Recording Requested by and
When Recorded Return to:

City Clerk
City of Mountain View
P.O. Box 7540
Mountain View, CA 94039-7540

Exempt from Recording Fees per Govt. Code §§ 6103 and 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Assessor's Parcel Nos:
116-02-037, 116-02-054, 116-02-081, 116-02-083, 116-02-084, 116-02-088, 116-10-077, 116-10-078, 116-10-079, 116-10-080, 116-10-084, 116-10-088, 116-10-089, 116-10-095, 116-10-101, 116-10-102, 116-10-104, 116-10-105, 116-10-107, 116-10-108, 116-10-109, 116-10-111, 116-11-012, 116-11-021, 116-11-022, 116-11-024, 116-11-025, 116-11-028, 116-11-030, 116-11-038, 116-11-039, 116-13-027, 116-13-034, 116-13-037, 116-13-038, 116-14-028, 116-14-058, 116-14-066, 116-14-070, 116-14-072, 116-14-095, 116-20-043

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF MOUNTAIN VIEW

AND

GOOGLE LLC, A DELAWARE LIMITED LIABILITY COMPANY

FOR THE NORTH BAYSHORE MASTER PLAN PROJECT

Effective Date: [redacted]

EXHIBITS

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into as of [DATE] by and between the CITY OF MOUNTAIN VIEW, a California charter city and municipal corporation, organized and existing under the laws of the State of California ("**City**"), and GOOGLE LLC, a Delaware limited liability company ("**Developer**"), pursuant to Government Code Sections 65864 *et seq*. Developer and City are referred to individually in this Agreement as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development, the Legislature of the State of California enacted Sections 65864, *et seq*., of the Government Code ("**Development Agreement Statute**"), which authorizes City and any person holding a legal or equitable interest in real property to enter into a development agreement, establishing certain development rights in the property.

B. Pursuant to Government Code Section 65865, City has adopted procedures and requirements for consideration of development agreements in Sections 36.54 to 36.54.40 ("**Development Agreement Ordinance**") of the City Code. This Agreement has been processed, considered, and executed in accordance with such procedures and requirements.

C. Developer has a legal interest in that certain approximately 153 acre real property located in the City, with a core area bounded by Charleston Road to the north, Stevens Creek to the east, Space Park Way to the south, and Huff Avenue to the west (the "**Property**"). The Property is located in the North Bayshore Precise Plan Area, with certain portions of the Project Area also located in the Gateway Master Plan area, as more particularly described in the attached **Exhibit A** and shown on the map attached as **Exhibit B**.

D. Developer desires to redevelop the Property to create the development envisioned by the North Bayshore Master Plan, by demolishing existing buildings, removing heritage and non-heritage trees, landscaping and improvements, and reconfiguring existing parcels to create new parcels for a new mixed-use development of up to 7,000 residential units (5,950 market rate units, and through land dedication, facilitation of up to 1,050 below market rate units), 3.~~14~~11 million square feet of office and research and development (R&D) buildings, 288,990 square feet of retail commercial space (including active uses, community spaces, and civic uses), 525 hotel rooms, land dedication of 6.9 acres to accommodate affordable residential units, district parking facilities, 14.8 acres of dedicated public parks, and 11.3 acres of POPA Open Space (which may, subject to City's approval, also be dedicated to City as public parks), pedestrian and bicycle improvements, and an optional private district utility system, all as further described in this Agreement, including in the Project Summary attached hereto as **Exhibit C,** and in the "Existing Approvals" (defined in Section 1.3 below) (collectively, the "**Project**").

E. The Property is located within the North Bayshore Change Area under the City's 2030 General Plan ("**General Plan**"), which was adopted by the City Council on July 10, 2012 by Resolution No. 17711, and the Property is subject to the North Bayshore Precise Plan first adopted

"**Compliance Plan**" means a summary of the Project's strategy, as of the Effective Date, to comply with minimum City requirements for development in accordance with the Precise Plan and Applicable City Law as further described in **Exhibit E**, subject to any changes to such plan pursuant to the terms of this Agreement.

"**Conditions of Approval**" means the Project's Conditions of Approval, including the Subdivision Conditions, as such conditions may be modified from time-to-time in accordance with terms and limitations of the Existing Approvals, applicable Subsequent Approvals, and this Agreement.

"**Connection Fees**" means those fees charged by City on a City-wide basis or by a utility provider to utility users as a cost for connecting water, sanitary sewer, and other applicable utilities, except for any such fee or portion thereof that constitutes an Impact Fee.

"**Construction Cost Index**" or "**CCI**" means the Engineering News Record (ENR) Construction Cost Index for the San Francisco Urban Area published each year, or if such index is no longer available then a comparable index as reasonably selected by City.

"**Construction Codes**" is defined in Section 3.8.1.

"**Consumer Price Index**" or "**CPI**" means the San Francisco-Oakland-San Jose Consumer Price Index, All Items (1982-84=100) for All Urban Consumers (CPI-U), published by the Bureau of Labor Statistics for the U.S. Department of Labor Consumer Price Index for the San Francisco Bay Area, or if such index is no longer available then a comparable index as reasonably selected by City.

"**Contaminated Site**" means a parcel(s) with existing site contamination within, or in close proximity to, the Former Spectra-Physics Lasers, Inc., Former Teledyne Semiconductor Sites Superfund Study Area, and the Union Pacific Railroad Property Plymouth Street Site, and the North Bayshore Area groundwater plume that are subject to review, oversight, and remedial response review or actions by other government agencies, including, but not limited to, the U.S. Environmental Protection Agency (US EPA) and San Francisco Regional Water Quality Control Board (SFRWQCB).

"**Control**", "**Controlling**", "**Controlled**", and "**Common Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management and activities of the specified entity (provided, the possession of so-called major decision consent right shall not, in and of itself, be deemed to constitute Control).

"**Dedicated Parkland Site**" is defined in section 5.1.2.

"**Dedicated Parkland Site Reimbursement Agreement**" is defined in Section 5.1.2.1.~~C.~~

"**Demolition and Grading Permit**" or "**Demolition Permit**" means and refers to City-issued permits for demolition and/or grading in anticipation of additional construction activities issued under a separate Building Permit.

"**Developer**" means Google LLC, a Delaware limited liability company, and its permitted successors, assigns, and Transferees.

"**Developer Party**" and "**Developer Parties**" are defined in Section 12.9.

"**Development Agreement Ordinance**" is defined in Recital B.

"**Development Agreement Statute**" is defined in Recital A.

"**Development Project**" means a development project as defined by section 65928 of the California Government Code.

"**District Central Plant**" means a centralized facility to operate one or more District Utility Systems anticipated to be located on Parcel SB12 on the Vesting Tentative Map, as generally described in the Existing Approvals. The District Central Plant is an optional design feature in the Project.

"**District Utility System**" is defined in Section 3.10.

"**Eco Gem**" means the approximately 10.8 acre future park on the Property to be developed by City on land Irrevocably Offered by Developer identified as Parcel SB26 on the Vesting Tentative Map, as provided in the Approvals and this Agreement.

"**Eco Gem Developer Funding**" is defined in Section 5.5.5.

~~"**Eco Gem Project Team**" refers to the Eco Gem design team comprised of City staff and hired consultant firm(s), including sub-consultant firms, designated by the Public Works Director as referred to in **Exhibit G**.~~

"**Economic Recession**" is defined in Section 8.2.1.

"**Effective Date**" is defined in Section 2.1.

"**Enacting Ordinance**" is defined in Recital N.

"**Exactions**" means exactions that may be imposed by City under Applicable Law as a condition of or in connection with developing the Project, including requirements for acquisition, dedication or reservation of land or improvements; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements or mitigation measures in connection with environmental review of the Project or, as set forth in Section 3.3.1, as part of Subsequent Approvals, as may be allowed

Restriction for privately owned, publicly accessible open space, which form shall include the key provisions attached hereto as **Exhibit H**.

"**Joaquin Terraces POPA Open Space**" means the approximately 2.2 acres of privately-owned, publicly accessible (POPA) open space, consisting of two contiguous parcels, Joaquin Terrace East (approximately 1.3 acres) and Joaquin Terrace West (approximately 0.90 acres), and the improvements thereon to be developed, operated, maintained and repaired by Developer and its successors and assigns, at their expense, as provided in the Approvals, this Agreement, and in City's standard form Covenant, Agreement and Deed Restriction for privately owned, publicly accessible open space, which form shall include the key provisions attached hereto as **Exhibit H**.

"**Lendlease**" shall mean Lendlease Americas Holdings Inc., a Delaware corporation or its successors or assigns.

"**Lendlease Affiliate**" shall mean any Affiliated Party of Lendlease Americas Holdings Inc., a Delaware corporation, including, without limitation, Lendlease Corporation Limited, a New South Wales corporation.

"**Letter of Credit**" means an irrevocable stand by letter of credit from an issuer and in a form reasonably acceptable to City and approved by the City Attorney

"**Litigation Challenge**" is defined in Section 12.10.1.

"**Lot C**" means that certain property owned by the City commonly known as Shoreline Amphitheater Parking Lot C (APN 116-20-043).

"**Market-Rate Housing**" means all of the residential development in the Project other than the Affordable Housing.

"**Master Plan**" is defined in Recital F.2. and includes all exhibits, addenda, or other attachments to the Master Plan.

"**Master Encroachment Agreement for District Utility System Terms**" means the agreed upon key terms identified in **Exhibit N** to be included in a Master Encroachment Agreement as described in Section 3.3.5 to be entered into between the Parties if Developer pursues the District Utility System in permit applications for Subsequent Approvals.

"**Material Change**" shall mean any modification to this Agreement that would materially alter the rights, benefits, or obligations of City or Developer under this Agreement by: (a) extending or reducing the Term of this Agreement, except as expressly authorized herein; (b) materially changing the range of Permitted Uses of the Property, except as provided in this Agreement or in the Existing Approvals; (c) changing the general location of on-site or off-site improvements identified in the Existing Approvals; (d) increasing the maximum height beyond that permitted by the applicable Approval(s); (e) increasing the number of market rate residential

"**Office**" means those uses defined in Section 36.60.33 of the Zoning Ordinance as "Offices," "Offices, administrative and executive," and "Offices, research and development," as may be further specified in the Approvals.

