alternative would not meet any of the proposed Project's specific objectives, including increasing the everyday use of St. James Park, adding a performing arts pavilion, creating a private-public partnership to ensure quality park stewardship, improving maintenance and operation of the park, integrating arts and culture at the park, providing all-inclusive and accessible play areas, and implementing community plans and vision for the site. Therefore, this alternative is rejected.

2A. Enclosed Pavilion Alternatives – 5,000 Attendees

- A. Description of Alternative:** This alternative would completely enclose the pavilion using standard building construction with no operable windows as the design for the pavilion, with all activities kept indoors. To accommodate the proposed 5,000 attendees, an enclosed pavilion would likely require development within most of the eastern half of the park. This alternative would assume that the eastern half of the park would be developed with the enclosed pavilion and therefore, would preclude other project improvements such as the dog parks and Naglee Picnic Grove.
- B. Comparison of Environmental Impacts:** The Enclosed Pavilion Alternative for 5,000 Attendees would avoid the project's significant and unavoidable operational noise impact. Based on the anticipated design to accommodate the proposed 5,000 attendees, the project would need a taller and more massive building than the proposed Project. Furthermore, equipping the proposed enclosed building would result in more energy for mechanical equipment such as HVAC and lighting. The elimination of the eastern half of the park to accommodate for this footprint would also reduce the usable and programmable space for the existing park.

While this alternative would have more proposed impervious surface, it would likely have similar impacts to hydrology as the proposed Project because development under this alternative would comply with local, regional, and state regulations for stormwater and sanitation. The Enclosed Pavilion Alternative for 5,000 Attendees would result in the same or similar impacts to biological resources, geology and soils, hazards and hazardous materials, as the proposed project due to the same or similar area of impacts to those resource. Given the land uses and the intensity of the land uses under this alternative are the similar the proposed project, impacts related to transportation, land use, population and housing, public services, and utilities and service systems would be comparable to the proposed project.

This alternative, however, would result in additional construction for a larger foundation and would likely extend the construction timeframe and duration, increasing construction impacts such as air quality and biological impacts. This alternative would also increase energy and GHG emission compared to the proposed project as there would be a larger building proposed on site. usage would occur, as would an increase in GHG emissions compared to the proposed project.

- C. Finding:** The Enclosed Pavilion Alternative for 5,000 Attendees would be able to meet most of the project objectives by renovating and improving St. James Park and constructing a performing arts pavilion. This alternative would not fully meet the project objective of increasing everyday use of the park as the park is unlikely to be used during the days and times when the enclosed pavilion is not in used. The Enclosed Pavilion Alternative for 5,000 Attendees would avoid the project's significant and unavoidable noise impact. The alternative would result in greater impacts to aesthetics, air quality, historic resources, energy, GHG, parks, and recreational facilities. The Enclosed Pavilion Alternative for 5,000 Attendees would meet all of the project objectives except for increasing daily use specifically when the pavilion (including the space it occupies on the park) is not in use and complimenting the historic district. As this alternative would eliminate significant operational noise, it would likely result in intensity of the construction, operational impact to utilities such as GHG emission and energy, would eliminate certain key components of the proposed Project that would increase daily use of the park (i.e. meeting a key objective), and increase incompatibility to the historic integrity of the park, this alternative is rejected.

2B. Enclosed Pavilion Alternatives With Footprint

- A. Description of Alternative:** Under the Enclosed Pavilion Alternative with Project Footprint, the pavilion would be completely enclosed and the footprint of the enclosed pavilion would be limited to the footprint of the proposed pavilion and lawn seating area. An Enclosed Pavilion Alternative with Project Footprint, given the area needed for the enclosure, would not be able to accommodate 5,000 attendees.
- B. Comparison of Environmental Impacts:** Similar to the Enclosed Pavilion Alternative for 5,000 Attendees Alternative, this alternative would result in greater impacts to aesthetics, air quality, historic resources, energy, and GHG as it would result in a new, fully, building at the same footprint as the proposed pavilion and lawn seating areas on the northeastern quadrant of the park. This alternative would, however, result in lesser impacts to parks and recreational

facilities because the footprint of the enclosed pavilion under this alternative would not be as expansive as the footprint of the enclosed pavilion under the Enclosed Pavilion Alternative for 5,000 Attendees.

- C. Finding:** The Enclosed Pavilion Alternative with Project Footprint would avoid the project's significant and unavoidable noise impact. The alternative would result in greater impacts to aesthetics, air quality, historic resources, energy, and GHG. The alternative would result in the same or similar impacts as the proposed project to all other environmental resources. The Enclosed Pavilion Alternative with Project Footprint would meet most of the project objectives, but would continue to limit the use of the pavilion space during non-operating hours. This alternative would result in similar impacts to the historic integrity of the park and district. Although this alternative would eliminate significant operational noise, it would likely result in intensity of the construction, operational impact to utilities such as GHG emission and energy, and increase incompatibility to the historic integrity of the park. Therefore, this alternative is rejected.

3. Pavilion With No Concerts Alternative

- A. Description of Alternative:** The Pavilion with No Concerts Alternative is the project as proposed except no music concerts or other events producing noise levels similar to that of concerts (e.g., 85 dBA at 100 feet from the stage) would be allowed.
- B. Comparison of Environmental Impacts:** The Pavilion with No Concert Alternative would result in the same impacts (Significant Unavoidable with Mitigation Measures) as the proposed project in term of aesthetic, cultural resources, and recreation. The project would, however, avoid the project's significant and unavoidable noise impact.
- C. Finding:** The Pavilion with No Concerts Alternative would meet eight of the project objectives by renovating and improving St. James Park and constructing a performing arts pavilion, but would not meet four of the 12 project objectives to provide enhancement through a music venue or a facility that would facilitate community music and programs. Therefore, this alternative is rejected.

4. Discovery Meadow Alternative Pavilion Location

- A. Description of Alternative:** Discovery Meadow is an approximately six-acre public park located downtown at the southeast corner of Woz Way and Park

Avenue, approximately one mile southwest of the Project site. Discovery Meadow has large open lawn areas and currently hosts a variety of events. There are no sensitive receptors such as residential developments located near Discovery Meadow. The alternative site is surrounded by commercial uses to the north, Guadalupe River to the east, Children Discovery Museum of San Jose to the south, and Highway 87 to the west. This alternative would relocate the proposed pavilion to the Discovery Meadow and keep all other programming and proposed park elements (i.e., playground, fountain, monument walks, etc.) at the project site.

- B. Comparison of Environmental Impacts:** As there are no sensitive receptors located near Discovery Meadow, this alternative would avoid the project's significant and unavoidable operational noise impact as it would not result in impacts to nearby sensitive receptors. Because Discovery Meadow is not located within a historic district or designated a historic resource, the development of the project at this alternative location would avoid the project's impact to historic resources. However, it does not guarantee that the relocation of the pavilion would fully reduce historic resources to the St. James Project location as other components the park are still kept as the originally proposed project. Furthermore, as this setting is similar to the proposed project site, the development of the pavilion at Discovery Meadow would result in similar or same impacts to air quality, archaeological resources, energy, geology and soils, GHG emissions, hazards and hazardous materials, hydrology and water quality, land use, public services, recreation, transportation, and utilities and service systems impacts as the proposed project. With careful design and orientation, the project could also avoid significant light and noise impacts due to the proximity to sensitive riparian habitat along the Guadalupe River bordering the east side of the park.
- C. Finding:** The Discovery Meadow Alternative Location would meet most of the project objectives (by revitalizing St. James Park and providing a performing arts pavilion, though at a different location from the Project), except one main objective that specifies transforming an underutilized neighborhood park into a prime destination where music concerts occur. Based on recent data provided by the Department of Parks, Recreation, and Neighborhood Services, the St. James Park site had a higher number of events than Discovery Meadow due to efforts of activating the park and encouraging residents to use and attend the events. Even with fewer events, the Discovery Meadow site offers different scales of events and encourage more attendance per event. For example, in 2018-2019, St. James Park has a total of 156 events with a total of 19,062 attendees while Discovery Meadow has a total of 23 events with a total of 182,980 attendees. As the objectives (Object 5, 7, and 8) of this project is to

revitalize and transform an underutilized neighborhood park through a combination of physical and programmatic improvements (including through activation of musical events), this objective would not be met with the relocation of the pavilion to another site. Therefore, this alternative is rejected.

5. Design Alternative

- A. Description of Alternative:** This redesign alternative would reintroduce the diagonal paths and reorientation of the perimeter path to be more consistent with the original pathway. The new park buildings such as the proposed café shop and associated public restroom would remain in the Project, but would be redesigned to be more compatible with required standards such as the *1989 St. James Square Historic District Guidelines* and the *Secretary of the Interior's Standards (Rehabilitation)*. This alternative would result in the removal of the pavilion as the diagonal pathways would not accommodate the placement of an outdoor performance venue with the desired capacity. The lawns in the northwest quadrant would be segmented or removed, and amenity spaces within the southeast quadrant would need to be redesigned to allow for an uninterrupted path. Realignment of the perimeter path would likely require changes to the placement of proposed amenity spaces and existing memorials proposed for preservation within the park.
- B. Comparison of Environmental Impacts:** Being of similar size as the proposed project, this alternative would likely to result in similar impacts under air quality, noise, and biological impacts as construction would be of similar scope. However, the Design Alternative would result in lesser impacts to the historic resources.
- C. Findings:** The purpose of this design alternative is to reduce the cultural resources impacts to a less than significant level by keeping some of the character defining features such as the north/south, east/west axis paths, diagonal cross axis paths, circular features at the four corners, undulating path around the perimeter connecting to circular features, random placement of statuary and monuments, flat ground plan with lack of topographic variation, and an informal planting scheme. To keep these main character defining features, the project site would need to reintroduce the diagonal paths that would segment proposed lawns and areas, relocate monuments and features of the park, and not construct the proposed pavilion from the Project. This alternative would not be consistent with five of the 12 project objectives. Specifically, it would not be consistent with objectives to enhance and provide opportunities of gathering and use of the park through a music venue or facility that would facilitate community music and programs. Keeping all the character

defining features or a full reversion to the historic layout could affect other park programming, which could result in not meeting other objectives of the project. Therefore, this alternative is rejected.

Environmentally Superior Alternative

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. . The main significant unavoidable impacts of the Project are associated with cultural resources and operational noise. Aesthetics and Recreation resource areas are deemed to be significant unavoidable in relationship to the visual context and historic integrity of the site and in the physical adverse impact to the existing environment. Alternatives 2A, 2B, 3 and 4 would avoid the significant operational noise impact as these alternatives would result in either an enclosed pavilion, prohibition of any music events at the open air pavilion, or relocation of the pavilion altogether to an area with no nearby sensitive receptors. However, the project could intensify other environmental impacts such as construction, energy, and GHG emission and would increase incompatibility to the historic integrity of the park. Furthermore, Alternatives 2A, 2B, 3 and 4 would meet most of the objectives, but not the critical objectives to promote the park as a cultural assets and building community through music and cultural events. Alternative 5 would reduce historic impacts and, potentially, significant noise impact. Alternative 5, Design Alternative, would avoid all significant unavoidable impacts and construction impacts, and is environmentally superior in that respect. However, this alternative would not be consistent with five of the 12 project objectives, specifically objectives to enhancement and provide opportunities of gathering and use of the park through a music venue or facility that would facilitate community music and programs.

MITIGATION MONITORING AND REPORTING PROGRAM

Attached to this Resolution as Exhibit "A" and incorporated and adopted as part of this Resolution herein is the Mitigation Monitoring and Reporting Program ("MMRP") for the Project required under Section 21081.6 of the CEQA Statute and Section 15097(b) of the CEQA Guidelines. The MMRP identifies impacts of the Project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action.