"**Office Building**" means a structure(s) with or without parking built for Office use on an Office Parcel.

"**Office Parcel**" means one of the parcels as shown on the Vesting Tentative Map and the Phasing Plan as designated primarily for Office use.

"**Office Trip Cap**" is defined in the TDM Agreement Terms.

"**Operating Memorandum**" is defined in Section 8.8.1.1.

"**Other Agency**" or "**Other Agencies**" means any governmental or oversight agency, other than City, having jurisdiction over the Project or a portion thereof.

"**Other Agency Fees**" means fees and charges imposed by Other Agencies which in some cases are collected by City on behalf of such agencies.

"**Other Agency Approvals**" means approvals, entitlements and permits required for development or use of the Project to be obtained from Other Agencies.

"**Parking Structure(s)**" means parking structures SB-PP-1, JN-PP-1, JS-PP-1, SA-PP-1, MW-PP-11, and MW-PP-2, as further described in the Approvals.

"**Parkland Obligations**" is defined in Section 5.1.2.

"**Parkland Requirement**" is defined in Section 5.1.2.

"**Parks Delivery Plan**" means the plan for sequencing of park land dedication and POPA Open Space delivery in the Project ~~and City park design process for Eco Gem~~ attached hereto as **Exhibit G**.

"**Party**" or "**Parties**" means individually and collectively Developer and City.

"**People Centric Fund**" means the People Centric Fund Payment, which shall be paid by Developer to City and deposited in the City's General Fund for use in City's discretion to benefit City and its residents, which may include funding of, among other programs: (i) housing opportunities and anti-displacement efforts, (ii) small business support and workforce development, (iii) safe and expanded connections for pedestrians and bicyclists and consolidated infrastructure, and (iv) quality open space for recreation, relaxation, and entertainment.

"**People Centric Fund Payment**" means cumulatively the First People Centric Fund Payment and the Second People Centric Fund Payment.

"**Permitted Uses**" is defined in Section 3.3.1.

"**Phase(s)**" means the eight (8) discrete development phases of the Project as described and shown in **Exhibit D,** which may be developed sequentially or concurrently with other portions of the Project, subject to the terms and conditions of the Approvals and this Agreement, including the Phasing Plan.

"**Phasing Plan**" means the summary table and diagram setting forth a conceptual, illustrative example of the delivery of development phasing of the Project attached hereto as **Exhibit D**.

"**Planning Commission**" means the City of Mountain View Environmental Planning Commission as defined in Recital F.1.

"**POPA Agreement**" is defined in Section 5.1.2.5.

"**POPA Improvements**" means the improvements to be constructed by Developer in the POPA Open Spaces in accordance with the Approvals and the Parks Delivery Plan.

"**POPA Open Space**" means the privately-owned, publicly-accessible open spaces within the Project as further described in Section 5.1.2.3.

"**Precise Plan**" is defined in Recital E.

"**Precise Plan EIR**" is defined in Recital F.1.

"**Prevailing Wage Laws**" is defined in Section 6.1.2.

"**Processing Fees**" means any standard fee (which is not an Impact Fee, Connection Fee or Exaction) applied for processing, licensing, permitting, or inspecting permitted activities citywide as listed in City's adopted Fiscal Year Master Fee Schedule, as addressed further in Section 4.2.

"**Project**" is defined in Recital D.

"**Project CEQA Documentation**" is defined in Recital F.1.

"**Project Compliance Plan**" means the illustrative plan attached as **Exhibit E.**

"**Project EIR**" is defined in Recital F.1.

"**Project Manager**" means a City staff person responsible to lead a Dedicated Parkland Site design and construction project as designated by City's Public Works Director.

"**Project Summary**" means the summary of the maximum development proposed by the Project and Existing FAR attached as **Exhibit C**.

"**Property**" is defined in Recital C, described in **Exhibit A,** and depicted in **Exhibit B**.

"**Transferee**" is defined in Section 10.1.

"**Vacation**" is defined in Recital F.4.

"**Vesting Tentative Map**" is defined in Recital F.3.

"**Zoning Ordinance**" is defined in Recital M.

ARTICLE II
TERM

2.1 **Effective Date.** The "**Effective Date**" of this Agreement shall be the later of (a) full execution by the Parties determined by the last date of a signatory as shown in the signature blocks or (b) [DATE], the date that is thirty (30) days after the date the Enacting Ordinance is adopted.

2.2 **Term.** Subject to the following qualifications, the "**Term**" of this Agreement shall commence upon the later of: (a) the Effective Date, and (b) the date on which Final Approval occurs; provided, however, if Final Approval has not occurred by the third anniversary of the Effective Date then the Term shall commence as of such third anniversary date, notwithstanding the fact that Final Approval has not yet occurred. Notwithstanding the foregoing, Developer may elect to have the Term commence despite the fact that Final Approval has not yet occurred (unless the validity of this Agreement has been directly challenged in the appropriate court of law or by a referendum in connection with the granting of the Approvals), by giving written notice to City of such election, in which case the Term shall commence upon the date that is thirty (30) days after the date of such notice. Notwithstanding any other provision hereof to the contrary, (A) if Developer reasonably determines that (i) Final Approval will not occur due to a challenge to this Agreement or any of the Approvals or (ii) any challenge to this Agreement or any of the Approvals is resolved in such manner as to prevent the occurrence of Final Approval, or (B) if by the date that is sixty (60) days prior to the third anniversary of the Effective Date, the Term has not yet commenced, then Developer at any time prior to commencement of the Term may terminate this Agreement effective upon not less than thirty (30) days advance written notice to City. Following such termination, neither Party shall have any further rights or obligations hereunder, except for those obligations which by their terms survive expiration or termination hereof.

2.2.1 **Initial Term.** Subject to potential extension as expressly provided in this Agreement, including for Force Majeure Delays as provided in Section 8.2.2 below, the "**Initial Term**" shall be fifteen (15) years.

2.2.2 **Extended Term.** Subject to the terms and conditions in this Section 2.2, Developer shall have the right to extend the Initial Term for one additional period of fifteen (15) years (a "**Term Extension**") for a total Term of thirty (30) years, subject to potential further extension for Force Majeure Delays as provided in Section 8.2.2. In order to obtain the Term Extension, Developer must be in compliance in all material respects with all of its obligations under this Agreement and the Approvals and shall have satisfied all of the conditions described in Section 2.2.3 below.

2.2.3 **Term Extension Requirements.** In addition to the conditions in Section 2.2.2 above, in order to obtain the Term Extension, Developer shall have fully satisfied all of the

following requirements prior to expiration of the Initial Term (collectively, the "**Term Extension Requirements**").

2.2.3.1 **Affordable Housing Sites.** Developer shall have ~~complied with the requirements of Section 5.1.1.1 and shall have~~ made ~~an~~ Irrevocable Offer(s) ~~for any additional~~ and caused to be in the Required Condition a sufficient number of Affordable Housing Sites ~~that cumulatively would~~to allow for the development of Affordable Housing Units ~~in number~~ equal to at least fifteen percent (15%) of the number of market rate residential units for which Developer has obtained Building Permits~~, per the Schedule~~. For avoidance of doubt, temporary shortfalls in ~~Exhibit F. If Developer is unable to make any such additional Irrevocable Offers prior to the expiration of the Initial Term, then Developer shall still have the right to the Term Extension if, prior to the expiration of the Initial Term, Developer provides City with a letter of credit in the amount of the in-lieu affordable housing fees that would be due in order to achieve the fifteen percent (15%) requirement.~~Affordable Housing Site dedications which ~~letter of credit shall remain in effect until such time as Developer has made such Irrevocable Offers of dedication. Such letter of credit shall~~may otherwise be addressed through delivery of Letters of Credit as provided in ~~the form required under~~ Section 5.1.~~2.7~~3 below ~~and shall be increased annually to reflect any increase in the amount of the in-lieu affordable housing fees applicable per the requirements of Section 4.1.3.~~, shall not permitted at the time of Term Extension.

2.2.3.2 **Residential Development.** Through a combination of Developer having obtained Building Permits for the construction of market rate residential units and Developer's Irrevocable Offers for Affordable Housing Sites to City in the Required Condition, Developer shall have enabled the potential development of a minimum of 500 Affordable Housing units and 1250 market rate residential units.

2.2.3.3 **People Centric Fund.** Developer shall have paid to City the First People Centric Fund Payment (regardless of whether Developer is proceeding with any office development).

2.2.3.4 **Shorebird Yards and Eco Gem.** Developer shall have Irrevocably Offered the land for Shorebird Yards and Eco Gem, which may be accepted by City as set forth in ~~Section~~Sections 5.4.1 and 5.5.5, respectively.

2.2.3.5 **Eco Gem Developer Funding.** Developer shall have paid to City the full amount of the Eco Gem Developer Funding.

2.2.3.6 **Parkland and POPA Spaces.** Developer shall have made Irrevocable Offer(s) and caused to be in the Required Condition a sufficient number of Parkland Sites and/or recorded POPA Agreements against, and fully completed improvements to, a sufficient number of POPA Open Spaces (or, to the extent such improvements have not been fully completed, delivered to City Letter(s) of Credit in amount(s) required to ensure completion of such POPA Open Space improvements) to fully satisfy the Parkland Requirement for all market rate residential units for which Building Permits have been issued. For avoidance of doubt, temporary shortfalls in Parkland Obligations which may otherwise be addressed through Developer's delivery of Letters of Credit as provided in Section 5.1.3 below, shall not permitted at the time of Term Extension.

2.2.3.62.2.3.7 **Maintain Minimum Requirements**. Without limiting the general requirement to be in compliance in all material respects with the terms of this Agreement and the Approvals, Developer shall have satisfied the requirements then in effect for: (a) the Parkland Obligations as further described in Section 5.1.2, including Sections 5.1.2.2 through 5.1.2.7, and the Parks Delivery Plan; and (b) payment of all applicable City Processing Fees, Connection Fees, and Impact Fees then due and payable.

2.2.4 **Extension Request**. If Developer desires to seek the Term Extension, Developer must submit a letter addressed to the City Manager requesting such extension at least one hundred eighty (180) days prior to the date that the Initial Term otherwise would expire (the "**Extension Request**"). The Extension Request shall include documentation in a form reasonably acceptable to City demonstrating that the applicable extension conditions described in Sections 2.2.2 and 2.2.3 above ("**Extension Conditions**") have been satisfied, or will be satisfied prior to the date that the Initial Term otherwise would expire.

2.2.5 **Extension Review**. Within forty-five (45) days after receipt of an Extension Request and accompanying documentation, the City Manager shall determine reasonably and in good faith, in a written notice to Developer, whether the Extension Conditions have been satisfied, including whether Developer is in compliance with this Agreement in all material respects. If the City Manager determines that the Extension Conditions have not been satisfied, then the City Manager shall include in the written notice a detailed explanation of the unsatisfied Extension Conditions and why the City Manager believes such conditions have not been satisfied. Except as otherwise provided in this Section 2.2, the determination whether Developer is in compliance with this Agreement shall be undertaken in a manner consistent with the annual review process described in Section 8.1 below. If the City Manager determines Developer is not in compliance with this Agreement in all material respects through such review process, then the City Manager shall provide written notice of the non-compliance items, and Developer shall have the opportunity to cure such non-compliance within thirty (30) days following the date of City Manager's non-compliance notice. The City Manager's determination shall be final, unless the City Manager determines, in their sole discretion, to refer the matter to the City Council for a determination with any such hearing being held as soon as reasonably possible after City Manager makes such determination and in any event no later than thirty (30) days before the date upon which the Initial Term otherwise would expire. The City Council's decision shall be final, subject to Developer's ability to pursue available remedies as provided in Section 7.1 below. If the City Manager concludes in the written notice described hereinabove that the Extension Conditions have been satisfied, then they shall grant the Extension Request and promptly provide written notice to Developer, in a recordable form, that the Agreement has been extended for the Extension Term, and the Term shall be extended accordingly; provided, however, that the City Manager's failure or delay in providing such written notice following the City Manager's conclusion that the Extension Conditions have been satisfied shall not affect the extension of the Term.

2.2.6 **Memorandum of Extension**. Within ten (10) days after the written request of either Party hereto, City and Developer agree to execute, acknowledge and record in the Official Records a memorandum evidencing any approved extension of the Term pursuant to this Section 2.2; provided, however, that the Parties' failure or delay in entering into or recording such memorandum shall not affect the extension of the Term.

business licenses, in accordance with the procedures and requirements set forth in the City Code and the Precise Plan.

3.5.1.3 Subsequent Approval zoning permits consistent with the Existing Approvals are required for each phase of development; such zoning permits may include increments of Phases at the discretion of Developer. Certain zoning permits require approval at a duly noticed Administrative Zoning public hearing, while others may be approved administratively by City staff. All required zoning permits must be in effect prior to submitting for building and fire permits. While this Agreement extends the life of the Existing Approvals for the Term of this Agreement as provided in Section 2.3, in order to maintain consistent review procedures and demonstrate development progress, each Subsequent Approval shall be valid for the term specified in the Applicable City Law and be eligible for extension as may be allowed by the Applicable City Law; provided, however, per the Existing Approvals, each zoning permit for new construction shall have a term of four (4) years with no permit extension and provided further that, during the term of each such Subsequent Approval, Developer shall, except as otherwise set forth in the Parks Delivery Plan and Affordable Housing Delivery Plan, be entitled to apply for, process and obtain building permits and any other City permits and introduce uses in reliance on that Subsequent Approval during the valid entitlement period of that Subsequent Approval even after termination of this Agreement, provided such termination shall not have occurred as a result of Developer's breach of this Agreement. Should a Subsequent Approval expire, and if Developer still wishes to pursue development pursuant to the Subsequent Approval, Developer shall reapply, pay new Processing Fees, and be subject to the approval process specified in the Existing Approvals, and to the extent not addressed in the Existing Approvals, Applicable City Law.

3.5.1.4 Because the Project will be built out over a number of years, the amount and timing of Required Exactions, Community Benefits and Public Benefits are allocated by square footage of North Bayshore Nonresidential Bonus FAR development, number of residential units, and/or applications to construct vertical improvements on particular blocks or parcels. The scope and timing of infrastructure that is associated with specific blocks, parcels, or buildings, will be consistent with the Approvals and this Agreement. Developer shall meet its obligations to pay Impact Fees and provide the Required Exactions, Community Benefits and Public Benefits described in Approvals and this Agreement as and when required by the terms of this Agreement and the Approvals.

3.5.1.5 Developer shall obtain a phased final map and enter into one or more public improvement agreements in City's standard form and as approved by the City Attorney before Commencing Construction of any building, infrastructure, or site preparation for land to be dedicated to City. The time limits for completion of off-site improvements as specified in City's improvement agreement or conditions of the Approvals shall govern, unless other time limits are specified in this Agreement in which case this Agreement shall control. Developer is not required to obtain one final map for the entire Property, but can obtain multiple final maps, one for each Phase or building parcel, as desired.

3.6 **Applicable City Law Governs.** Development of the Property shall be subject to all Applicable Law, except as otherwise provided herein. If and to the extent any New City Law, including any change in the City's Charter, ordinances, resolutions, orders, rules, official policies, standards, specifications, plans, guidelines or other regulations (whether adopted by means of an

3.11 **Water and Sewer Capacity.** City has found the Project to be consistent with the General Plan which anticipates that there will be sufficient potable water and sanitary sewer capacity to serve future development contemplated by the General Plan, including the Project. However, nothing in this Agreement shall be deemed to exempt the Project or the Property or any portion thereof from any water use rationing requirements that may be imposed on the City system on a City-wide basis from time to time or be construed as a reservation of any existing sanitary sewer or potable water capacity. If District Utility Systems for wastewater collection, treatment, and recycled water distribution are pursued by Developer, usage fees for sewer shall apply based on actual demand placed on the respective City systems at rate(s) to be determined by City.

3.12 **Construction and Residential Parking and Construction Staging.** Developer may from time to time request use of City-owned land for construction staging or temporary parking related to development of the Project, including temporary residential parking until such time as sufficient district parking facilities have been constructed. If such use is approved by City in its discretion at the time it is proposed, such use shall be subject to a construction staging license agreement or temporary residential parking license agreement in form reasonably acceptable to City and approved by the City Attorney, which includes, among other terms and conditions, payment of a fair market value license fee and insurance and indemnity requirements. Subject to compliance with any parking management requirements in the Approvals, without prior approval from City, Developer may also utilize existing or future surface parking lots on privately owned land within the Property for construction staging, or for temporary residential parking or office parking until such time as sufficient district parking facilities have been constructed.

3.13 **Public Rights of Way and Right of Way Easements.** City acknowledges that Developer's donation of land for new public rights of way within the Property shall serve as consideration for City's vacation of any right of way easements required for development of the Project, because the City has determined that the value of the donated land substantially exceeds the value of the vacated right of way easements. Accordingly, no additional fee or payment from Developer shall be required for such vacation If, as the result of future changes the value of the land donated by Developer for new public rights of way is less than the value of the vacated right of way easements, Developer shall be required to pay to City an amount equal to the difference in value prior to City vacating such right of way.

3.14 **Private Streets.** If Developer provides District Utility Systems, certain private streets may be constructed to allow for District Utility System routing. If District Utility System routing does not require construction of a street as a private street, then, at the time of zoning permit application, Developer may request to designate as a public street any street previously identified in the Master Plan as a private street, which City shall consider in its reasonable discretion, and which shall not constitute a Material Change. If, after a private street has been constructed, it is determined that such private street is not required for District Utility System routing, Developer may offer such private street to City as a public street, and City will determine in its sole discretion whether to accept dedication of any formerly private street as a public street.

3.15 **Intentionally Omitted.**

3.16 **Transportation Demand Management Plan.** The Parties shall negotiate and ~~mutually~~ execute a Transportation Demand Management Agreement in a form reasonably

acceptable to City prior to implementation of an Office Trip Cap. Until such time as the Parties enter into the TDM Agreement ~~any other~~all applicable site specific project trip and headcount caps and monitoring requirements ~~in the Precise Plan area~~set forth in the conditions of approval for those properties shall apply. The TDM Agreement will include, among other terms, the TDM Agreement Terms~~, including an express provision that~~. The TDM Agreement shall remain in full force and effect notwithstanding the ~~agreement will survive the Term~~expiration or earlier termination of this Agreement.

ARTICLE IV
FEES, TAXES AND ASSESSMENTS

4.1 **Impact Fees.**

4.1.1 **Impact Fees During Fee Lock Period.** During the Initial Term, including any extension thereof for Force Majeure Delay as provided in Section 8.2.2 ("**Fee Lock Period**"), City shall only impose those Impact Fees that City has adopted as of the Effective Date ("**Existing Impact Fees**"), as itemized on **Exhibit I**, subject to all Existing Impact Fee escalation provisions in effect on the Effective Date.

4.1.2 **Impact Fees Following Expiration of Fee Lock Period.** Except as otherwise provided in this Section 4.1.2 below, following expiration of the Fee Lock Period, any and all new Impact Fees adopted after the Effective Date which are in effect and any increases in Existing Impact Fees above and beyond existing escalation provisions, if any, shall apply to the Project, provided, however: (a) Developer shall receive a credit equal to the amount of Public Benefits that Developer has provided (i.e., up to Eighteen Million Five Hundred Thousand Dollars ($18,500,000), plus the product of $18,500,000 (or the then-remaining balance thereof) times the percentage increase in CCI between the Effective Date and the date on which Developer is obligated to pay any such new Impact Fees or increases (above and beyond existing escalation provisions) in Existing Impact Fees) towards any such new or increased Impact Fees; and (b) no new or increased Impact Fees shall be charged on (i) residential development or (ii) redevelopment of Existing FAR (i.e., only net new Office square footage shall be subject to the new or increased Impact Fees).

4.1.3 **Impact Fee Credits.** Developer shall receive credit for the payment of Impact Fees in accordance with the provisions of the City Code, Applicable City Law, and as identified in this Section 4.1.3.