STATEMENT OF OVERRIDING CONSIDERATIONS

- A. **Significant Unavoidable Impacts.** With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined that the Project will result in significant unmitigated or unavoidable impacts, as set forth above, associated with cultural resources and operational noise.
- B. **Overriding Considerations.** The City Council specifically adopts and makes this Statement of Override Considerations that this 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 economic, legal, environmental, social, technological or other considerations noted below, because the benefits of the Project outweigh its significant adverse environmental impact of the Project. the city Council finds that each of the overriding considerations set forth below constitutes a separate and independent basis for finding that the benefits constitutes a separate and independent basis for finding that the benefits of the Project outweigh its significant adverse environmental impacts and is an overriding consideration warranting approval of the Project. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San Jose 2040 General Plan, the 2015 Saint James Revitalization Strategy, and Activate SJ Strategic Plan.
- C. **Benefits of the Project.** The City Council has considered the public record of proceedings on the proposed Project and other written materials presented to the City 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 the following substantial public benefits:
1. **Envision San José 2040 General Plan Strategies, Goals, and Policies.**
 - Major Strategy #9 Destination Downtown and #11 Design for a Healthful Community: The Project is located in the Downtown core and is a 7.5-acre site of open space within a dense community within access to public transit. The Project would result in the revitalization of a prime open space within an existing neighborhood with the intent to increase everyday use and enjoyment of the St. James Park by reprogramming and designing the park to include a diverse number of recreational elements for all ages and enjoyment. The Project will improve an existing resource for residents and users in the area and promote good and convenient access to a large and diverse variety of

parks, trails, and creation facilities to all City residents. Furthermore, by encouraging usage of the Project location with events, the Project would also energize the Downtown area.

- General Plan Policy for High Quality Facilities and Programs, PR-1.6, 1.7, 1.8

The Project site currently has park elements such as lawns, pedestrian paths, playgrounds, and monument. The site has been reported to have fewer number of attendees per event in the last couple of years, despite being part of an on-going active effort by staff to activate and increase usage. The Project would improve existing amenities at the site, incorporate new physical elements to encourage new programs and new activities such as community events, festivals, and farmer markets. The Project would include new physical and programmatic elements such as dog park, new playground, perimeter garden, new interactive fountain, small café, and performing art pavilion to promote a diverse number of activities within the park. All the improvements would change the site to balance both passive and active types of recreations at the park, and therefore, encourage uses at the site. This is consistent with a changing environment and growing Downtown Core.

- General Plan Goal for Interconnected Parks System, PR-7.3 and 7.4

The site is located within an urbanized area, Downtown Core, with accessibility to public transit and is in walkable area. The physical and programmatic proposal to the Project site would expand recreational opportunities to residents in a dense area with a focus on improving connection to new recreational facilities. The programmatic changes, as proposed by the Project, would also add new uses that would enhance the diversity of users.

- General Plan Goal For Fiscal Management of Parks and Recreational Resources, PR-8.1

The Project would establish a partnership with a community-based organization for the programming of the proposed pavilion. This would provide the community with further ownership and connection to support the long-term activation goals of the park. This, therefore, would be consistent with this General Plan policy

to promote volunteerism in the care and programming of a neighborhood recreational facility.

2. **2015 Saint James Park Revitalization Strategy.** City Council approved the Saint James Park Revitalization Strategy in 2015 which directs staff to coordinate, collaborate, and to use a multi-pronged approach to transform the park into a vibrant public space that residents and employees in Downtown and beyond will use. The Strategy including specific funding mechanisms with the goal to focused on park activation, communications, park safety/street life outreach, capital vision maintenance, and park governance and sustainable funding. This Project is consistent with the approved strategies and desired outcome of this strategy. Specifically, the area and workplan items of this Strategy including working in parallel and together with the performance pavilion project, development of a plan for activation, on-going maintenance of amenities on site, and implement capital projects for the capital vision. This Project is the product of efforts that stems from the Strategy.
3. **Economic Benefits.** According to the 2016 The Trust For Public Land Study for Economic Benefits of the Park & Recreation System in San Jose, California, quality parks can raise property values of nearby residential property by \$1 billion and increase property tax revenues by \$12.1 million a year. The proposed Project would revitalize an existing park to add more diverse amenities that would attract new park users and revitalization of a park. It would overall increase property values, direct tax revenue, tourism, and rental events.
4. **ActivateSJ Strategic Plan.** The ActivateSJ Strategic Plan is the City of San José's Department of Parks, Recreation and Neighborhood Services' (PRNS) plan to maintain, improve and expand our facilities, programs and services. The Project would achieve goals such as improve community health in partnership with others by promoting parks and recreational experience for a diverse crowd, providing a quality park with a range of both passive and active activities within a 10-minute walk from neighborhoods, and enhance safety to deter presence of illegal activities in parks.

The City Council has weighed each of the above benefits of the proposed Project against its unavoidable environmental risks and adverse environmental effects identified in the Final Environmental Impact Report and hereby determines that those benefits outweigh the risks and adverse environmental effects of the Project and, therefore, further

determines that these risks and adverse environmental effects are acceptable and overridden.

LOCATION AND CUSTODIAN OF RECORDS

The documents and other materials that constitute the record of proceedings on which the City Council based the foregoing findings and approval of the Project are located at the City's Department of Planning, Building and Code Enforcement, San José City Hall, 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113. The City Council hereby designates the City's Director of Planning, Building, and Code Enforcement at the Director's office at 200 East Santa Clara Street, 3rd Floor Tower, San José California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

ADOPTED this ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

St. James Park Capital Vision and Performing Arts Pavilion Project File No. PP16-037 (SCH# 2016052074)

MAY 2020



PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Environmental Impact Report (EIR) prepared for the St. James Park Capital Vision and Performing Arts Pavilion Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project. This MMRP addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the EIR concluded that the impacts from implementation of the project would be less than significant. Project conditions identified in the EIR are listed at the end of the MMRP.

The City of San José hereby agrees to fully implement the EIR described below which have been developed in conjunction with the preparation of an EIR for the proposed project. The City understands that these mitigation measures or substantially similar measures will be adopted as conditions of approval to avoid or significantly reduce potential environmental impacts to a less than significant level, where feasible.

MITIGATIONS		MONITORING AND REPORTING PROGRAM			
		Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]	
		Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports
AESTHETICS					
Impact AES-1: Implementation of the proposed project would impact the visual character of the site because the design is not fully consistent with the Secretary of the Interior’s Standards for Rehabilitation.					
See MM CUL-1.1 through MM CUL-1.6 below.					
AIR QUALITY					
Impact AIR-3: Construction of the proposed project would result in toxic air contaminant emissions in excess of BAAQMD thresholds.					
Impact AIR-C: The project would result in a cumulatively considerable contribution to a significant air quality impact with the incorporation of the below mitigation.					
MM AIR-3.1: The project proponent shall retain a qualified consultant to develop a construction operations plan demonstrating that the off-road equipment used on-site to construct the project would achieve a fleet-wide average of 72 percent reduction in diesel particulate matter (DPM) exhaust emissions	Prepare a construction operations plan demonstrating that the off-road equipment used on-site to construct the project would achieve a fleet-	Prior to the start of any construction or ground-disturbance activities.	Director of Planning or Director’s designee.	Receive the construction operations plan and records.	Prior to the start of any construction or ground-disturbance activities.

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<p>or greater. To achieve the reduction, one or a combination of the following measures could be implemented:</p> <ul style="list-style-type: none"> All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet EPA particulate matter emissions standards for Tier 3 engines that include CARB-certified Level 3 Diesel Particulate Filters or equivalent. Use of equipment that meets EPA Tier 4 standards for particulate matter Use of equipment that is electrically powered or uses non-diesel fuels. 	<p>wide average of 72 percent reduction in DPM exhaust emissions or greater.</p> <p>Submit the construction operations plan and records to the Director of Planning or Director's designee prior to the start of any construction or ground-disturbance activities.</p>			

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The project proponent shall submit the construction operations plan and records to achieve a fleet-wide average 72 percent reduction to the Director of Planning or Director’s designee prior to the start of any construction or ground-disturbance activities.					
BIOLOGICAL RESOURCES					
Impact BIO-1: Construction activities could result in the loss of fertile eggs, nesting raptors, or nest abandonment.					
Impact BIO-C: The project could result in a cumulatively considerable contribution to a significant biological resources impact.					
MM BIO-1.1: Tree removal and construction activities shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive. If tree removals and construction cannot be scheduled outside of nesting season, a	Avoidance of construction activities during nesting seasons. If avoidance of construction activities during nesting seasons is not feasible, a pre-construction nesting	Prior to the start of any construction or ground-disturbance activities (e.g., tree removal).	City’s Director of Planning or Director’s designee.	Confirm that demolition and construction activities are scheduled outside of the nesting season.	Prior to the start of any construction or ground-disturbance activities (e.g., tree removal).

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<p>qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of ground-disturbance activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these ground-disturbance activities during the late part of the breeding season (May 1st through August 31st, inclusive).</p> <p>During this survey, the qualified ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that would be disturbed by construction, the ornithologist shall designate a construction-free buffer zone</p>	<p>bird survey shall be conducted by a qualified ornithologist and, in consultation with the California Department of Fish and Wildlife, a construction-free buffer zone shall be designated around any discovered nest.</p>			<p>If activities are scheduled during the nesting season, review report indicating the results of the survey (or any other environmental investigation reports, if applicable) and any designated buffer zones.</p>
	<p>The project proponent shall submit a report indicating the results of the survey and any designated buffer zones to the City's Director of</p>			

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<p>(typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.</p> <p>The project proponent shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning or Director's designee, prior to the start of any construction or ground-disturbance activities (e.g., tree removal).</p>	Planning or Director's designee.			
CULTURAL RESOURCES				

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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
	Impact CUL-1: Implementation of the proposed project would impact the historic integrity of St. James Park and the St. James Park Historic District.				
MM CUL-1.1: Prior to the start of construction, a qualified arborist shall undertake a detailed assessment of the row of heritage palm trees (along North 1st Street) and other heritage trees to establish the baseline condition of the trees. The documentation shall take the form of detailed written descriptions and visual illustrations and/or photos, including physical characteristics. The documentation shall be submitted for review and approval by the City of San José’s Historic Preservation Officer and the Director of Planning or Director’s designee.	A qualified arborist shall make a detailed assessment of the palm trees and heritage trees to establish the baseline conditions.	Prior to construction.	City of San José’s Historic Preservation Officer and the Director of Planning or Director’s designee.	Review and approve the assessment of the heritage trees, the existing conditions visual study of the historic resources, and the Historic Resources Protection Plan.	Prior to any ground disturbing activities and during construction.

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<p>MM CUL-1.2: Prior to the start of construction, the project proponent shall retain a qualified historic architect who meets the Secretary of Interior's Professional Qualifications Standards. The qualified historic architect shall formalize the existing conditions through a visual study of the historic resources on-site, which would include preparation of preconstruction documentation of the historic resources that could be at risk from construction of the project, including the McKinley Statue and Monument, Kennedy Podium, and Naglee Monument. The purpose of the study is to establish the baseline condition of the resources prior to construction. The documentation shall take the form of detailed written descriptions and visual illustrations and/or photos, including physical characteristics of each resource that convey</p>	<p>A qualified historic architect shall formalize the existing conditions visual study of the historic resources on-site.</p>	<p>Prior to the issuance of grading permits.</p>	<p>City of San José's Historic Preservation Officer.</p>	<p>Review and approve the existing conditions visual study.</p> <p>Prior to the issuance of grading permits.</p>

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<p>its historic significance and justify its eligibility as a contributing feature of the site. The documentation shall be reviewed and approved by the City of San José's Historic Preservation Officer prior to issuance of grading permits.</p> <p>MM CUL-1.3: The historic architect shall prepare and implement a Historic Resources Protection Plan to protect the historic resources determined to be at risk from direct or indirect impacts during construction activities (i.e., due to damage from operation of construction equipment, staging, and material storage). The City shall ensure the contractor follows the Historic Resources Protection Plan while working near these historic resources. At a minimum, the Historic Resources Protection Plan shall include:</p>	<p>The historic architect shall prepare and implement a Historic Resources Protection Plan to protect the historic resources determined to be at risk from construction activities. The City shall ensure the contractor follows the plan while working near these historic resources. The historic</p>	<p>Prior to the issuance of any permits.</p>	<p>The City's Historic Preservation Officer.</p>	<p>Review and approve the Historic Resources Protection Plan.</p> <p>Prior to the issuance of any permits.</p>

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<ul style="list-style-type: none"> Guidelines for operation of construction equipment adjacent to historical resources; Requirements for monitoring and documenting compliance with the plan; and Education/training of construction workers about the significance of the historical resources around which they would be working. <p>The Historic Resources Protection Plan must be reviewed and approved by the City's Historic Preservation Officer prior to issuance of any permits.</p> <p>MM CUL-1.4: Utilizing the visual study MM CUL-1.3, the historic architect shall make periodic site visits to monitor the condition of the historic resources identified in the Historical Resources Protection Plan.</p>	architect shall make periodic site visits to monitor the condition of the historic resources identified in the plan.			
	The historic architect shall make periodic site visits to monitor the condition of the historic resources identified	Timing of visits shall be based on the schedule specified in the Historic	City of San José's Historic Preservation Officer.	Ensure that the historic architect makes periodic site visits.
				Throughout construction.

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<p>The timing of the visits shall be specified in the Historic Resources Protection Plan.</p> <p>MM CUL-1.5: In the event of damage to contributing features during construction, repair work would be completed in full compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and would restore the character-defining features of the park.</p>	<p>in the Historical Resources Protection Plan.</p> <p>In the event of damage to contributing features during construction, restore the character-defining features of the park.</p>	<p>Resources Protection Plan.</p> <p>Immediately after damage is caused.</p>	City of San José's Historic Preservation Officer.	Ensure that if repair work is required, that it is completed in full compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.	In the event of damage during construction.
Impact CUL-2: Construction of the proposed project could disturb as yet unrecorded subsurface cultural resources.					
<p>MM CUL-2.1: Prior to any ground disturbance, the project shall implement the following measures:</p> <ul style="list-style-type: none"> A qualified archaeologist shall be on-site to monitor the initial excavation. After monitoring the initial excavation, the archaeologist shall 	On-site monitoring shall be on site during excavation. If resources are found during excavation, appropriate next steps shall be	During ground-disturbance activities.	Qualified archaeologist, City Environmental Principal Planner.	Confirm on-site monitoring is implemented, review any recommendation from qualified	During ground-disturbance activities

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<p>make recommendations for further monitoring if it is determined that the site has cultural resources. If the archaeologist determines that no resources are likely to be found on site, no additional monitoring shall be required. If no resources are discovered, the consulting archaeologist shall submit a report to the City's Environmental Principal Planner verifying that the required monitoring occurred and that no further mitigation is necessary.</p> <ul style="list-style-type: none"> If evidence of any archaeological, cultural, and/or historical deposits is found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. In the event that human 	recommended and implemented.			archeologist, as applicable.

MITIGATIONS	MONITORING AND REPORTING PROGRAM			
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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	
<p>remains are found, the project shall comply with the procedures set forth by Health and Safety Code § 7050.5 and Public Resources Code § 5097.94 of the State of California.</p> <ul style="list-style-type: none"> The archaeologist shall submit a report(s) describing the testing program and subsequent results, to the satisfaction of the City's Environmental Principal Planner. The report(s) shall identify any program mitigation that the City shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources). A final report verifying completion of the mitigation program shall be submitted to the City's Supervising 				

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Environmental Planner for review and approval prior to release of the project acceptance. This report shall contain a description of the mitigation programs and results of the mitigation, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources.				
NOISE				
Impact NOI-1: Operation of the proposed performing arts pavilion would result in interior noise levels above the City's residential interior noise standard.				
MM NOI-1.1: Amplified music events at the performing arts pavilion shall end by 10:00 PM.	Ensure amplified music events at the performing arts	During events at the performing arts pavilion.	Director of Planning or	Ensure amplified music events at the performing events at the

MITIGATIONS	MONITORING AND REPORTING PROGRAM			
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	pavilion end by 10:00 PM.		Director's designee.	arts pavilion end by 10:00 PM. performing arts pavilion.
RECREATION				
Impact REC-2: The proposed changes to St. James Park would result impact the visual character and historic integrity of the park and would also result in an operational noise impact.				
Refer to all project mitigation measures above.				

Source: City of San José. *Draft Environmental Impact Report. St. James Park Capital Vision and Performing Arts Pavilion Project. May 2020*.

Project Conditions

The following project conditions organized by environmental resource are required to be implemented as part of the project.

Air Quality

Construction

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

Biological Resources

- Tree Replacement: The project is required to meet the City's tree replacement ratios in accordance with all applicable laws, policies, and guidelines (Chapter 13 of the San José Municipal Code and General Plan policies MS-21.4, MS-21.5, MS-21.6, and CD-1.24), as outlined in Table 3.4-2 below.

Table 3.4-2: City of San José Standard Tree Replacement Ratios			
Circumference of Tree to Be Removed	Type of Tree to be Removed		Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard
38 inches or greater	5:1	4:1	3:1
19-38 inches	3:1	2:1	none
Less than 19 inches	1:1	1:1	none
<p>x:x = tree replacement to tree loss ratio</p> <p>Note: Trees greater than or equal to 38-inch 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 permit is required for removal of trees of any size.</p> <p>A 38-inch tree equals 12.1 inches in diameter.</p> <p>A 24-inch box tree = two 15-gallon trees</p> <p>Single Family and Two-dwelling properties may be mitigated at a 1:1 ratio.</p>			

- Alternative: In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
 - The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
 - Pay Off-Site Tree Replacement Fee(s) prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- Site Preparation: All existing trees to be retained shall be fenced off 10 feet beyond the drip line of the tree. If not feasible, then fenced to the dripline of the tree. Where fencing is not possible, the trunk shall be protected with straw waddle and orange snow fencing.
 - The fence should be a minimum of six feet high, made of pig wire fencing with steel stakes or any material superior in quality, such as cyclone fencing.

- A tree protection zone sign shall be affixed to fencing at appropriate intervals as determined by the certified arborist on-site. If the fence is within the drip line of the trees, the foliar fringe shall be raised to offset the chance of limb breakage from construction equipment encroaching within the drip line.
- All contractors, subcontractors and other personnel shall be warned that encroachment within the fenced area is forbidden without the consent of the certified arborist. This includes, but is not limited to, storage of lumber and other materials, disposal of paints, solvents or other noxious materials, parked cars, grading equipment or other heavy equipment. Penalties, based on the cost of remedial repairs and the evaluation guide published by the International Society of Arboriculture, shall be assessed for damages to the trees.
- Grading/Excavating: Grading plans shall specify grading within the drip line of a tree. The plans shall be reviewed by the certified arborist. The certified arborist shall outline provisions for aeration, drainage, and pruning, tunneling beneath roots, root pruning, or other necessary actions to protect the trees.
 - Trenching that is within the drip line shall be done by hand labor and dug directly beneath the trunk of the tree. All roots 2 inches or larger shall be tunneled under and other roots shall be cut smoothly to the trunk side of the trench. The trunk side should be draped immediately with two layers of untreated burlap to a depth of three feet from the surface. The burlap shall be soaked nightly and left in place until the trench is back filled to the original level. The certified arborist shall examine the trench prior to back filling to ascertain the number and size of roots cut to determine the necessary remedial repairs.
- Remedial Repairs: The certified arborist shall observe on-going activities that may affect the trees and prescribe necessary remedial work to ensure the health and stability of the trees.
 - Pruning, as outlined in the "pruning standards" of the western chapter of the International Society of Arboriculture, shall be prescribed as necessary.
 - Fertilizing, aeration, irrigation, pest control and other activities shall be prescribed according to the tree needs, local site requirements, and state agricultural pest control laws.
 - All specifications shall be in writing.
- Final Inspection: The certified arborist, upon completion of the project, shall review all work undertaken that may have impacted the existing trees, with special attention to cuts and fills, compacting, drainage, pruning and future remedial work. The certified arborist shall submit a final report outlining the need for any on-going remedial care following the final inspection to the project applicant and City Arborist.
- Habitat Agency: The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit 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. The Habitat Plan and supporting materials can be viewed at www.scv-habitatplan.org.

Cultural Resources

- Human Remains. Human Remains. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:
 - The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
 - The MLD identified fails to make a recommendation; or
 - The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

Geology and Soils

- The project shall be constructed in conformance with the recommendation of the design-level geotechnical investigation, which shall be reviewed and approved by the City Geologist. The project would be built using standard engineering and seismic safety design techniques and shall meet the requirements of the 2019 California Building Standards Code, or subsequent adopted codes. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk of life or property to the extent feasible and in compliance with the Building Code.
- Schedule all excavation and grading work in dry weather months or weatherize construction sites.
- Cover stockpiles and excavated soils with secured tarps or plastic sheeting.
- Install ditches to divert runoff around excavations and graded areas if necessary.

- Construct the project in accordance with standard engineering practices in the California Building Code, as adopted by the City of San José. Obtain a grading permit from the Department of Public Works prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- The project shall retain a qualified professional to prepare a design-level geotechnical investigation for the project and submit to the City of San José Public Works Department for review and approval. The project shall implement the recommendations in the investigation to minimize impacts from expansive soils. Options to address these conditions may range from removal of the problematic soils and replacement, as needed, with properly conditioned and compacted fill, lime treat soils, and to design and construct improvements to withstand the forces exerted during the expected shrink-swell cycles and settlements.
- The City shall ensure all construction personnel receive paleontological awareness training that includes information on the possibility of encountering fossils during construction, the types of fossils likely to be seen, based on past finds in the project area and proper procedures in the event fossils are encountered. Worker training shall be prepared and presented by a qualified paleontologist.
- If vertebrate fossils are discovered during construction, all work on the site shall stop immediately until a qualified professional paleontologist can 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 Director of Planning or Director's designee shall be responsible for ensuring that the project applicant implements the recommendations of the paleontological monitor regarding treatment and reporting.

Hydrology and Water Quality

- Install burlap bags filled with drain rock around storm drains to route sediment and other debris away from the drains.
- Suspend earthmoving or other dust-producing activities during periods of high winds.
- Water all exposed or disturbed soil surfaces at least twice daily to control dust as necessary.
- Water or cover stockpiles of soil or other materials that can be blown by the wind.
- Cover all trucks hauling soil, sand, and other loose materials and maintain at least two feet of freeboard on all trucks.
- Sweep all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites daily (with water sweepers).
- Replant vegetation in disturbed areas as quickly as possible.
- Fill with rock all unpaved entrances to the site to remove mud from tires prior to entering City streets. Install a tire wash system if requested by the City.

- Comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City’s Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

Noise

- Pile-driving shall be prohibited.
- Limit construction hours to between 7:00 a.m. and 7:00 p.m., Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.
- Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Prohibit unnecessary idling of internal combustion engines.
- 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 sensitive land uses.
- Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
- Notify all adjacent business, 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.
- 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.
- 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.
- Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite 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.
- The performing arts pavilion sound system design shall maximize the use of state-of-the-art technology to focus sound system output in the crowd areas and limit spillover of music into the community.

- The first two large concerts (in excess of 1,000 people) held at the performing arts pavilion shall be completed by 8:00 PM to provide an opportunity to evaluate facility noise generation, including crowd noise, at the nearest residences and other sensitive receptors.
- To the maximum extent feasible, sound system output shall be limited to an average of 85 dBA L_{eq} averaged over a five-minute period at a position located 100 feet from the amphitheater stage. This level could be increased if it can be demonstrated through noise level measurements that the design of the sound system can maintain exterior sound levels at the facades of the nearest sensitive receptors of 70 dBA or less.
- To control low-frequency sound in the surrounding neighborhood, C-weighted sound levels shall be limited to 95 dBA L_{eq} averaged over a five-minute period at a position located 100 feet from the amphitheater stage.
- During all amplified music events with over 500 persons in attendance noise levels shall be monitored and logged in five minutes intervals by the project applicant. The monitoring should be conducted continuously from the sound stage using a logging sound level meter meeting ANSI Type 1 or 2 specifications. The meter shall be calibrated before and after each music event. The logs shall be made available to the City of San José upon request.
- The amphitheater operator shall inform event producers of the sound level limits in effect as they are considerably lower than levels generated by typical large concerts. Suitable measures shall be developed and implemented to both ensure the limits are maintained and penalties established if producers fail to comply with the noise level limits.
- During larger events, amplified music would likely be audible within the nearest sensitive receptors. The amphitheater operator shall designate a noise contact to respond to resident concerns and complaints regarding sound levels during the events so that appropriate investigation of those concerns can be accommodated.
- Due to the likely difficulty of providing additional acoustical isolation to the interior space of the Trinity Church, the designated noise contact shall work with the Church representatives to minimize interference with church functions to the maximum extent possible.
- The Department of Parks, Recreation, and Neighborhood Services shall contact local law enforcement agencies following the concerts to determine if any noise complaints were registered during the concerts. Legitimate complaints shall be investigated, and additional sound controls evaluated and implemented as appropriate.

Transportation

- The project shall convert the southbound left-turn lane on North 4th Street to a shared through/left-turn lane. The southbound left-turn lane is currently aligned with the existing inside southbound lane on Second Street. This improvement would require minor signal modifications and restriping.
- A temporary passenger loading and unloading, and ride share drop-off area along 3rd Street adjacent to St. James Park shall be provided for use when concert events occur at the performing arts pavilion.