4.1.3.1 **Impact Fee Credit for Replacement of Existing Office Space.** The Parties acknowledge that the Property currently contains 1,814,681 gross square feet of space in existing office buildings and 11,056 gross square feet of space in existing retail buildings. Developer will need to demolish a substantial portion of this space in order to build out the Project. The current address and square footage of each existing building is set forth in **Exhibit C, Table C2**. In calculating Impact Fees based on net new square footage, Developer shall receive credit for demolition of existing office and retail buildings on the Property based on **Table C2**; provided, however, in the event a building is only partially demolished, then such credit shall be based on the actual amount of demolished square footage as set forth in the City-issued Demolition Permit. Square footage credit will be earned for each existing building when demolition is complete as

"**Required Exactions**") are of particular importance to City and the community, and Developer accepts such Required Exactions and agrees that such Required Exactions are justified, appropriate and in compliance with Applicable Law. Developer agrees not to challenge any Required Exactions and to deliver such Required Exactions as and when required by this Agreement and the Approvals.

5.1.1 **Affordable Housing.** As more fully set forth in the Conditions of Approval and the Affordable Housing Delivery Plan, Developer shall satisfy its below-market-rate housing obligation under Article XIV (Affordable Housing Program) of Chapter 36 (Zoning) of the City Code, the Precise Plan, and Section B of the North Bayshore Precise Plan Affordable Housing Administrative Guidelines, to provide fifteen percent (15%) of the total residential units at affordable rent or sales prices to obtain Tier I Residential Bonus FAR, as follows:

5.1.1.1 As a condition to issuance of the first Building Permit ~~for a Residential Building~~, Developer shall have provided an Irrevocable Offer for the Affordable Housing Sites shown as parcels JS3, JS4, and PE2 on the Vesting Tentative Map. City agrees to defer taking fee title to parcels JS3, JS4 and PE2 until January 31, 2029, and the terms of the Irrevocable Offer shall include that the offer is conditioned upon such deferrals; provided, however, that Developer may waive such condition and provide for the City to take fee title on an earlier date. Developer shall make further Irrevocable Offers for Affordable Housing Sites as set forth in the Affordable Housing Delivery Plan. Developer shall ensure that each Affordable Housing Site is in the Required Condition at the time City accepts the Irrevocable Offer of the applicable Affordable Housing Site. Subject to any continuing obligations of Developer with respect to the Required Condition, upon City's taking title to the Affordable Housing Site, Developer shall have no further obligation with respect to such accepted Affordable Housing Site. If Developer has not obtained a Building Permit ~~for a Residential Building~~ prior to ~~December 16~~February 1, 2029, then, as a condition to issuance of the first Building Permit ~~for a Residential Building~~, Developer shall convey fee title to the City of the Affordable Housing Sites shown as parcels JS3, JS4 and PE2 on the Vesting Tentative Map in the Required Condition. Developer's making of Irrevocable Offers with respect to the Affordable Housing Sites shall constitute preliminary satisfaction of Developer's obligations with respect to providing below market rate housing under this Agreement and the Approvals such that Developer shall be entitled to obtain Building Permits for market rate development. Upon City's taking fee title to the applicable Affordable Housing Site (or if City is delayed or refuses to take title notwithstanding that the site is in the Required Condition and Developer is otherwise ready, willing and able to convey title), then Developer shall have fully satisfied the below market rate housing obligation for the market rate dwelling units constructed or to be constructed under the Building Permit issued in reliance on the Irrevocable Offer.

5.1.2 **Parkland Obligations.** As more fully set forth in the Parks Delivery Plan and the Existing Approvals, Developer shall satisfy its obligation under Chapter 41 of the City Code to Irrevocably Offer 0.006 acres of land per new market rate dwelling unit~~, or pay an in-lieu fee~~ ("**Parkland Requirement**"), by undertaking the obligations set forth in Sections 5.1.2.2 through 5.1.2.7 below which are anticipated to satisfy the Parkland Requirement for approximately 4,358 market rate residential units, and paying the in-lieu fee for each additional market rate residential unit thereafter (collectively, "**Parkland Obligations**"). Developer's making of Irrevocable Offers with respect to the applicable parkland shall constitute preliminary satisfaction

of Developer's obligations with respect to providing parkland under this Agreement, the Parks Delivery Plan and the Existing Approvals such that Developer shall be entitled to obtain Building Permits for the development associated with such parkland. Each site Irrevocably Offered for parkland ("**Dedicated Parkland Site**") shall be in the Required Condition at the time City accepts the Irrevocable Offer. Except as provided in Section 5.5 below, and subject to any continuing obligations of Developer with respect to the Required Condition, upon City's acceptance of each Dedicated Parkland Site, Developer shall have no further obligation with respect to such accepted Dedicated Parkland Site.

5.1.2.1 **Intentionally Omitted.**

5.1.2.2 **Dedicated Parkland Sites.** Developer shall make Irrevocable Offers for the following Parkland Sites within the times set forth in the Parks Delivery Plan:

A. **Eco Gem**. Approximately 10.8 acres of land for future Eco Gem;

B. **Joaquin Commons**. Approximately 2.5 acres of land for future Joaquin Commons;

C. **Shorebird Square**. Approximately 0.3 acres of land for future Shorebird Square;

D. **Gateway Plaza**. Approximately 0.9 acres of land for future Gateway Plaza; and

E. **Shoreline Square**. Approximately 0.3 acres of land for future Shoreline Square.

Developer may request that City, in its sole discretion, allow Developer to construct City-approved improvements at a Dedicated Parkland Site. In the event City agrees to allow Developer to construct improvements at a Dedicated Parkland Site, the Parties shall enter into a reimbursement agreement between the Parties, whereby Developer constructs City-approved improvements and City reimburses Developer its reasonable out-of-pocket costs of construction ("**Dedicated Parkland Site Reimbursement Agreement**"). In the case of a Dedicated Parkland Site Reimbursement Agreement for Eco Gem only, any Eco Gem Developer Funding would be excluded from the amount to be reimbursed by City to Developer. A Dedicated Parkland Site Reimbursement Agreement would be in City's standard agreement form and subject to all applicable federal, state, and local requirements for construction projects utilizing City funds. All such work would be subject to Prevailing Wage Laws. In addition, Developer will provide City with the security required under Section 5.1.2.7.

Provided that City has agreed to Developer's construction of City-approved improvements at a Dedicated Parkland Site, as an alternative or in combination with a Dedicated Parkland Site Reimbursement Agreement, Developer may elect to utilize Government Code Section 66477(a)(9) to provide park and recreational improvements to any Dedicated Parkland Site, with the value of improvements and any equipment located on such Dedicated Parkland Site to be applied as a credit against any future park in lieu fees, rather than seeking reimbursement for

Developer's costs of construction under a Dedicated Parkland Site Reimbursement Agreement or, if done in combination with a Dedicated Parkland Site Reimbursement Agreement, then only to the extent the value of the improvements exceed the amounts for which Developer is to be reimbursed under the applicable Dedicated Parkland Site Reimbursement Agreement. In no event shall Developer's obligation to Irrevocably Offer the Dedicated Parkland Sites to City as required under the Master Plan be reduced.

5.1.2.3 **Additional Open Space; POPA Open Space Credit.** Developer shall retain ownership of an additional, approximately 11.3 acres of land for POPA Open Space. Developer may elect to Irrevocably Offer one or more POPA Open Spaces to City as unimproved land for use as park land which City may decide to accept as set forth below The POPA Open Spaces are described below:

A. **Greenway Park East**. Approximately 0.6 acres.

B. **Greenway Park West**. Approximately 1.8 acres.

C. **Shorebird Wilds**. Approximately 4.5 acres.

D. **The Portal**. Approximately 0.8 acres.

E. **Joaquin Grove**. Approximately 1.4 acres.

F. **Joaquin Terrace East**. Approximately 1.3 acres.

G. **Joaquin Terrace West**. Approximately 0.9 acres.

Subject to the requirements set forth below, Developer, at its option, may elect to Irrevocably Offer for dedication one or more of the above POPA Open Spaces to City as unimproved parkland rather than improving and retaining ownership of such land as POPA Open Space. At least ninety (90) days prior to Developer's submittal of a zoning permit application that includes one or more POPA Open Spaces, Developer shall notify City as to whether Developer desires to develop and retain ownership of the land as POPA Open Space or irrevocably offer such land for dedication to City as parkland. Developer's right to irrevocably offer such land(s) as parkland shall be subject to satisfaction of the following conditions: (a) the City may reasonably require that Developer reconfigure such POPA Open Space proposed for parkland dedication to ~~ensure that the land is rectilinear~~realign irregular edges and ensure that the land otherwise meets City's reasonable requirements for parkland configuration provided any such reconfiguration does not materially reduce the permitted density on the applicable adjacent parcel, or change the area of the POPA Open Space Area proposed for parkland dedication by more than ___ percent (__%); (b) Developer, at its expense, agrees to cause as part of the Required Condition, the relocation of any District Utility Systems, or other public or private utilities that may be located on the land, if City requests such relocation; (c) Developer shall execute, acknowledge and deliver to City for recordation in the Official Records of the County an Irrevocable Offer of Dedication of the land as parkland; (d) Developer shall provide reasonable assurances to City that the land will be in the Required Condition on or before the date by which City can first accept the offer of parkland dedication; (e) if the square footage of the land offered for dedication to City as parkland is less than the square footage of the POPA Open Space as originally configured, Developer shall pay

the applicable park in lieu fee for the reduced area upon issuance of the first building permit for any building contemplated by the zoning permit application; and (f) Developer shall have provided the City with such other information reasonably requested by City, such as title reports and plotted maps of easements. Any City request for reconfiguration of the POPA Open Space Area proposed for parkland dedication under clause (a) above shall be made within __ (__) days following receipt of Developer's notice of its election to dedicate such POPA Open Space as parkland. City and Developer will meet and confer upon request of either party regarding the above requirements. City shall notify Developer whether the requirements of (a)-(f) above have been met within __ (__) days following receipt of Developer's notice of election to dedicate POPA Open Space as parkland and all requested supporting documentation. Further, City agrees to defer acceptance of any Irrevocable Offer of POPA Open Space as parkland until after the first to occur of (i) the date that is 2 years after recordation of the Irrevocable Offer, or (ii) issuance of the first Certificate of Occupancy for a residential dwelling unit in a building contemplated by the applicable zoning permit. POPA Open Space offered for dedication to City as parkland under this Section 5.1.2.3 must be in the Required Condition on or before the date on which City may accept the Irrevocable Offer. Subject to any continuing obligations of Developer with respect to Required Condition of the parkland, upon City's acceptance of an Irrevocable Offer of POPA Open Space land as parkland, Developer shall have no further obligation with respect to such POPA Open Space. If Developer fails to satisfy the conditions set forth in (a) through (f) above, or if Developer otherwise elects to develop such land as POPA Open Space, then Developer shall do so in accordance with this Agreement, including Section 5.1.2.5 below and the Parks Delivery Plan, and the conditions of the approved zoning permit application and other applicable Approvals. Subject to Developer's acceptance of changes to the configuration of the POPA Open Space offered for parkland dedication pursuant to clause (a) above, and City's administrative processing of any required amendments to the Vesting Tentative Map to accommodate such changes, Developer shall include with its zoning permit application an Irrevocable Offer for any applicable POPA Open Space in accordance with this Section 5.1.2.3. Any such changes to proposed dedicated parkland boundaries shall not constitute a Material Change¶