RESOLUTION NO. 79770

**A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN JOSE CERTIFYING THE ST. JAMES PARK CAPITAL
VISION AND PERFORMING ARTS PAVILION (ST. JAMES
PARK MASTER PLAN) ENVIRONMENTAL IMPACT
REPORT AND MAKING CERTAIN FINDINGS CONCERNING
SIGNIFICANT IMPACTS, MITIGATION MEASURES AND
ALTERNATIVES, AND ADOPTING A STATEMENT OF
OVERRIDING CONSIDERATIONS AND A MITIGATION
MONITORING AND REPORTING PROGRAM, ALL IN
ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT, AS AMENDED**

WHEREAS, the proposed St. James Park Capital Vision and Performing Arts Pavilion (St. James Park Master Plan) includes physical and programmatic changes to the St. James Park located in Downtown, San José, that would 1) allow for the demolition, reconstruction, and new construction of major park features such a performing arts pavilion, café and restroom buildings, picnic pavilion and grove, dog parks, pedestrian walk, open space meadow and plaza, playgrounds, fountain, park office, new security lights; 2) allow opportunities for new music and performing arts events at the new performing arts pavilion and new commercial uses at the park; 3) allow for transportation and pedestrian improvements related to the operational changes to the project site; all on an approximately 7.5-acre site in the City of San José, California (collectively referred to herein as the "Project"); and

WHEREAS, approval of the Project would constitute a Project under the provisions of the California Environmental Quality Act of 1970, together with related state and local implementation guidelines and policies promulgated thereunder, all as amended to date (collectively, "CEQA"); and

WHEREAS, the City is the lead agency for the Project, and has prepared a Final Environmental Impact Report for the Project pursuant to and in accordance with CEQA, which the Final Environmental Impact Report is comprised of the Draft Environmental

Impact Report for the Project (the "Draft EIR"), together with the First Amendment to the Draft EIR (collectively, all of said documents are referred to herein as the "FEIR"); and

WHEREAS, on September 23, 2020 the Planning Commission of the City of San José reviewed the FEIR prepared for the Project, and recommended to the City Council that it find the environmental clearance for the proposed Project was completed in accordance with the requirements of CEQA and further recommended the City Council adopt this Resolution; and

WHEREAS, CEQA requires that, in connection with the approval of a project for which an environmental impact report has been prepared which identifies one or more significant environmental effects of the project, the decision-making body of a public agency make certain findings regarding those effects and adopt a mitigation or monitoring program and overriding statement of consideration for any impact that may not be reduced to a less than significant level.

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

1. That the above recitals are true and correct; and
2. That the City Council does hereby find and certify that the FEIR has been prepared and completed in compliance with CEQA; and
3. The City Council was presented with, and has independently reviewed and analyzed, the FEIR and other information in the record and has considered the information contained therein, including the written and oral comments received at the public hearings on the FEIR and the Project, prior to acting upon or approving the Project, and has found that the FEIR represents the independent judgment of the City of San José ("City") as lead agency for the Project, and designated the Director of Planning, Building and Code Enforcement at the Director's office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and record of proceedings on which the decision of the City is based; and

4. That the City Council does hereby find and recognize that the FEIR contains additions, clarifications, modifications, and other information in its response to comments on the Draft EIR or obtained by the City after the Draft EIR was issued and circulated for public review and does hereby find that such changes and additional information are not significant new information as that phrase is described under CEQA because such changes and additional information do not indicate that any of the following would result from approval and implementation of the Project: (i) any new significant environmental impact or substantially more severe environmental impact not already disclosed and evaluated in the Draft EIR, (ii) any feasible mitigation measure considerably different from those analyzed in the Draft EIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented, or (iii) any feasible alternative considerably different from those analyzed in the Draft EIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented; and
5. That the City Council does hereby find and determine that recirculation of the FEIR for further public review and comment is not warranted or required under the provisions of CEQA; and
6. The City Council does hereby make the following findings with respect to the significant effects of the environment of the Project, as identified in the FEIR, with the understanding that all of the information in this Resolution is intended as a summary of the full administrative record supporting the FEIR, which full administrative record should be consulted for the full details supporting these findings.

**ST. JAMES PARK CAPITAL VISION AND PERFORMING ARTS PAVILION
(ST. JAMES PARK MASTER PLAN) PROJECT
SIGNIFICANT ENVIRONMENTAL IMPACTS**

Aesthetic

- Impact:** **Impact AES-1:** Implementation of the Project would impact the visual character of the site because the design is not fully consistent with the Secretary of the Interior's Standards for Rehabilitation.
- Mitigation:** Mitigation measures identified for MM CUL-1.1 through MM CUL-1.5 (detailed below).
- Finding:** Implementation of the Project would result in reconfiguration of the existing park to include new buildings and performing arts pavilion which would

change the character of the existing park and square. As mentioned in Section 3.5 Cultural Resources of the Final EIR (FEIR), the change in setting and character of the Project could result in significant impacts if the change would also result in a significant historic impact. Implementation of the Project would change the visual character of the site and the buildings and, as designed, would be constructed in a manner that would impact the historic significance of the park and the St. James Historic District and therefore, impact the visual character of the site. **(Significant Unavoidable Impact)**

Facts in Support of Finding: As discussed in Section 3.5 Cultural Resources in the Final EIR (FEIR), the Project site is an existing park and is a part of the St. James Square Historic District which includes a mix of historic and modern buildings. Implementation of the Project would renovate the existing park with removal, reconfiguration, and addition of new buildings. While the Project includes mitigation measures (MM CUL-1.1 through CUL-1.5, detailed below) to protect existing historic elements of the park from being damaged from operation of construction equipment, staging, and material storage, absent a redesign of the Project that would be fully consistent with the Secretary of the Interior's Standards for Rehabilitation, the proposed mitigation measures would continue to reduce the visual character impact, but would still result in a significant unavoidable impact.

Air Quality

Impact: **Impact AIR-1:** Construction of the Project would result in toxic air contaminant emissions in excess of Bay Area Air Quality Management District's (BAAQMD) thresholds. Construction activities associated with the Project would expose infants cancer risk at the maximally-exposed-individual (MEI) of the construction zones and in proximity to the Project site to temporary toxic air contaminant (TAC) emissions of 35.5 in one million, which is in excess of BAAQMD's significance threshold of 10 per one million for cancer risk.

Mitigation: **MM AIR-1.1:** The Project proponent shall retain a qualified consultant to develop a construction operations plan demonstrating that the off-road equipment used on-site to construct the Project would achieve a fleet-wide average 72 percent reduction in diesel particulate matter (DPM) exhaust emissions or greater. To achieve the reduction on the Project one or a combination of the following measures could be implemented:

- All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet EPA particulate matter emissions standards for Tier

3 engines that include CARB-certified Level 3 Diesel Particulate Filters or equivalent.

- Equipment that meets EPA Tier 4 standards for particulate matter.
- Use of equipment that is electrically powered or uses non-diesel fuels.

The Project proponent shall submit the construction operations plan and records to achieve a fleet-wide average 72 percent reduction to the Director of Planning or Director's designee prior to the start of any construction or ground-disturbance activities.

Finding: With the implementation of Mitigation Measures MM AIR-1.1, air quality impacts resulting from construction activities associated with the Project would be reduced to a less than significant level. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: Implementation of the City's standard project conditions for construction air quality, which incorporate Best Management Practices (BMPs) from the Bay Area Air Quality Management District (BAAQMD), would reduce exhaust emissions during construction. Based on the FEIR and associated Air Quality and Greenhouse Gas Assessment (Appendix B of the FEIR), combined with mitigation measures MM AIR-1.1, the maximum excess residential cancer risk from construction of the Project would be reduced to 3.9 cancer cases per million which is less than the BAAQMD threshold of 10 cancer cases per million. As a result, the required mitigation measures and BMPs would reduce the temporary construction emissions impact to a less than significant level.

Impact: **Impact AIR-C:** With both the Project and cumulative community risk impacts at the construction MEI, the combined effect of all TAC sources in the project area could result in toxic air contaminant emissions in excess of Bay Area Air Quality Management District's (BAAQMD) thresholds of more than 100 cases per million for cancer risk, 0.8 microgram per cubic meter for particulate matter 2.5 concentration, and a hazard index of more than 10.

Mitigation: Mitigation measures identified for MM AIR-1.1 (detailed above).

Finding: With the implementation of Mitigation Measures MM AIR-1.1, the combined effect of all TAC sources in the Project area (including the Project with the implementation of the Project conditions and mitigation measure MM AIR-1.1 identified under Impact AIR-1) would be less than significant as it would not exceed the Bay Area Air Quality Management District's (BAAQMD) thresholds of more than 100 cases per million for cancer risk, 0.8 microgram

per cubic meter for particulate matter 2.5 (PM_{2.5}) concentration, and a Hazard Index of 10. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: Table 3.3-4 in Section 3.3.2.2 of the FEIR identified other air pollutant sources around the Project area and its risks for the Maximally Exposed Individual (MEI). With these existing sources and the construction of the proposed Project, the Project could result in significant TAC impacts. Implementation of the City's standard project conditions for construction air quality, which incorporate Best Management Practices (BMPs) from the Bay Area Air Quality Management District (BAAQMD), would reduce exhaust emissions during construction for the Project. With the same Project conditions during construction periods, and combined with mitigation measure MM AIR-1.1 to select higher tier construction equipment, the maximum excess residential cancer risk from combined sources would be 20.8 maximum cancer risk which is less than the BAAQMD threshold of more than 100 cases per million, 0.22 microgram per cubic meter of particulate matter 2.5 which is less than BAAQMD threshold of more than 0.8 microgram per cubic meter, and Hazard Index of 0.12 which is less than BAAQMD threshold of more than 10. As a result, implementation of the required mitigation measure and BMPs would reduce the temporary construction emissions impact to a less than significant level.

Biological Resources

Impact: **Impact BIO-1:** Construction activities could result in the loss of fertile eggs, nesting raptors, or nest abandonment.

Mitigation: **MM BIO-1.1:** Tree removal and construction activities shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive.

If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of ground disturbance activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these ground-disturbance activities during the late part of the breeding season (May 1st through August 31st, inclusive).

During this survey, the qualified ornithologist will inspect all trees and other

possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that would be disturbed by construction, the ornithologist shall designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.

The Project proponent shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning or Director's designee prior, prior to the start of any construction or ground disturbance activities (e.g., tree removal).

Finding: Implementation of Mitigation Measure MM BIO-1.1 would reduce impacts to nesting raptors and other migratory birds to a less than significant level. **(Less than Significant Impact with Mitigation)**

Facts in Support of Finding: Conducting pre-construction surveys and implementing a construction-free buffer zone around any migratory bird nests (if found) would ensure that raptor or migratory bird nests are not disturbed during Project construction, consistent with the federal Migratory Bird Treaty Act and the California Fish and Game Code. The size of the buffer zones would be determined by consultation between the qualified ornithologist and the CDFW, and based on scientific evidence and best management practices. Compliance with Mitigation Measure MM BIO-1.1 would avoid impacts to nesting birds.

Impact: **Impact BIO-C:** The Project could result in a cumulatively considerable contribution to a significant biological resources impact.

Mitigation: Mitigation measures identified for MM BIO-1.1 above.

Finding: Implementation of Mitigation Measure MM BIO-1.1 would reduce cumulative impacts to nesting raptors and other migratory birds to a less than significant level. **(Less than Significant Impact with Mitigation)**

Facts in Support of Finding: The geographic area for cumulative biological resource impacts include the Project site and the adjacent parcels. Similar to the Project-specific impact discussed above, the Project could result in loss of raptor nests during construction activities. Therefore, consistent with the federal Migratory Bird Treaty Act and the California Fish and Game Code, conducting pre-construction surveys and implementing a construction-free buffer zone around any migratory bird nests (if found) would ensure that raptor or migratory bird nests are not disturbed during Project construction.

The size of the buffer zones would be determined by consultation between the qualified ornithologist and the CDFW, and based on scientific evidence and best management practices. Compliance with Mitigation Measure MM BIO-1.1 would then also avoid cumulative impacts to nesting birds.

Cultural Resources

Impact: **Impact CUL-1:** Based on the analysis of the FEIR and associated documents, the Project is not in substantial conformance with the general character and surface treatment (specifically fenestration, materials, detailing, and color) of the applicable *1989 St. James Square Historic District Guidelines* and is not in substantial conformance with the *Secretary of the Interior's Standards (Rehabilitation)* regarding the proposed structures and overall design. Construction of the Project could result in existing historic elements in the park being damaged and implementation of the Project would impact the historic integrity of St. James Park and the St. James Park Historic District.

Mitigation: **MM CUL-1.1:** Prior to the start of construction, a qualified arborist shall undertake a detailed assessment of the row of heritage palm trees (along North 1st Street) and other heritage trees to establish the baseline condition of the trees. The documentation shall take the form of detailed written descriptions and visual illustrations and/or photos, including physical characteristics. The documentation shall be submitted for review and approval by the City of San José's Historic Preservation Officer and the Director of Planning or Director's designee.

MM CUL-1.2: Prior to the start of construction, the Project proponent shall retain a qualified historic architect who meets the Secretary of Interior's Professional Qualifications Standards. The qualified historic architect shall formalize the existing conditions through a visual study of the historic resources on-site, which would include preparation of preconstruction documentation of the historic resources that could be at risk from construction of the Project, including the McKinley Statue and Monument, Kennedy Podium, and Naglee Monument. The purpose of the study is to establish the baseline condition of the resources prior to construction. The documentation shall take the form of detailed written descriptions and visual illustrations and/or photos, including physical characteristics of each resource that convey its historic significance and justify its eligibility as a contributing feature of the site. The documentation shall be reviewed and approved by the City of San José's Historic Preservation Officer prior to issuance of any grading permits.

MM CUL-1.3: The historic architect shall prepare and implement a Historic Resources Protection Plan to protect the historic resources determined to be at risk from direct or indirect impacts during construction activities (i.e., due to damage from operation of construction equipment, staging, and material storage). The Project proponent shall ensure the contractor follows the Historic Resources Protection Plan while working near these historic resources. At a minimum, the Historic Resources Protection Plan shall include:

- Guidelines for operation of construction equipment adjacent to historical resources;
- Requirements for monitoring and documenting compliance with the plan; and
- Education/training of construction workers about the significance of the historical resources around which they would be working.

The Historic Resources Protection Plan must be reviewed and approved by the City's Historic Preservation Officer prior to issuance of any ground disturbance activities.

MM CUL-1.4: Utilizing the visual study in MM CUL-1.3, the historic architect shall make periodic site visits to monitor the condition of the historic resources identified in the Historical Resources Protection Plan. The timing of the visits shall be specified in the Historic Resources Protection Plan.

MM CUL-1.5: In the event of damage to contributing features during construction, repair work would be completed in full compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and would restore the character-defining features of the park. Documentation illustrating how the repair work would be completed would be done in consultation with the City of San José's Historic Preservation Officer.

Finding: The Project's implementation of mitigation measures MM CUL-1.1 through MM CUL-1.5 would document preconstruction conditions of historic resources on-site (e.g., the heritage trees and monuments), preparing and implementing a plan to protect historic resources during construction, monitoring historic resources during construction, and repairing any damage during construction to restore the character-defining features of the resource. However, these mitigation measures would only reduce construction impacts to cultural integrity of the park elements and park, but the implementation of the Project would continue to not be fully consistent with the Secretary of the Interior's Standards for Rehabilitation. Therefore,

there are no feasible mitigation measures that would reduce the impact to a less than significant level. **(Significant Unavoidable)**

Facts in Support of Finding: The Project was analyzed against the St. James Square Historic District Guidelines and the Secretary of the Interior's Standards for the Treatment of Historic Properties 10 Rehabilitation Standards. Project effects were analyzed for any impact the Project would have on the park as a Candidate City Landmark and contributor to the City Landmark District and the National Register District and the local and National historic district as a whole under California Environmental Quality Act (CEQA). Based on the analysis of the DEIR and associated documents, the City's historic consultant concluded that the Project is not in substantial conformance with the general character and surface treatment (specifically fenestration, materials, detailing, and color) of the 1989 *St. James Square Historic District Guidelines* and is not in substantial conformance with the Secretary of the Interior's Standards (Rehabilitation) regarding the proposed structures and overall design. Pursuant to CEQA Guidelines Section 15064.5(b)(3), generally a project that follows the Secretary of the Interior's Standards is considered to have a less than significant impact on a historical resource. Furthermore, analysis of the Project concluded that if additional character-defining features of the park are lost, the park would no longer qualify under the NRHP as a contributing property. By removing or altering character defining features such as the north/south and east/west axis paths, diagonal cross axis paths, circulate features at four corners, undulating path around the perimeter connecting the circulate features, random placement of statuary and monument, flat ground plan with a lack of topographic variation, and informal planting scheme, the Project would not be in substantial conformance with the general character and surface treatment of the 1989 *St. James Square Historic District Guidelines* and with the *Secretary of the Interior's Standards (Rehabilitation)*. Therefore, the Project would affect the historic significance of the site, change eligibility, remove character-defining features, and/or compromise integrity of the Project site and the Project would have a significant impact on the historic integrity of the park and the district.

Impact: **Impact CUL-2:** While there are no known archaeological resources on-site, the Project site is located in an archaeologically sensitive area and unknown archaeological resources could be encountered during construction. Therefore, construction of the Project could disturb unrecorded subsurface cultural resources.

Mitigation: **MM CUL-2.1:** Prior to any ground disturbance, the Project shall implement the following measures:

- A qualified archaeologist shall be on-site to monitor the initial excavation. After monitoring the initial excavation, the archaeologist shall make recommendations for further monitoring if it is determined that the site has cultural resources. If the archaeologist determines that no resources are likely to be found on site, no additional monitoring shall be required. If no resources are discovered, the consulting archaeologist shall submit a report to the City's Environmental Principal Planner verifying that the required monitoring occurred and that no further mitigation is necessary.
- If evidence of any archaeological, cultural, and/or historical deposits is found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. In the event that human remains are found, the Project shall comply with the procedures set forth by Health and Safety Code § 7050.5 and Public Resources Code § 5097.94 of the State of California.
- The archaeologist shall submit a report(s) describing the testing program and subsequent results, to the satisfaction of the City's Environmental Principal Planner. The report(s) shall identify any program mitigation that the City shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources).
- A final report verifying completion of the mitigation program shall be submitted to the City's Supervising Environmental Planner for review and approval prior to release of the project acceptance. This report shall contain a description of the mitigation programs and results of the mitigation, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources.

Finding: Implementation of mitigation measure MM CUL-2.1 would reduce potential impacts to archaeological resources to a less than significant level (**Less than Significant Impact with Mitigation**)

Facts in Support of Finding: Construction of the Project could potentially unearth and disturb non-recorded archaeological resources at the Project site. Implementation of MM CUL-2.1 would require monitoring of subsurface construction activity by an archaeologist and if resources are found, the archeologist would recommend next appropriate steps to manage and properly handle the resource. Therefore, the mitigation measure would

reduce potential risk to archaeological resources to a less than significant level.

Noise

Impact: **Impact NOI-1:** Operation of the proposed performing arts pavilion portion of the Project would result in interior noise levels above the City's residential interior noise standard of 45 dBA DNL.

Mitigation: **MM NOI-1.1:** Amplified music events at the performing arts pavilion shall end by 10:00 PM.

Finding: The Project would construct a performing arts pavilion in the northwest corner of the Project site. A schedule of events for the performing arts pavilion is unavailable at this time. The FEIR assumed that the Project would host between 50 and 300 events annually. The results show that with mitigation measures and Project conditions to restrict operations of the proposed performing arts pavilion portion of the Project, the Project would reduce music event noise to the area and overall exterior noise, not causing a permanently increase the ambient exterior noise level of the Project area, consistent with General Plan Policy EC-1.1 and 1.2. However, even with the measures and conditions, the operation of the pavilion would still result in interior noise levels of 45 to 50 dBA within the residences along St. James Street. **(Significant Unavoidable Impact)**

Facts in Support of Finding: Noise generation from the performing arts pavilion would vary significantly depending on the nature of the event, sound amplification needs, and the size of the crowd. In addition, reactions from nearby residents would vary depending on the time of day, duration of the event, and frequency of events. The Project would incorporate Project conditions and designs such as sound system technology to limit spillover of music in the community. Also, other Project features will reduce noise impacts, such as large concerts (define) ending by 8:00 PM, limits on sound system outputs, continuous noise monitoring during operations of certain sized (specify size) events, retrofitting the most sensitive noise receptors such as the Trinity Church, and requirements for PRNS to work with local law enforcement for investigation of legitimate noise concerns. Furthermore, the MM NOI-1.1 would further reduce the usable timeframe and events proposed in the pavilion. However, as previously mentioned, it does not ensure that the Project would not result in a substantial increase in interior noise levels at the nearest noise-sensitive receptors. As discussed above, the proposed pavilion component of the overall Project would result in operational noise to the City's residential interior noise standards, even with the limitation of usable hours.

Recreation

Impact: **Impact REC-1:** The proposed changes to St. James Park would impact the visual character and historic integrity of the park and would result in an operational noise impact.

Mitigation: Mitigation measures identified for MM CUL-1.1, MM CUL-1.5, NOI-1.1 (detailed above).

Finding: As discussed in Sections 3.1, 3.5, and 3.13 of this Resolution, even with the implementation of identified mitigation, the visual, cultural, and noise impacts resulting from the Project would be significant and unavoidable. The Project would have a significant unavoidable impact on the visual character of the park (Section 3.1, Aesthetics) and the historic integrity of the park (Section 3.5, Cultural Resources). In addition, the proposed performing arts pavilion would have a significant and unavoidable operational noise impact (Section 3.13, Noise). Therefore, the Project would be a recreational facility that would result in adverse physical effects to the environment. **(Significant Unavoidable Impact)**

Facts in Support of Finding: The Project site is an existing park and is a part of the St. James Square Historic District which includes a mix of historic and modern buildings. While most identified physical construction and operational impacts would be less than significant, the overall physical changes to the park is connected with the significance in change in visual character of the Park. As the project was found to have significant unavoidable impacts to Cultural Resources, Aesthetics, and Noise such as described above, the proposed recreational facility would also result in an adverse physical effect to the environment overall.

FINDINGS CONCERNING ALTERNATIVES

In order to comply with the purposes of CEQA, it is important to identify alternatives that reduce the significant impacts that are anticipated to occur if the Project is implemented and to try to meet as many of the Project's objectives as possible. The CEQA Guidelines emphasize a common sense approach -- the alternatives should be reasonable, should "foster informed decision making and public participation," and should focus on alternatives that avoid or substantially lessen the significant impacts.

The alternatives analyzed in the FEIR were developed with the goal of being at least potentially feasible, given Project objectives and site constraints, while avoiding or reducing the Project's identified environmental effects. The following are evaluated as alternatives to the proposed Project:

1. No Project Alternative
- 2A. Enclosed Pavilion Alternatives for 5,000 Attendees,
- 2B. Enclosed Pavilion Alternative with Project Footprint,
3. Pavilion with No Concerts Alternative,
4. Discovery Meadow Alternative Pavilion Location, and
5. Design Alternative

1. No Project Alternative

- A. **Description of Alternative:** The No Project Alternative would retain the existing park site without any physical or programmatic changes. If the Project site were to remain as is, there would be no new impacts.
- B. **Comparison of Environmental Impacts:** The No Project Alternative would avoid all of the Project's environmental impacts.
- C. **Finding:** The No Project Alternative would avoid the Project's construction and operation impacts as there would be no ground disturbance activities and no new sources of noise (i.e., proposed pavilion). The No Project Alternative would not meet any of the proposed Project's specific objectives, including increasing the everyday use of St. James Park, adding a performing arts pavilion, creating a private-public partnership to ensure quality park stewardship, improving maintenance and operation of the park, integrating arts and culture at the park, providing all-inclusive and accessible play areas, and implementing community plans and vision for the site. Therefore, this alternative is rejected.

2A. Enclosed Pavilion Alternatives – 5,000 Attendees

- A. **Description of Alternative:** This alternative would completely enclose the pavilion using standard building construction with no operable windows as the design for the pavilion, with all activities kept indoors. To accommodate the proposed 5,000 attendees, an enclosed pavilion would likely require development within most of the eastern half of the park. This alternative would assume that the eastern half of the park would be developed with the enclosed pavilion and therefore, would preclude other project improvements such as the dog parks and Naglee Picnic Grove.
- B. **Comparison of Environmental Impacts:** The Enclosed Pavilion Alternative for 5,000 Attendees would avoid the Project's significant and unavoidable operational noise impact. Based on the anticipated design to accommodate the proposed 5,000 attendees, the Project would need a taller and more massive building than the proposed Project. Furthermore, equipping the

proposed enclosed building would result in more energy for mechanical equipment such as HVAC and lighting. The elimination of the eastern half of the park to accommodate for this footprint would also reduce the usable and programmable space for the existing park.