5.1.2.4 **Multi-Modal Pathway Public Access Easements.** Developer and City shall enter into public access easement agreements with respect to the public's use of the multi-modal connection pathways for pedestrians and bicycles as shown in the Master Plan and record each such agreement in the Official Records. The final location of the public access easement areas shall be as shown on the applicable phased final map in accordance with the Existing Approvals and executed and recorded prior to issuance of Building Permits for the building(s) abutting the multimodal pathways on the same parcel. Issuance of Certificate(s) of Occupancy for building(s) abutting the multimodal pathways, or applicable portions thereof, shall be conditioned upon Developer's satisfactory Completion of construction of the multi-model connection pathways, or applicable portion thereof, in accordance with plans and specifications approved by City.

5.1.2.5 **POPA Open Spaces.** For each POPA Open Space, Developer and City shall enter into City's standard form Covenants and Agreements Relating to Public Access and Open Space, as modified pursuant to the POPA Open Space Terms attached as **Exhibit H** to this Agreement ("**POPA Agreement**"), providing for the public's rights to access and use for recreational purposes the applicable POPA Open Space, and record the applicable POPA

Agreement in the Official Records immediately following recordation of the phased final map creating the parcel on which such POPA Open Space is located. The final locations of the public access and use areas shall be as shown on the applicable phased final map. Execution of each POPA Agreement shall occur concurrently with the phased final map and prior to issuance of the Building Permits for the building(s) which triggered each POPA Open Space as set forth in the Parks Delivery Plan. Developer, at its expense, shall develop each POPA Open Space in accordance with the requirements of the Approvals and this Agreement, including the Parks Delivery Plan. Developer shall Complete development of the POPA Improvements on the applicable POPA Open Space by the times set forth in the Parks Delivery Plan.

5.1.2.6 **Park In-Lieu Fees.** After credit is given for land dedication and POPA Open Spaces in accordance with this Agreement, the Parties do not anticipate that Developer will be required to pay any in-lieu fees required to satisfy Parkland Requirements until issuance of the Building Permit that provides for construction of the 4,358th market rate dwelling unit.

5.1.2.7 **Security for Parkland Compliance.** If City agrees to Developer's construction of any improvements on any Dedicated Parkland Site in accordance with Section 5.1.2.1, then Developer shall enter into a public improvement agreement with City requiring, among other things, that Developer undertake such work in compliance with Prevailing Wage Laws and provide, or cause its contractor to provide, such security (e.g., a surety bond, contractor's bond or letter of credit) as is then required under, and in accordance with, Applicable City Law to be provided by a party performing such construction.

If Developer is obligated to provide a ~~letter of credit under Applicable City Law, then any such letter of credit shall be from an issuer and in a form reasonably acceptable to City and approved by the City Attorney. Each letter of credit~~Letter of Credit under Applicable City Law, then City shall have the right to draw the full amount of a Letter of Credit that is about to expire and is not being renewed or replaced, to ensure City has security for Developer's obligation to complete the construction of the park on the Dedicated Parkland Site. City shall return the applicable Letter of Credit to Developer promptly following Completion of such construction.

5.1.3 **Letter of Credit Security for Temporary Land Dedication Shortfalls.** As set forth in the Affordable Housing Delivery Plan, the Parks Delivery Plan and the Project Compliance Plan, over the Term of this Agreement, City will receive (i) dedications of Affordable Housing Sites of sufficient size to accommodate development of Affordable Housing units equal to at least fifteen percent (15%) of the total number of market rate residential units to be developed as part of the Project; and (ii) dedications of parkland, delivery of completed POPA Open Spaces and payments of parkland in lieu fees which, collectively, would fully satisfy the parkland requirements for the Project at full buildout. The Parties further anticipate that after credit is given for parkland dedications and POPA Open Spaces in accordance with this Agreement, Developer will not be required to pay in-lieu fees to satisfy Parkland Requirements until on or about issuance of the Building Permit authorizing construction of the 4,358th market rate residential unit. Because the Project Compliance Plan and the Phasing Plan on which it is based are illustrative, however, it is possible that, at various points during Project build out Developer may have delivered (i) Irrevocable Offers for a lesser amount of Affordable Housing Site acreage than is needed to accommodate development of Affordable Housing Units equal to fifteen percent (15%) of the total

number of market rate residential units for which Building Permits have been issued; and/or (ii) a lesser amount of Irrevocable Offers and/or POPA Open Spaces (that are subject to a recorded POPA Agreement) than is required by the Approvals based on the total number of market rate residential units for which Building Permits have been issued. For example, the illustrative Project Compliance Plan contemplates a temporary Affordable Housing Site acreage shortfall occurring in Phase 7, and a temporary parkland dedication/POPA Open Space delivery shortfall occurring in Phase 2. To ensure City receives the benefit of the negotiated affordable housing, parkland and POPA Open Space contributions required by this Agreement, each time a temporary shortfall in Affordable Housing Site or parkland/POPA Open Space acreage exists, Developer shall deliver to City a Letter of Credit as security to cover the temporary shortfall in required acreage. The Project Compliance Plan includes illustrative Letter of Credit dollar amount calculations based on (i) hypothetical temporary land dedication shortfalls in Phase 7 (for affordable housing) and Phase 2 (for parkland and POPA Open Spaces) and (ii) a 2023 City land dedication value of Eleven Million Seven Hundred Thousand Dollars ($11,700,000) per acre. The Parties agree that the actual Letter of Credit dollar amount(s) shall be equal to the product of the acreage shortfall in effect from time to time multiplied by the City's per acre land value in effect at the time of the shortfall. On each Letter of Credit renewal date, Developer shall be required to increase the amount of all Letter(s) of Credit by an amount commensurate with the increase, if any, in City's per acre land dedication value for the then current year over the prior year's value. If Developer is obligated to provide a Letter of Credit under this Section 5.1.3, then City shall have the right to draw the full amount of a Letter of Credit that is about to expire and is not being renewed or replaced, to ensure City has security for the shortfall. In addition, City may draw on the Letter of Credit if (i) Developer fails to eliminate the shortfall as required under the Approvals; or (ii) upon the expiration or sooner termination of this Agreement (unless such termination is due to a City default under this Agreement, whereupon City shall promptly return the Letter of Credit) and as of such expiration or termination Developer has failed to eliminate the shortfall as required under the Approvals. City shall return the applicable Letter of Credit to Developer promptly following the date on which Developer has eliminated the shortfall in the manner provided under the Approvals.

Each Letter of Credit shall provide that it will automatically be extended annually unless the issuer notifies City sixty (60) or more days before the expiration date that issuer elects not to extend it. Annual renewal of the ~~letter~~Letter of ~~credit~~Credit shall be timed to coincide with annual review of this Agreement, at which time the amount of the Letter of Credit will be adjusted (i) pursuant to the applicable annual escalator factor ~~shall be applied and incorporated into the new letter of credit.~~; or (ii) the applicable change in the City's per acre land dedication value. If the issuer of a ~~letter~~Letter of ~~credit~~Credit elects not to approve annual renewal of its ~~letter~~Letter of ~~credit~~Credit, or not to approve the ~~annual escalator increase~~applicable adjustment, then, Developer shall, at least fifteen (15) days before expiration of the ~~letter~~Letter of ~~credit~~Credit obtain a replacement ~~letter~~Letter of ~~credit~~Credit from another issuer, subject to City's approval of the issuer and the form of ~~letter of credit. City shall have the right to draw the full amount of a letter of credit that is about to expire and is not being renewed or replaced, to ensure City has security for Developer's obligation to complete the construction of the park on the Dedicated Parkland Site. City shall return the applicable letter of credit to Developer promptly following Completion of such construction.~~Letter of Credit.

5.2 **Green-Building Measures.** Developer shall design the Project to meet the following green building measures per the Precise Plan:

may request that it be allowed to utilize such new State law. Any such request shall be treated as a Material Change under Section 8.8.2.

5.3.3 City, or any nonprofit affordable housing developer(s) in partnership with City, may utilize the State Density Bonus Law, City Affordable Housing Program, or City Density Bonus Law, as they may be amended from time to time, or any other process or mechanism allowed under state or local law now or in the future, in any capacity to obtain entitlements for or receive funding for affordable housing development(s) on the Affordable Housing Sites, or to increase, modify, expand or change the amount of or design for residential development on the Affordable Housing Sites. No process or project pursued by City or any nonprofit affordable housing developer(s) on the Affordable Housing Sites shall (a) modify Developer's rights or obligations under this Agreement or the Approvals, or (b) require or cause, or would reasonably be anticipated to require or cause (i) Developer to provide or pay for materially more infrastructure to serve or as a result of such additional density or (ii) any additional or new analysis under CEQA with respect to any Subsequent Approval; nor shall the Approvals or this Agreement restrict, constrain or affect in any way any future affordable housing-related actions, developments, or funding by or on behalf of City or any nonprofit affordable housing developer(s).