While this alternative would have more proposed impervious surface, it would likely have similar impacts to hydrology as the proposed Project because development under this alternative would comply with local, regional, and state regulations for stormwater and sanitation. The Enclosed Pavilion Alternative for 5,000 Attendees would result in the same or similar impacts to biological resources, geology and soils, hazards and hazardous materials, as the proposed Project due to the same or similar area of impacts to those resource. Given the land uses and the intensity of the land uses under this alternative are the similar the proposed Project, impacts related to transportation, land use, population and housing, public services, and utilities and service systems would be comparable to the proposed Project.

This alternative, however, would result in additional construction for a larger foundation and would likely extend the construction timeframe and duration, increasing construction impacts such as air quality and biological impacts. This alternative would also increase energy and GHG emission compared to the proposed Project as there would be a larger building proposed on site. Increase usage would occur, as would an increase in GHG emissions compared to the proposed Project.

- C. **Finding:** The Enclosed Pavilion Alternative for 5,000 Attendees would be able to meet most of the Project objectives by renovating and improving St. James Park and constructing a performing arts pavilion. This alternative would not fully meet the Project objective of increasing everyday use of the park as the park is unlikely to be used during the days and times when the enclosed pavilion is not in used. The Enclosed Pavilion Alternative for 5,000 Attendees would avoid the Project's significant and unavoidable noise impact. The alternative would result in greater impacts to aesthetics, air quality, historic resources, energy, GHG, parks, and recreational facilities. The Enclosed Pavilion Alternative for 5,000 Attendees would meet many of the Project objectives except for increasing daily use specifically when the pavilion (including the space it occupies on the park) is not in use and complimenting the historic district. As this alternative would eliminate significant operational noise, it would likely result in intensity of the construction, operational impact to utilities such as GHG emission and energy, would eliminate certain key components of the proposed Project that would increase daily use of the park (i.e. meeting a key objective), and increase incompatibility to the historic integrity of the park, therefore, this alternative is rejected.

2B. Enclosed Pavilion Alternatives with Footprint

- A. **Description of Alternative:** Under the Enclosed Pavilion Alternative with Project Footprint, the pavilion would be completely enclosed, and the footprint of the enclosed pavilion would be limited to the footprint of the proposed pavilion and lawn seating area. An Enclosed Pavilion Alternative with Project Footprint, given the area needed for the enclosure, would not be able to accommodate 5,000 attendees.
- B. **Comparison of Environmental Impacts:** Similar to the Enclosed Pavilion Alternative for 5,000 Attendees Alternative, this alternative would result in greater impacts to aesthetics, air quality, historic resources, energy, and GHG as it would result in a new, fully, building at the same footprint as the proposed pavilion and lawn seating areas on the northeastern quadrant of the park. This alternative would, however, result in lesser impacts to parks and recreational facilities because the footprint of the enclosed pavilion under this alternative would not be as expansive as the footprint of the enclosed pavilion under the Enclosed Pavilion Alternative for 5,000 Attendees.
- C. **Finding:** The Enclosed Pavilion Alternative with Project Footprint would avoid the Project's significant and unavoidable noise impact. The alternative would result in greater impacts to aesthetics, air quality, historic resources, energy, and GHG. The alternative would result in the same or similar impacts as the proposed Project to all other environmental resources. The Enclosed Pavilion Alternative with Project Footprint would meet most of the Project objectives, but would continue to limit the use of the pavilion space during non-operating hours. This alternative would result in similar impacts to the historic integrity of the park and district. Although this alternative would eliminate significant operational noise, it would likely result in intensity of the construction, operational impact to utilities such as GHG emission and energy, and increase incompatibility to the historic integrity of the park. Therefore, this alternative is rejected.

3. Pavilion with No Concerts Alternative

- A. **Description of Alternative:** The Pavilion with No Concerts Alternative is the Project as proposed except no music concerts or other events producing noise levels similar to that of concerts (e.g., 85 dBA at 100 feet from the stage) would be allowed.
- B. **Comparison of Environmental Impacts:** The Pavilion with No Concert Alternative would result in the same impacts (Significant Unavoidable with Mitigation Measures) as the proposed Project in term of aesthetic, cultural resources, and recreation. The Project would, however, avoid the Project's

significant and unavoidable noise impact.

- C. **Finding:** The Pavilion with No Concerts Alternative would meet eight of the Project objectives by renovating and improving St. James Park and constructing a performing arts pavilion, but would not meet four of the 12 project objectives to provide enhancement through a music venue or a facility that would facilitate community music and programs. Therefore, this alternative is rejected.

4. Discovery Meadow Alternative Pavilion Location

- A. **Description of Alternative:** Discovery Meadow is an approximately six-acre public park located downtown at the southeast corner of Woz Way and Park Avenue, approximately one mile southwest of the Project site. Discovery Meadow has large open lawn areas and currently hosts a variety of events. There are no sensitive receptors such as residential developments located near Discovery Meadow. The alternative site is surrounded by commercial uses to the north, Guadalupe River to the east, Children Discovery Museum of San José to the south, and Highway 87 to the west. This alternative would relocate the proposed pavilion to the Discovery Meadow and keep all other programming and proposed park elements (i.e., playground, fountain, monument walks, etc.) at the Project site.
- B. **Comparison of Environmental Impacts:** As there are no sensitive receptors located near Discovery Meadow, this alternative would avoid the Project's significant and unavoidable operational noise impact as it would not result in impacts to nearby sensitive receptors. Because Discovery Meadow is not located within a historic district or designated a historic resource, the development of the Project at this alternative location would avoid the Project's impact to historic resources. However, it does not guarantee that the relocation of the pavilion would fully reduce historic resources to the St. James Project location as other components the park are still kept as the originally proposed Project. Furthermore, as this setting is similar to the proposed Project site, the development of the pavilion at Discovery Meadow would result in similar or same impacts to air quality, archaeological resources, energy, geology and soils, GHG emissions, hazards and hazardous materials, hydrology and water quality, land use, public services, recreation, transportation, and utilities and service systems impacts as the proposed Project. With careful design and orientation, the Project could also avoid significant light and noise impacts due to the proximity to sensitive riparian habitat along the Guadalupe River bordering the east side of the park.
- C. **Finding:** The Discovery Meadow Alternative Location would meet most of the Project objectives (by revitalizing St. James Park and providing a performing

arts pavilion, though at a different location from the Project), except one main objective that specifies transforming an underutilized neighborhood park into a prime destination where music concerts occur. Based on recent data provided by the Department of Parks, Recreation, and Neighborhood Services, the St. James Park site had a higher number of events than Discovery Meadow due to efforts of activating the park and encouraging residents to use and attend the events. Even with fewer events, the Discovery Meadow site offers different scales of events and encourage more attendance per event. For example, in 2018-2019, St. James Park has a total of 156 events with a total of 19,062 attendees while Discovery Meadow has a total of 23 events with a total of 182,980 attendees. As the objectives (Object 5, 7, and 8) of this Project is to revitalize and transform an underutilized neighborhood park through a combination of physical and programmatic improvements (including through activation of musical events), this objective would not be met with the relocation of the pavilion to another site. Therefore, this alternative is rejected.

5. Design Alternative

- A. **Description of Alternative:** This redesign alternative would reintroduce the diagonal paths and reorientation of the perimeter path to be more consistent with the original pathway. The new park buildings such as the proposed café shop and associated public restroom would remain in the Project, but would be redesigned to be more compatible with required standards such as the *1989 St. James Square Historic District Guidelines* and the *Secretary of the Interior's Standards (Rehabilitation)*. This alternative would result in the removal of the pavilion as the diagonal pathways would not accommodate the placement of an outdoor performance venue with the desired capacity. The lawns in the northwest quadrant would be segmented or removed, and amenity spaces within the southeast quadrant would need to be redesigned to allow for an uninterrupted path. Realignment of the perimeter path would likely require changes to the placement of proposed amenity spaces and existing memorials proposed for preservation within the park.
- B. **Comparison of Environmental Impacts:** Being of similar size as the proposed Project, this alternative would likely to result in similar impacts under air quality, noise, and biological impacts as construction would be of similar scope. However, the Design Alternative would result in lesser impacts to the historic resources.
- C. **Findings:** The purpose of this design alternative is to reduce the cultural resources impacts to a less than significant level by keeping some of the character defining features such as the north/south, east/west axis paths, diagonal cross axis paths, circular features at the four corners, undulating path around the perimeter connecting to circular features, random placement of

statuary and monuments, flat ground plan with lack of topographic variation, and an informal planting scheme. To keep these main character defining features, the Project site would need to reintroduce the diagonal paths that would segment proposed lawns and areas, relocate monuments and features of the park, and not construct the proposed pavilion from the Project. This alternative would not be consistent with five of the 12 Project objectives. Specifically, it would not be consistent with objectives to enhance and provide opportunities of gathering and use of the park through a music venue or facility that would facilitate community music and programs. Keeping all the character defining features or a full reversion to the historic layout could affect other park programming, which could result in not meeting other objectives of the Project. Therefore, this alternative is rejected.

Environmentally Superior Alternative

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. The main significant unavoidable impacts of the Project are associated with cultural resources and operational noise. Aesthetics and Recreation resource areas are deemed to be significant unavoidable in relationship to the visual context and historic integrity of the site and in the physical adverse impact to the existing environment. Alternatives 2A, 2B, 3 and 4 would avoid the significant operational noise impact as these alternatives would result in either an enclosed pavilion, prohibition of any music events at the open air pavilion, or relocation of the pavilion altogether to an area with no nearby sensitive receptors. However, the Project could intensify other environmental impacts such as construction, energy, and GHG emission and would increase incompatibility to the historic integrity of the park. Furthermore, Alternatives 2A, 2B, 3 and 4 would meet most of the objectives, but not the critical objectives to promote the park as a cultural assets and building community through music and cultural events. Alternative 5 would reduce historic impacts and, potentially, significant noise impact. Alternative 5, Design Alternative, would avoid all significant unavoidable impacts and construction impacts, and is environmentally superior in that respect. However, this alternative would not be consistent with five of the 12 Project objectives, specifically objectives to enhancement and provide opportunities of gathering and use of the park through a music venue or facility that would facilitate community music and programs.

MITIGATION MONITORING AND REPORTING PROGRAM

Attached to this Resolution as Exhibit "A" and incorporated and adopted as part of this Resolution herein is the Mitigation Monitoring and Reporting Program ("MMRP") for the Project required under Section 21081.6 of the CEQA Statute and Section 15097(b) of the CEQA Guidelines. The MMRP identifies impacts of the Project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action.

STATEMENT OF OVERRIDING CONSIDERATIONS

- A. **Significant Unavoidable Impacts.** With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined that the Project will result in significant unmitigated or unavoidable impacts, as set forth above, associated with cultural resources and operational noise.
- B. **Overriding Considerations.** The City Council specifically adopts and makes this Statement of Override Considerations that this 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 economic, legal, environmental, social, technological or other considerations noted below, because the benefits of the Project outweigh its significant adverse environmental impact of the Project. The City Council finds that each of the overriding considerations set forth below constitutes a separate and independent basis for finding that the benefits constitutes a separate and independent basis for finding that the benefits of the Project outweigh its significant adverse environmental impacts and is an overriding consideration warranting approval of the Project. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San José 2040 General Plan, the 2015 Saint James Revitalization Strategy, and Activate SJ Strategic Plan.
- C. **Benefits of the Project.** The City Council has considered the public record of proceedings on the proposed Project and other written materials presented to the City 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 the following substantial public benefits:
1. **Envision San José 2040 General Plan Strategies, Goals, and Policies.**
 - Major Strategy #9 Destination Downtown and #11 Design for a Healthful Community: The Project is located in the Downtown core and is a 7.5-acre site of open space within a dense community with access to public transit. The Project would result in the revitalization of a prime open space within an existing neighborhood with the intent to increase everyday use and enjoyment of the St. James Park by reprogramming and designing the park to include a diverse number of recreational

elements for all ages and enjoyment. The Project will improve an existing resource for residents and users in the area and promote good and convenient access to a large and diverse variety of parks, trails, and creation facilities to all City residents. Furthermore, by encouraging usage of the Project location with events, the Project would also energize the Downtown area.