5.4 **Community Benefits.** The Existing Approvals for the Project authorize up to 1,303,250 square feet of North Bayshore Nonresidential Bonus FAR. To utilize the allocation of the North Bayshore Nonresidential Bonus FAR, and the other benefits afforded to Developer under this Agreement, including vested rights, Developer shall provide the benefits and contributions set forth in this Section 5.4 (collectively, "**Community Benefits**"), which has a total estimated value of at least $47 Million Dollars, and which the Parties agree provide City with community benefits required for the Project under the Precise Plan. Developer agrees that the Community Benefits are justified, appropriate and in compliance with Applicable Law as a consequence of City approval of the Existing Approvals, and Developer accepts and covenants not to challenge any of the Community Benefits..

5.4.1 **Shorebird Yards Land Dedication.** In satisfaction of Developer's Community Benefits obligation under Section 5.4, Developer shall make an Irrevocable Offer for the land for Shorebird Yards prior to issuance of the first Building Permit. City agrees to defer acceptance of the Irrevocable Offer of dedication of Shorebird Yards until after December 15, 2029; provided, however, that Developer may waive such condition and allow for City's acceptance of the Irrevocable Offer at an earlier date. Developer shall cause the land for Shorebird Yards to be in the Required Condition at the time of City's acceptance of the Irrevocable Offer. Subject to any continuing obligations of Developer with respect to the Required Condition, upon City's taking title to the land Developer shall have no further obligation with respect to Shorebird Yards and City agrees for the Term not to allow Shorebird Yards to be developed with or used for (a) commercial Office uses, or (b) market rate residential uses. Notwithstanding the foregoing, the City shall have the right to utilize Shorebird Yards for mixed income residential projects that (i) include at least fifty percent (50%) of units as "affordable ~~units~~housing" as defined in Section 36.40.05(b) of the City Code, or (ii) ~~the project~~are considered to be "Exempt Surplus Land" under Government Code Sections 54221(f)(1)(A) ~~and~~or (f)(1)(F) as such sections may be amended.

condemnation or unavoidable casualties; (13) mediation, arbitration, litigation, or other administrative or judicial proceeding involving the Approvals or this Agreement other than between City and Developer; (14) epidemics and other public health crises affecting the workforce by actions such as quarantine restrictions (excluding COVID-19 related restrictions occurring as of the Effective Date); (15) Economic Recession, or (16) site preparation and construction restrictions in accordance with Section 5.1.3 of the Precise Plan (each a "**Force Majeure Event**"); provided, except as otherwise provided in Section 8.2.2 below, the Term shall not be extended by reason of any Force Majeure Delay. An extension of time for any such cause (each a "**Force Majeure Delay**") shall be for the period of delay caused by the Force Majeure Event and shall commence to run from the time of commencement of the Force Majeure Event, if written notice by the Party claiming such extension is sent to the other Party within sixty (60) days of commencement of the Force Majeure Event. If notice is sent after such sixty (60) day period, then the extension shall commence to run no sooner than sixty (60) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City Manager and Developer. Developer's inability or failure to obtain financing shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for Force Majeure Delay unless such inability, failure, or delay is a direct result of an Economic Recession. "**Economic Recession**" means two consecutive quarters of negative GDP recession as defined and determined by the National Bureau of Economic Research during which the cumulative GDP decline is -3.0% or more.

8.2.2 **Extension of Term.** The Term may be extended by one or more Force Majeure Delays, up to a cumulative maximum of three (3) years. The extension(s) for Force Majeure Delays can either be applied to the Initial Term or Extended Term or a combination thereof, but in no event shall the Term exceed thirty three (33) years. Nothing herein shall be deemed to prevent the Parties from later agreeing, each in its sole and absolute discretion, to a further extension of the Term, but any such extension will be subject to processing as a Material Change in accordance with the Development Agreement Statute and Development Agreement Ordinance, as they may be amended from time to time. Notwithstanding the foregoing, Force Majeure delays associated with site preparation and construction restrictions pursuant to Section 8.2.1(16) shall not count toward the cumulative maximum of three (3) years of Force Majeure Delays, but such delays cannot cause the Term to exceed thirty three (33) years.

8.3 **Certain Waivers.** City shall have the right, but not the obligation, to waive or reduce the burden of provisions of the Approvals as they apply to any portion of the Property, with the consent of the Developer of such portion, so long as: (a) the waiver, reduction, or revision does not conflict with the land uses or improvements that are the subject of the Approvals (or any permit or approval granted thereunder); (b) such reduction or waiver does not increase the burden imposed upon a portion of the Property owned by any other Developer or property owner; (c) the waiver, reduction, or revision is not inconsistent with the purpose and goals of the General Plan or Precise Plan; and (d) such waiver or reduction is made with the written consent of the Developer of the portion of the Project as to which such waiver or reduction is granted.

8.4 **Life Safety and Related Matters.** Nothing contained herein shall be deemed to prevent adoption and application to improvements upon the Property of laws, ordinances, uniform codes, rules, or regulations pertaining to or imposing life-safety, fire protection, environmental, energy or resource efficiency, mechanical, electrical, and/or building integrity requirements at the

Memorandum shall first be approved by Developer and the Community Development Director; and provided further, that the Community Development Director in consultation with the City Attorney shall make the determination on behalf of City whether a requested refinement, clarification or other change may be effectuated pursuant to this Section 8.8.1 or whether the requested refinement, clarification or other change is of such a character to constitute an amendment hereof pursuant to Section 8.6 or 8.8.2. The Community Development Director shall be authorized to execute any Operating Memoranda hereunder on behalf of City. Minor modifications to the Project as to the location, operational design, or requirements for maintenance of improvements shall be suitable for treatment through Operating Memoranda subject to the provisions of this Section 8.8.1, and shall not be deemed a Material Change and shall not require a formal Agreement Amendment as provided in Section 8.8.2.

8.8.1.3 Concurrently with this Agreement the Parties are entering into an Option to Ground Lease Lot C pursuant to which the Developer has the option to lease all or a portion of Lot C for "District Parking" use as contemplated in the Master Plan. In the event that Developer exercises its option to lease all or a portion of Lot C and the Parties enter into a ground lease, then those portions of Lot C included in the lease will become part of the "Property" that is the subject of this Agreement and will enjoy the vesting protections of this Agreement, including the protections against the applicability of New City Laws to such portions of Lot C. Upon request of either Party, the Parties shall enter into an Operating Memorandum in recordable form memorializing the addition of such portion(s) of Lot C to this Agreement.

8.8.2 **Material Change by Agreement Amendments.** Any revision to this Agreement which involves a Material Change or is otherwise determined not to qualify for an Operating Memorandum as set forth in Section 8.8.1 shall require a formal "**Agreement Amendment,**" which will require submittal of a subsequent zoning permit application and review thereof in order to process the Agreement Amendment, and duly noticed public hearings before the Zoning Administrator and City Council in accordance with the City Code and the Development Agreement Statute. Approval of any Material Change to this Agreement shall require approval by both the City Council and Developer.

8.9 **Amendment of Approvals.** As provided in the Existing Approvals, any major modification to the Project or the Approvals proposed by Developer requires City Council approval whereas minor modifications do not require City Council approval. What constitutes a major or a minor modification to the Project or Approvals is set forth in the Conditions of Approval. Modifications of the Project or Approvals will not require an amendment of this Agreement unless the modification constitutes a Material Change. Any related amendment to this Agreement shall be limited to those Agreement provisions that are implicated by the applicable modification.

8.10 **Cancellation by Mutual Consent.** Except as otherwise permitted in this Agreement, this Agreement may be canceled in whole or in part only by the mutual consent of City and Developer or its successors-in-interest, in accordance with the provisions of the City Code. Except as otherwise set forth in this Agreement or under Applicable Law, any fees or monetary amounts paid by Developer to City pursuant to this Agreement prior to the date of cancellation shall be retained by City, and any sums then due and owing to City shall be paid as part of the cancellation.