- General Plan Policy for High Quality Facilities and Programs, PR-1.6, 1.7, 1.8

The Project site currently has park elements such as lawns, pedestrian paths, playgrounds, and monument. The site has been reported to have fewer number of attendees per event in the last couple of years, despite being part of an on-going active effort by staff to activate and increase usage. The Project would improve existing amenities at the site, incorporate new physical elements to encourage new programs and new activities such as community events, festivals, and farmer markets. The Project would include new physical and programmatic elements such as dog park, new playground, perimeter garden, new interactive fountain, small café, and performing art pavilion to promote a diverse number of activities within the park. All the improvements would change the site to balance both passive and active types of recreations at the park, and therefore, encourage uses at the site. This is consistent with a changing environment and growing Downtown Core.

- General Plan Goal for Interconnected Parks System, PR-7.3 and 7.4

The site is located within an urbanized area, Downtown Core, with accessibility to public transit and is in walkable area. The physical and programmatic proposal to the Project site would expand recreational opportunities to residents in a dense area with a focus on improving connection to new recreational facilities. The programmatic changes, as proposed by the Project, would also add new uses that would enhance the diversity of users.

- General Plan Goal for Fiscal Management of Parks and Recreational Resources, PR-8.1

The Project would establish a partnership with a community-based organization for the programming of the proposed pavilion. This would provide the community with further ownership and connection to support the long-term activation goals of the park. This, therefore, would be consistent with this General Plan policy

to promote volunteerism in the care and programming of a neighborhood recreational facility.

2. **2015 Saint James Park Revitalization Strategy.** City Council approved the Saint James Park Revitalization Strategy in 2015 which directs staff to coordinate, collaborate, and to use a multi-pronged approach to transform the park into a vibrant public space that residents and employees in Downtown and beyond will use. The Strategy including specific funding mechanisms with the goal to focused on park activation, communications, park safety/street life outreach, capital vision maintenance, and park governance and sustainable funding. This Project is consistent with the approved strategies and desired outcome of this strategy. Specifically, the area and workplan items of this Strategy including working in parallel and together with the performance pavilion project, development of a plan for activation, on-going maintenance of amenities on site, and implement capital projects for the capital vision. This Project is the product of efforts that stems from the Strategy.
3. **Economic Benefits.** According to the 2016 The Trust for Public Land Study for Economic Benefits of the Park & Recreation System in San José, California, quality parks can raise property values of nearby residential property by \$1 billion and increase property tax revenues by \$12.1 million a year. The proposed Project would revitalize an existing park to add more diverse amenities that would attract new park users and revitalization of a park. It would overall increase property values, direct tax revenue, tourism, and rental events.
4. **ActivateSJ Strategic Plan.** The ActivateSJ Strategic Plan is the City of San José's Department of Parks, Recreation and Neighborhood Services' (PRNS) plan to maintain, improve and expand our facilities, programs and services. The Project would achieve goals such as improve community health in partnership with others by promoting parks and recreational experience for a diverse crowd, providing a quality park with a range of both passive and active activities within a 10-minute walk from neighborhoods, and enhance safety to deter presence of illegal activities in parks.

The City Council has weighed each of the above benefits of the proposed Project against its unavoidable environmental risks and adverse environmental effects identified in the Final Environmental Impact Report and hereby determines that those benefits outweigh the risks and adverse environmental effects of the Project and, therefore, further determines that these risks and adverse environmental effects are acceptable and overridden.

LOCATION AND CUSTODIAN OF RECORDS

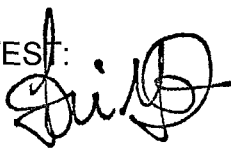
The documents and other materials that constitute the record of proceedings on which the City Council based the foregoing findings and approval of the Project are located at the City's Department of Planning, Building and Code Enforcement, San José City Hall, 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113. The City Council hereby designates the City's Director of Planning, Building, and Code Enforcement at the Director's office at 200 East Santa Clara Street, 3rd Floor Tower, San José California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

ADOPTED this 27th day of October, 2020, by the following vote:

AYES:	ARENAS, CARRASCO, DAVIS, DIEP, ESPARZA, FOLEY, JONES, JIMENEZ, KHAMIS, PERALEZ, LICCARDO.
NOES:	NONE.
ABSENT:	NONE.
DISQUALIFIED:	NONE.



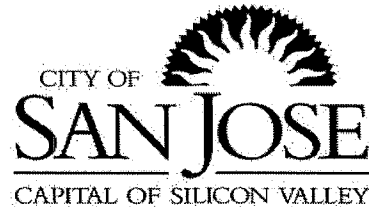
SAM LICCARDO
Mayor

ATTEST: 

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

St. James Park Capital Vision and Performing Arts Pavilion Project
File No. PP16-037 (SCH# 2016052074)
MAY 2020



PREFACE

EXHIBIT "A"
(File No. PP16-037)

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Environmental Impact Report (EIR) prepared for the St. James Park Capital Vision and Performing Arts Pavilion Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project. This MMRP addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the EIR concluded that the impacts from implementation of the project would be less than significant. Project conditions identified in the EIR are listed at the end of the MMRP.

The City of San José hereby agrees to fully implement the EIR described below which have been developed in conjunction with the preparation of an EIR for the proposed project. The City understands that these mitigation measures or substantially similar measures will be adopted as conditions of approval to avoid or significantly reduce potential environmental impacts to a less than significant level, where feasible.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
AESTHETICS					
Impact AES-1: Implementation of the proposed project would impact the visual character of the site because the design is not fully consistent with the Secretary of the Interior's Standards for Rehabilitation.					
See MM CUL-1.1 through MM CUL-1.6 below.					
AIR QUALITY					
Impact AIR-3: Construction of the proposed project would result in toxic air contaminant emissions in excess of BAAQMD thresholds.					
Impact AIR-C: The project would result in a cumulatively considerable contribution to a significant air quality impact with the incorporation of the below mitigation.					
MM AIR-3.1: The project proponent shall retain a qualified consultant to develop a construction operations plan demonstrating that the off-road equipment used on-site to construct the project would achieve a fleet-wide average of 72 percent reduction in diesel particulate matter (DPM) exhaust emissions	Prepare a construction operations plan demonstrating that the off-road equipment used on-site to construct the project would achieve a fleet-	Prior to the start of any construction or ground-disturbance activities.	Director of Planning or Director's designee.	Receive the construction operations plan and records.	Prior to the start of any construction or ground-disturbance activities.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>or greater. To achieve the reduction, one or a combination of the following measures could be implemented:</p> <ul style="list-style-type: none"> • All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet EPA particulate matter emissions standards for Tier 3 engines that include CARB-certified Level 3 Diesel Particulate Filters or equivalent. • Use of equipment that meets EPA Tier 4 standards for particulate matter • Use of equipment that is electrically powered or uses non-diesel fuels. 	<p>wide average of 72 percent reduction in DPM exhaust emissions or greater.</p> <p>Submit the construction operations plan and records to the Director of Planning or Director's designee prior to the start of any construction or ground-disturbance activities.</p>				

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
The project proponent shall submit the construction operations plan and records to achieve a fleet-wide average 72 percent reduction to the Director of Planning or Director's designee prior to the start of any construction or ground-disturbance activities.					
BIOLOGICAL RESOURCES					
Impact BIO-1: Construction activities could result in the loss of fertile eggs, nesting raptors, or nest abandonment.					
Impact BIO-C: The project could result in a cumulatively considerable contribution to a significant biological resources impact.					
MM BIO-1.1: Tree removal and construction activities shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive. If tree removals and construction cannot be scheduled outside of nesting season, a	Avoidance of construction activities during nesting seasons. If avoidance of construction activities during nesting seasons is not feasible, a pre-construction nesting	Prior to the start of any construction or ground-disturbance activities (e.g., tree removal).	City's Director of Planning or Director's designee.	Confirm that demolition and construction activities are scheduled outside of the nesting season.	Prior to the start of any construction or ground-disturbance activities (e.g., tree removal).

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
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<p>qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of ground-disturbance activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these ground-disturbance activities during the late part of the breeding season (May 1st through August 31st, inclusive).</p> <p>During this survey, the qualified ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that would be disturbed by construction, the ornithologist shall designate a construction-free buffer zone</p>	<p>bird survey shall be conducted by a qualified ornithologist and, in consultation with the California Department of Fish and Wildlife, a construction-free buffer zone shall be designated around any discovered nest.</p> <p>The project proponent shall submit a report indicating the results of the survey and any designated buffer zones to the City's Director of</p>			<p>If activities are scheduled during the nesting season, review report indicating the results of the survey (or any other environmental investigation reports, if applicable) and any designated buffer zones.</p>	

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>(typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.</p> <p>The project proponent shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning or Director's designee, prior to the start of any construction or ground-disturbance activities (e.g., tree removal).</p>	Planning or Director's designee.				
CULTURAL RESOURCES					

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
Impact CUL-1: Implementation of the proposed project would impact the historic integrity of St. James Park and the St. James Park Historic District.					
MM CUL-1.1: Prior to the start of construction, a qualified arborist shall undertake a detailed assessment of the row of heritage palm trees (along North 1st Street) and other heritage trees to establish the baseline condition of the trees. The documentation shall take the form of detailed written descriptions and visual illustrations and/or photos, including physical characteristics. The documentation shall be submitted for review and approval by the City of San José's Historic Preservation Officer and the Director of Planning or Director's designee.	A qualified arborist shall make a detailed assessment of the palm trees and heritage trees to establish the baseline conditions.	Prior to construction.	City of San José's Historic Preservation Officer and the Director of Planning or Director's designee.	Review and approve the assessment of the heritage trees, the existing conditions visual study of the historic resources, and the Historic Resources Protection Plan.	Prior to any ground disturbing activities and during construction.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
MM CUL-1.2: Prior to the start of construction, the project proponent shall retain a qualified historic architect who meets the Secretary of Interior's Professional Qualifications Standards. The qualified historic architect shall formalize the existing conditions through a visual study of the historic resources on-site, which would include preparation of preconstruction documentation of the historic resources that could be at risk from construction of the project, including the McKinley Statue and Monument, Kennedy Podium, and Naglee Monument. The purpose of the study is to establish the baseline condition of the resources prior to construction. The documentation shall take the form of detailed written descriptions and visual illustrations and/or photos, including physical characteristics of each resource that convey	A qualified historic architect shall formalize the existing conditions visual study of the historic resources on-site.	Prior to the issuance of grading permits.	City of San José's Historic Preservation Officer.	Review and approve the existing conditions visual study.	Prior to the issuance of grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>its historic significance and justify its eligibility as a contributing feature of the site. The documentation shall be reviewed and approved by the City of San José's Historic Preservation Officer prior to issuance of grading permits.</p> <p>MM CUL-1.3: The historic architect shall prepare and implement a Historic Resources Protection Plan to protect the historic resources determined to be at risk from direct or indirect impacts during construction activities (i.e., due to damage from operation of construction equipment, staging, and material storage). The City shall ensure the contractor follows the Historic Resources Protection Plan while working near these historic resources. At a minimum, the Historic Resources Protection Plan shall include:</p>	<p>The historic architect shall prepare and implement a Historic Resources Protection Plan to protect the historic resources determined to be at risk from construction activities. The City shall ensure the contractor follows the plan while working near these historic resources. The historic</p>	<p>Prior to the issuance of any permits.</p>	<p>The City's Historic Preservation Officer.</p>	<p>Review and approve the Historic Resources Protection Plan.</p>	<p>Prior to the issuance of any permits.</p>

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<ul style="list-style-type: none"> Guidelines for operation of construction equipment adjacent to historical resources; Requirements for monitoring and documenting compliance with the plan; and Education/training of construction workers about the significance of the historical resources around which they would be working. <p>The Historic Resources Protection Plan must be reviewed and approved by the City's Historic Preservation Officer prior to issuance of any permits.</p> <p>MM CUL-1.4: Utilizing the visual study MM CUL-1.3, the historic architect shall make periodic site visits to monitor the condition of the historic resources identified in the Historical Resources Protection Plan.</p>	<p>architect shall make periodic site visits to monitor the condition of the historic resources identified in the plan.</p> <p>The historic architect shall make periodic site visits to monitor the condition of the historic resources identified</p>	<p>Timing of visits shall be based on the schedule specified in the Historic</p>	<p>City of San José's Historic Preservation Officer.</p>	<p>Ensure that the historic architect makes periodic site visits.</p>	<p>Throughout construction.</p>