EXHIBIT D

Illustrative Phasing Plan and Diagram

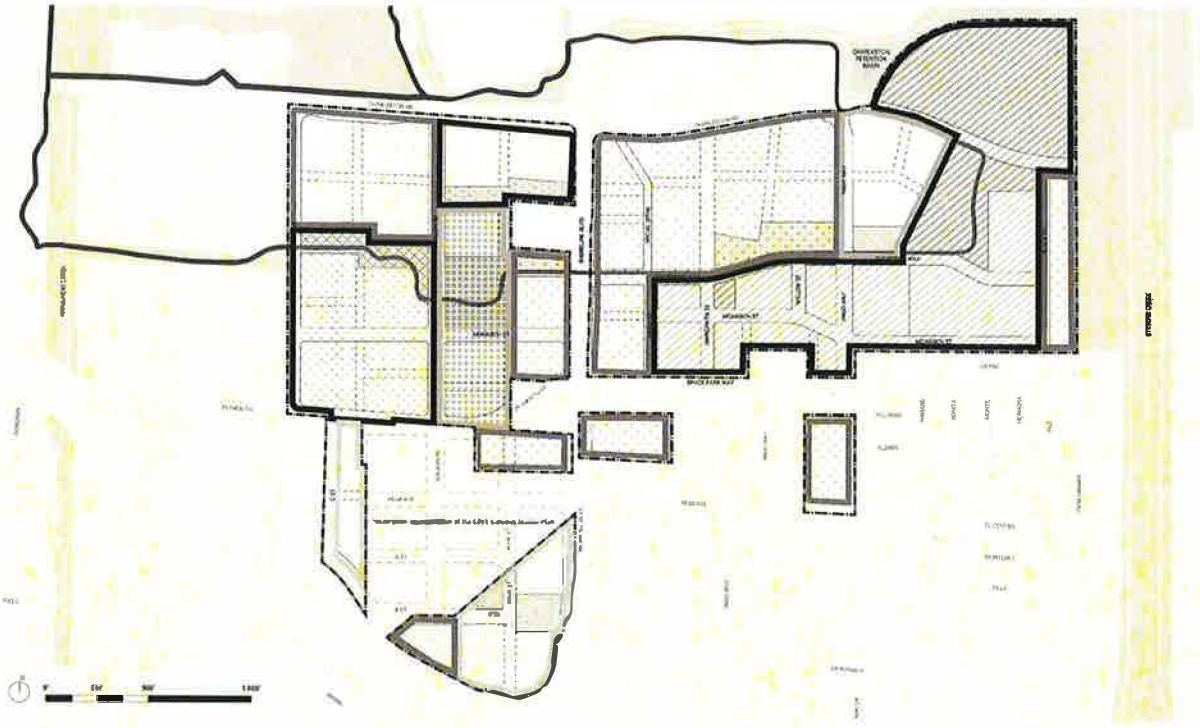

EXHIBIT E

Project Compliance Plan

EXHIBIT E

~~Project Compliance Plan~~

~~EXHIBIT E~~

PROJECT COMPLIANCE PLAN

TABLE E1: AFFORDABLE HOUSING COMPLIANCE STRATEGY
BASED ON CONCEPTUAL PHASING PLAN

	Prior to first ~~Residential~~ Building Permit being issued	Phase 1	Phase 2	Phase 3	Phase 4	Phase 5	Phase 6	Phase 7	Phase 8
No. of Market Rate Units Proposed	0 du	1,766 du	1,071 du	0 du	0 du	906 du	0 du	1,636 du	571 du
Projected Development Capacity - **Affordable Housing** ~~Unit Proposed~~Units on Dedicated Affordable Housing Sites Based on 2023 Zoning Regulations									
Land Dedication / Irrevocable Offer	VTM Parcels JS3 & JS4 **±276 du / 1.60ac (IO)** VTM Parcel PE2 **±231 du / 2.15 ac (IO)**	~~0 du~~	VTM Parcel SB25 **±220 du / 1.40 ac**	~~0 du~~	~~0 du~~	~~0 du~~	~~0 du~~	VTM Parcel JN6 **±167 du / 0.83 ac**	VTM Parcel JS2 **±156 du / 0.97 ac**
~~**Total Affordable Housing Units**~~	~~±507 du~~	~~0 du~~	~~±220 du~~	~~0 du~~	~~0 du~~	~~0 du~~	~~0 du~~	~~±167 du~~	~~±156du~~
Projected	±507 du	0 du	±220 du	0 du	0 du	0 du	0 du	±167 du	±156du

Number of Affordable Housing Units ~~required (Dedication)~~ on Affordable Housing Sites Based on 2023 Zoning Regulations									
Number of Affordable Housing Units required (met through dedication of Affordable Housing Sites)									
Total Affordable Housing Units Required	0 du x 15% = **0 du**	1,766 du x 15% = **312 du**	1,071 du x 15% = **189 du**			906 du x 15% = **160 du**		1,636 du x 15% = **289 du**	571 du x 15% = **101 du**

~~Park~~ Balance of Affordable Housing Land Obligations Owed to City ~~(Land or Fee)~~									
Affordable Housing Units Owed	0 – 507 = **-507 du**	312 – 507 = **-195 du**	501 – 727 = **-226 du**			661 – 727 = **-66 du**		950 – 894 = **56 du**	1,050 – 1,050 = **0 du**
Letter of Credit to the City* (2023 $$)	$0	$0	$0	$0	$0	$0	$0	$4.3 m *(land required for 56 units x land value)*	$0
Percent Compliant		163%	145%			110%		94%	100%

EXHIBIT E

TABLE E2: PARK LAND COMPLIANCE STRATEGY
BASED ON CONCEPTUAL PHASING PLAN

	Prior to first ~~Residential~~ Building Permit being issued	**Phase 1**	**Phase 2**	**Phase 3**	**Phase 4**	**Phase 5**	**Phase 6**	**Phase 7**	**Phase 8**
No. of Market Rate Units Proposed	0 du	1,766 du	1,071 du	0 du	0 du	906 du	0 du	1,636 du	571 du
Park Land Proposed									
Land Dedication / Irrevocable	Eco Gem **10.8 ac (IO)**		Shorebird Square **0.3 ac**			Joaquin Commons **2.5 ac**			Gateway Plaza **0.9 ac**

Offer									Shorebird Square **0.3 ac**
POPA Credit		The Portal **0.7 ac**	Gateway Park West **1.8 ac**	Gateway Park East **0.6 ac** Shorebird Wilds **4.5 ac**	Joaquin Grove **1.4 ac**			Joaquin Terraces **2.2 ac**	
Total Proposed	**10.8 ac**	**0.7 ac**	**2.1 ac**	**5.1 ac**	**1.4 ac**	**2.5 ac**	**0.0 ac**	**2.2 ac**	**1.2 ac**
Park Land required (~~Dedication or In-Lieu Fee~~Per City Code)									
Total Land Dedication Required	0 du x 0.0060 = **0 ac**	1,766 du x 0.0060 = **10.6 ac**	1,071 du x 0.0060 = **6.4 ac**	0 du x 0.0060 = **0 ac**	0 du x 0.0060 = **0 ac**	906 du x 0.0060 = **5.4 ac**	0 du x 0.0060 = **0 ac**	1,636 du x 0.0600 = **9.8 ac**	571 du x 0.0061 = **3.4 ac**
~~**Total In-Lieu Fee Required**~~	~~0 ac x $11.7m = $0~~	~~10.6 ac x $11.7m = $124.0m~~	~~6.4 ac x $11.7m = $75.2m~~	~~0 ac x $11.7m = $0~~	~~0 ac x $11.7m = $0~~	~~5.4 ac x $11.7m = $63.6m~~	~~0 ac x $11.7m = $0~~	~~9.8 ac x $11.7m = $114.8m~~	~~3.4 ac x $11.7m = $40.1m~~
Balance of Park Land Obligations Owed to City ~~(Land or Fee)~~									
Land Dedication Owed	0 - 10.8 = **(-10.8 ac)**	10.6 - 11.5 = **(-0.9 ac)**	17.0 - 13.6 = **3.4 ac**	17.0 - 18.7 = **-1.7 ac**	17.0 - 20.1 = **-3.1 ac**	22.4 - 22.6 = **-0.2 ac**	22.4 - 22.6 = **-0.2 ac**	32.2 - 24.8 = **7.4 ac**	35.6 - ~~26.1~~ 33.5** = ~~9.5~~ 2.2 **ac**
Letter of Credit to the City* (2023 $$)	**$0**	**$0**	**$39.7m**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**
In-Lieu Fee Owed* (2023 $$)	~~(-$125.9m)~~$0	~~(-$10.7m)~~$0	**$0**	~~(-$20.6m)~~$0	~~(-$36.9)~~$0	~~(-$3.2m)~~$0	~~(-$3.2m)~~$0	**$86.0m**	**$25.7m**

~~EXHIBIT E - Project Compliance Plan~~

Percent Compliant		**108%**	**100%**	**110%**	**118%**	**101%**	**101%**	**100%**	**100%**

* Dollar figures shown are based on 2023 values, actual amounts will be based upon land value at the time of dedication.
** Including payment of $86.0 million in previous phase

EXHIBIT F

AFFORDABLE HOUSING DELIVERY PLAN

This exhibit includes information on timing of affordable housing delivery within the Master Plan Area.

TABLE F1.1: AFFORDABLE HOUSING DELIVERY MILESTONES

Affordable Housing Parcel	Delivery Schedule
Vesting Tentative Map Parcel JS3, JS4, PE2	Developer to make Irrevocable Offer prior to the issuance of the first Building Permit ~~for~~. If Developer has obtained a ~~Residential~~ Building~~. Refer to section 5.1.1 of the Development Agreement~~ Permit on or before January 31, 2029, Developer shall cause each of VTM Parcels JS3, JS4, and PE2 to be in the Required Condition on or before January 31, 2029. The City will defer acceptance of the dedication to January 31, 2029 for VTM Parcels JS3, JS4, and PE2 ~~January 31~~or such earlier date as the Parties may mutually agree. If Developer has not obtained a Building Permit prior to February 1, 2029 ~~unless~~, then as a condition ~~is waived by~~to issuance of the first Building Permit, Developer ~~in which case~~shall convey to City ~~can accept the dedication at such earlier date~~fee title to VTM Parcels JS3, JS4, and PE2, in the Required Condition. Refer to section 5.1.1.1 of the Development Agreement.
All other dedicated parcels	Developer to ~~dedicate parcel in Required Condition to the City no later than 6 months from the Final Certificate of Occupancy being issued~~make Irrevocable Offer prior to issuance of the first Building Permit for ~~the~~any building located on the "Adjacent VTM Parcel" as identified in Table F1.2. Developer shall cause each of the additional affordable housing dedication parcels to be in the Required Condition on or before the date that is 12 months following issuance of the first Temporary Certificate of Occupancy for a building on the Adjacent VTM Parcel. No building(s) on the Adjacent VTM Parcel shall receive a Final Certificate of Occupancy until such time as the applicable affordable

	housing dedication parcel is in the Required Condition. Refer to Section 5.1.1.1 of the Development Agreement.

In the event that Developer fails to deliver Irrevocable Offers to any Affordable Housing Site and cause such land to be in the Required Condition and be ready for ~~acceptable~~acceptance by the City ~~at~~within the times set forth in this Affordable Housing Delivery Plan, ~~and if there are not sufficient affordable credits available based on Affordable Housing Sites previously dedicated or completed as applicable,~~ City may withhold issuance of Later Approvals for ~~any other building(s)~~market rate residential buildings and market rate residential parcels Project-wide ~~for other residential~~; provided, however, if Developer ~~delivers~~has timely delivered the Irrevocable Offer(s) and also delivered to City an irrevocable standby letter of credit from an issuer and in a form acceptable to City ~~and~~ in amount equal to ~~100~~125% of the estimated cost of putting the applicable affordable housing ~~fee credit value of such Affordable Housing Site~~parcel in the Required Condition as reasonably determined by City, City's ~~remedy~~remedies shall be limited to withholding of the Final Certificate of Occupancy for the building(s) on the Adjacent VTM Parcel, acceptance of the affordable housing parcel, and drawdown of the letter of credit if Developer desires to obtain a Later Approval that would otherwise be withheld, and City shall not withhold issuance of such Later ~~Approvals Project-wide~~Approval.