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>The timing of the visits shall be specified in the Historic Resources Protection Plan.</p> <p>MM CUL-1.5: In the event of damage to contributing features during construction, repair work would be completed in full compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and would restore the character-defining features of the park.</p>	<p>in the Historical Resources Protection Plan.</p> <p>In the event of damage to contributing features during construction, restore the character-defining features of the park.</p>	<p>Resources Protection Plan.</p> <p>Immediately after damage is caused.</p>	<p>City of San José's Historic Preservation Officer.</p>	<p>Ensure that if repair work is required, that it is completed in full compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.</p>	<p>In the event of damage during construction.</p>
Impact CUL-2: Construction of the proposed project could disturb as yet unrecorded subsurface cultural resources.					
<p>MM CUL-2.1: Prior to any ground disturbance, the project shall implement the following measures:</p> <ul style="list-style-type: none"> A qualified archaeologist shall be on-site to monitor the initial excavation. After monitoring the initial excavation, the archaeologist shall 	<p>On-site monitoring shall be on site during excavation. If resources are found during excavation, appropriate next steps shall be</p>	<p>During ground-disturbance activities.</p>	<p>Qualified archaeologist, City Environmental Principal Planner.</p>	<p>Confirm on-site monitoring is implemented, review any recommendation from qualified</p>	<p>During ground-disturbance activities</p>

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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<p>make recommendations for further monitoring if it is determined that the site has cultural resources. If the archaeologist determines that no resources are likely to be found on site, no additional monitoring shall be required. If no resources are discovered, the consulting archaeologist shall submit a report to the City's Environmental Principal Planner verifying that the required monitoring occurred and that no further mitigation is necessary.</p> <ul style="list-style-type: none"> If evidence of any archaeological, cultural, and/or historical deposits is found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. In the event that human 	recommended and implemented.			archeologist, as applicable.	

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>remains are found, the project shall comply with the procedures set forth by Health and Safety Code § 7050.5 and Public Resources Code § 5097.94 of the State of California.</p> <ul style="list-style-type: none"> The archaeologist shall submit a report(s) describing the testing program and subsequent results, to the satisfaction of the City's Environmental Principal Planner. The report(s) shall identify any program mitigation that the City shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources). A final report verifying completion of the mitigation program shall be submitted to the City's Supervising 					

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
Environmental Planner for review and approval prior to release of the project acceptance. This report shall contain a description of the mitigation programs and results of the mitigation, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources.					
NOISE					
Impact NOI-1: Operation of the proposed performing arts pavilion would result in interior noise levels above the City's residential interior noise standard.					
MM NOI-1.1: Amplified music events at the performing arts pavilion shall end by 10:00 PM.	Ensure amplified music events at the performing arts	During events at the performing arts pavilion.	Director of Planning or	Ensure amplified music events at the performing	During events at the

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
	pavilion end by 10:00 PM.		Director's designee.	arts pavilion end by 10:00 PM.	performing arts pavilion.
RECREATION					
Impact REC-2: The proposed changes to St. James Park would result impact the visual character and historic integrity of the park and would also result in an operational noise impact.					
Refer to all project mitigation measures above.					

Source: City of San José. *Draft Environmental Impact Report. St. James Park Capital Vision and Performing Arts Pavilion Project.* May 2020

Project Conditions

The following project conditions organized by environmental resource are required to be implemented as part of the project.

Air Quality

Construction

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

Biological Resources

- Tree Replacement: The project is required to meet the City's tree replacement ratios in accordance with all applicable laws, policies, and guidelines (Chapter 13 of the San José Municipal Code and General Plan policies MS-21.4, MS-21.5, MS-21.6, and CD-1.24), as outlined in Table 3.4-2 below.

Table 3.4-2: City of San José Standard Tree Replacement Ratios				
circumference of Tree to Be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or greater	5:1	4:1	3:1	15-gallon
19-38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon
<p>x:x = tree replacement to tree loss ratio</p> <p>Note: Trees greater than or equal to 38-inch 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 permit is required for removal of trees of any size.</p> <p>A 38-inch tree equals 12.1 inches in diameter.</p> <p>A 24-inch box tree = two 15-gallon trees</p> <p>Single Family and Two-dwelling properties may be mitigated at a 1:1 ratio.</p>				

- **Alternative:** In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
 - The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
 - Pay Off-Site Tree Replacement Fee(s) prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- **Site Preparation:** All existing trees to be retained shall be fenced off 10 feet beyond the outside of the drip line of the tree. If not feasible, then fenced to the dripline of the tree. Where fencing is not possible, the trunk shall be protected with straw waddle and orange snow fencing.
 - The fence should be a minimum of six feet high, made of pig wire fencing with steel stakes or any material superior in quality, such as cyclone fencing.

- A tree protection zone sign shall be affixed to fencing at appropriate intervals as determined by the certified arborist. If the sign is within the drip line of the trees, the foliar fringe shall be raised to offset the chance of limb breakage from construction equipment encroaching within the drip line.
- All contractors, subcontractors and other personnel shall be warned that encroachment within the fenced area is forbidden without the consent of the certified arborist. This includes, but is not limited to, storage of lumber and other materials, disposal of paints, solvents or other noxious materials, parked cars, grading equipment or other heavy equipment. Penalties, based on the cost of remedial repairs and the evaluation guide published by the International Society of Arboriculture, shall be assessed for damages to the trees.
- Grading/Excavating: Grading plans shall specify grading within the drip line of a tree. The plans shall be reviewed by the certified arborist. The certified arborist shall outline provisions for aeration, drainage, and pruning, tunneling beneath roots, root pruning, or other necessary actions to protect the trees.
 - Trenching that is within the drip line shall be done by hand labor and dug directly beneath the trunk of the tree. All roots 2 inches or larger shall be tunneled under and other roots shall be cut smoothly to the trunk side of the trench. The trunk side should be draped immediately with two layers of untreated burlap to a depth of three feet from the surface. The burlap shall be soaked nightly and left in place until the trench is back filled to the original level. The certified arborist shall examine the trench prior to back filling to ascertain the number and size of roots cut to determine the necessary remedial repairs.
- Remedial Repairs: The certified arborist shall observe on-going activities that may affect the trees and prescribe necessary remedial work to ensure the health and stability of the trees.
 - Pruning, as outlined in the "pruning standards" of the western chapter of the International Society of Arboriculture, shall be prescribed as necessary.
 - Fertilizing, aeration, irrigation, pest control and other activities shall be prescribed according to the tree needs, local site requirements, and state agricultural pest control laws.
 - All specifications shall be in writing.
- Final Inspection: The certified arborist, upon completion of the project, shall review all work undertaken that may have impacted the existing trees, with special attention to cuts and fills, compacting, drainage, pruning and future remedial work. The certified arborist shall submit a final report outlining the need for any on-going remedial care following the final inspection to the project applicant and City Arborist.
- Habitat Agency: The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit 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. The Habitat Plan and supporting materials can be viewed at www.scv-habitatplan.org.

Cultural Resources

- Human Remains. Human Remains. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:
 - The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
 - The MLD identified fails to make a recommendation; or
 - The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

Geology and Soils

- The project shall be constructed in conformance with the recommendation of the design-level geotechnical investigation, which shall be reviewed and approved by the City Geologist. The project would be built using standard engineering and seismic safety design techniques and shall meet the requirements of the 2019 California Building Standards Code, or subsequent adopted codes. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk of life or property to the extent feasible and in compliance with the Building Code.
- Schedule all excavation and grading work in dry weather months or weatherize construction sites.
- Cover stockpiles and excavated soils with secured tarps or plastic sheeting.
- Install ditches to divert runoff around excavations and graded areas if necessary.

- Construct the project in accordance with standard engineering practices in the California Building Code, as adopted by the City of San José. Obtain a grading permit from the Department of Public Works prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- The project shall retain a qualified professional to prepare a design-level geotechnical investigation for the project and submit to the City of San José Public Works Department for review and approval. The project shall implement the recommendations in the investigation to minimize impacts from expansive soils. Options to address these conditions may range from removal of the problematic soils and replacement, as needed, with properly conditioned and compacted fill, lime treat soils, and to design and construct improvements to withstand the forces exerted during the expected shrink-swell cycles and settlements.
- The City shall ensure all construction personnel receive paleontological awareness training that includes information on the possibility of encountering fossils during construction, the types of fossils likely to be seen, based on past finds in the project area and proper procedures in the event fossils are encountered. Worker training shall be prepared and presented by a qualified paleontologist.
- If vertebrate fossils are discovered during construction, all work on the site shall stop immediately until a qualified professional paleontologist can 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 Director of Planning or Director's designee shall be responsible for ensuring that the project applicant implements the recommendations of the paleontological monitor regarding treatment and reporting.

Hydrology and Water Quality

- Install burlap bags filled with drain rock around storm drains to route sediment and other debris away from the drains.
- Suspend earthmoving or other dust-producing activities during periods of high winds.
- Water all exposed or disturbed soil surfaces at least twice daily to control dust as necessary.
- Water or cover stockpiles of soil or other materials that can be blown by the wind.
- Cover all trucks hauling soil, sand, and other loose materials and maintain at least two feet of freeboard on all trucks.
- Sweep all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites daily (with water sweepers).
- Replant vegetation in disturbed areas as quickly as possible.
- Fill with rock all unpaved entrances to the site to remove mud from tires prior to entering City streets. Install a tire wash system if requested by the City.

- Comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and construction, and the City's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

Noise

- Pile-driving shall be prohibited.
- Limit construction hours to between 7:00 a.m. and 7:00 p.m., Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.
- Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Prohibit unnecessary idling of internal combustion engines.
- 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 sensitive land uses.
- Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- Notify all adjacent business, 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.
- 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.
- 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.
- Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite 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.
- The performing arts pavilion sound system design shall maximize the use of state-of-the-art technology to focus sound system output in the crowd areas and limit spillover of music into the community.

- The first two large concerts (in excess of 1,000 people) held at the performing arts pavilion shall be completed by 8:00 PM on PP16-037) opportunity to evaluate facility noise generation, including crowd noise, at the nearest residences and other sensitive receptors.
- To the maximum extent feasible, sound system output shall be limited to an average of 85 dBA L_{eq} averaged over a five-minute period at a position located 100 feet from the amphitheater stage. This level could be increased if it can be demonstrated through noise level measurements that the design of the sound system can maintain exterior sound levels at the facades of the nearest sensitive receptors of 70 dBA or less.
- To control low-frequency sound in the surrounding neighborhood, C-weighted sound levels shall be limited to 95 dBA L_{eq} averaged over a five-minute period at a position located 100 feet from the amphitheater stage.
- During all amplified music events with over 500 persons in attendance noise levels shall be monitored and logged in five minutes intervals by the project applicant. The monitoring should be conducted continuously from the sound stage using a logging sound level meter meeting ANSI Type 1 or 2 specifications. The meter shall be calibrated before and after each music event. The logs shall be made available to the City of San José upon request.
- The amphitheater operator shall inform event producers of the sound level limits in effect as they are considerably lower than levels generated by typical large concerts. Suitable measures shall be developed and implemented to both ensure the limits are maintained and penalties established if producers fail to comply with the noise level limits.
- During larger events, amplified music would likely be audible within the nearest sensitive receptors. The amphitheater operator shall designate a noise contact to respond to resident concerns and complaints regarding sound levels during the events so that appropriate investigation of those concerns can be accommodated.
- Due to the likely difficulty of providing additional acoustical isolation to the interior space of the Trinity Church, the designated noise contact shall work with the Church representatives to minimize interference with church functions to the maximum extent possible.
- The Department of Parks, Recreation, and Neighborhood Services shall contact local law enforcement agencies following the concerts to determine if any noise complaints were registered during the concerts. Legitimate complaints shall be investigated, and additional sound controls evaluated and implemented as appropriate.

Transportation

- The project shall convert the southbound left-turn lane on North 4th Street to a shared through/left-turn lane. The southbound left-turn lane is currently aligned with the existing inside southbound lane on Second Street. This improvement would require minor signal modifications and restriping.
- A temporary passenger loading and unloading, and ride share drop-off area along 3rd Street adjacent to St. James Park shall be provided for use when concert events occur at the performing arts pavilion.