TABLE F1.2: INDIVIDUAL AFFORDABLE HOUSING DELIVERY SCHEDULE

Affordable Housing VTM Parcel Ref	Area	Estimated Below Market Rate Yield	Percentage of Total Units	Market Rate Residential Equivalent	Adjacent VTM Parcel Ref
JOAQUIN NORTH					
JN6	0.83 ac	±167 du	±2.39%	946 du	JN5
JOAQUIN SOUTH					
JS2	0.97 ac	±156 du	±2.23%	884 du	JS1
JS3, JS4	1.60 ac	±276 du	±3.94%	1,564 du	N/A
PEAR					
PE2	2.15 ac	±231du	±3.30%	1,309 du	N/A
SHOREBIRD					
SB25	1.40 ac	±220 du	±3.14%	1,247 du	SB15/ SB17*
Total	**6.95 ac**	**1,050 du**	**15%**	**5,950 du**	-

*Whichever receives the final building occupancy first.

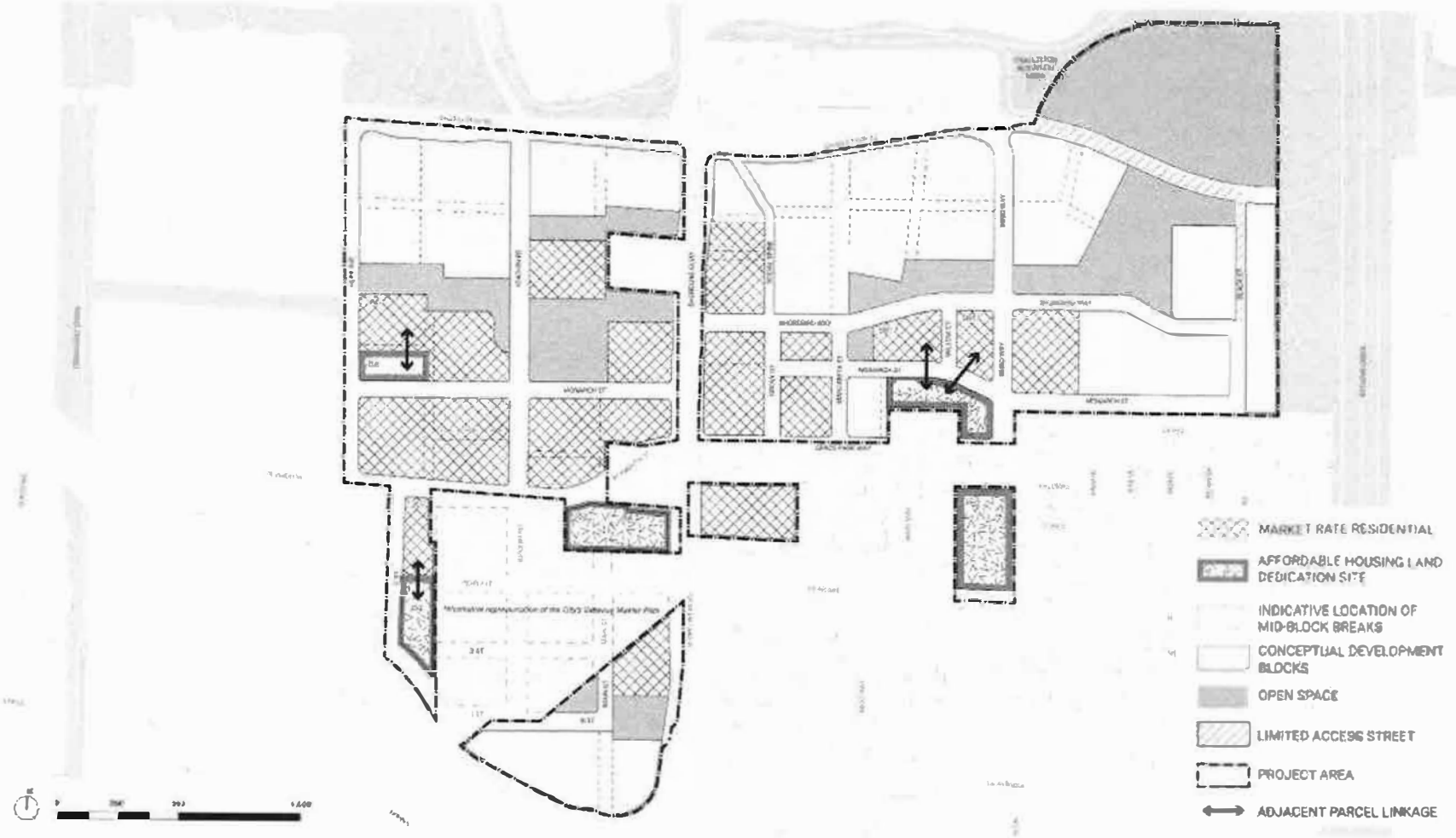

EXHIBIT F - Affordable Housing Delivery Plan

EXHIBIT G

Parks Delivery Plan

This exhibit includes information on intended timing of park delivery within the Master Plan area.

TABLE G1.1: PARKLAND DELIVERY MILESTONES

Type of Park	Delivery Schedule
Eco Gem	Developer to make Irrevocable Offer prior to the issuance of the first Building Permit for any building in the Master Plan Area. Refer to Sections 5.1.2 and 5.5.5 of the Development Agreement. The City will defer taking title to the Irrevocable Offer of the land for Eco Gem (Vesting Tentative Map Parcel SB 26) until December 15, 2030, unless otherwise mutually agreed to by both parties.
Dedicated Park	If one building will be developed on the Adjacent Vesting Tentative Map Parcel as identified in Table G1.2, Developer shall cause the applicable parkland to be in the Required Condition and ready for acceptance by City no later than 9 months following issuance of the first Temporary Certificate of Occupancy for such building. Where more than one building will be developed on the Adjacent Vesting Tentative Map Parcel, Developer shall cause the applicable parkland to be in the Required Condition and ready for acceptance by City on or before the first to occur of: (i) the date that is four (4) years following issuance of the first Temporary Certificate of Occupancy for the first building, or (ii) the date that is nine (9) months following issuance of the first Temporary Certificate of occupancy for the last such building. In all instances, no Final Certificate of Occupancy shall be issued for the building(s) which triggered the parkland dedication requirement, until such time as the parkland is in the Required Condition and ready for acceptance by City. In the event that Developer fails to deliver Irrevocable Offers to Eco Gem or any other parkland site and cause such land to be in the Required Condition and be ready for ~~acceptable~~acceptance by the City at the times set forth in this Parks Delivery Plan, and if there are not sufficient parkland credits available based on parkland and POPA spaces previously dedicated or completed as applicable, City may withhold issuance of Later Approvals for any other building(s) Project-wide for the same type of use (i.e. residential or commercial use) as the building(s) that triggered the requirement to dedicate the parkland; provided, however, if Developer delivers to City an

	irrevocable standby letter of credit in a form acceptable to City and in amount equal to 100% of the parkland fee credit value of such parkland, City's remedy shall be limited to drawdown of the letter of credit if Developer desires to obtain a Later Approval that would otherwise be withheld, and City shall not withhold issuance of such Later ~~Approvals Project-wide~~Approval.
POPA	If one building will be developed on the Adjacent Vesting Tentative Map Parcel as identified in Table G1.2, Developer shall cause the applicable POPA Open Space to be completed and ready for use by the public no later than 12 months following issuance of the first Temporary Certificate of Occupancy for such building. Where more than one building will be developed on the Adjacent Vesting Tentative Map Parcel, Developer shall cause the applicable POPA Open Space to be completed and ready for use by the public on or before the first to occur of: (i) the date that is four (4) years following issuance of the first Temporary Certificate of Occupancy for the first building, or (ii) the date that is ~~nine~~twelve (~~9~~12) months following issuance of the first Temporary Certificate of occupancy for the last such building. In all instances, no Final Certificate of Occupancy shall be issued for the building(s) which triggered the POPA Open Space requirement, until such time as the POPA Open Space is fully complete and ready for use by the public. In the event that Developer fails to complete any POPA Open Space and make it available for use by the public at the times set forth in this Parks Delivery Plan, and if there are not sufficient parkland credits available based on parkland and POPA spaces previously dedicated or completed as applicable, City may withhold issuance of Later Approvals for any other building(s) Project-wide for the same type of use (i.e. residential or commercial use) as the building(s) that triggered the requirement to deliver the POPA Open Space; provided, however, if Developer delivers to City an irrevocable standby letter of credit in a form acceptable to City and in amount equal to 100% of the parkland fee credit value of such POPA Open Space, City's remedy shall be limited to drawdown of the letter of credit if Developer desires to obtain a Later Approval that would otherwise be withheld, and City shall not withhold issuance of such Later ~~Approvals Project-wide~~Approval.

TABLE G1.2: INDIVIDUAL PARKLAND DELIVERY SCHEDULE

Park	Park VTM Parcel Ref	Type	Area	Market Rate Residential Equivalent at 0.006 ac/unit	Adjacent VTM Parcel Ref
JOAQUIN NORTH					
Joaquin Commons	JN16	Dedicated	2.5 ac	425 du	JN12
Joaquin Grove	JN11	Dedicated or POPA	1.4 ac	236 du	JN10
Joaquin Terrace East	JN3	Dedicated or POPA	1.3 ac	214 du	JN4
Joaquin Terrace West	JN2	Dedicated or POPA	0.9 ac	150 du	JN5
The Portal	JN14	Dedicated or POPA	0.8 ac	124 du	JN15
JOAQUIN SOUTH					
Gateway Plaza	JS9	Dedicated	0.9 ac	151 du	JS10
Shoreline Square	JS5	Dedicated	0.3 ac	54 du	JS10
SHOREBIRD					
Eco Gem	SB26	Dedicated	10.8 ac	1,793 du	N/A
Greenway Park East	SB8	Dedicated or POPA	0.6 ac	108 du	SB7
Greenateway Park West	SB6	Dedicated or POPA	1.8 ac	306 du	SB5
Shorebird Square	SB18	Dedicated	0.3 ac	51 du	SB17
Shorebird Wilds	SB9	Dedicated or POPA	4.5 ac	745 du	SB7

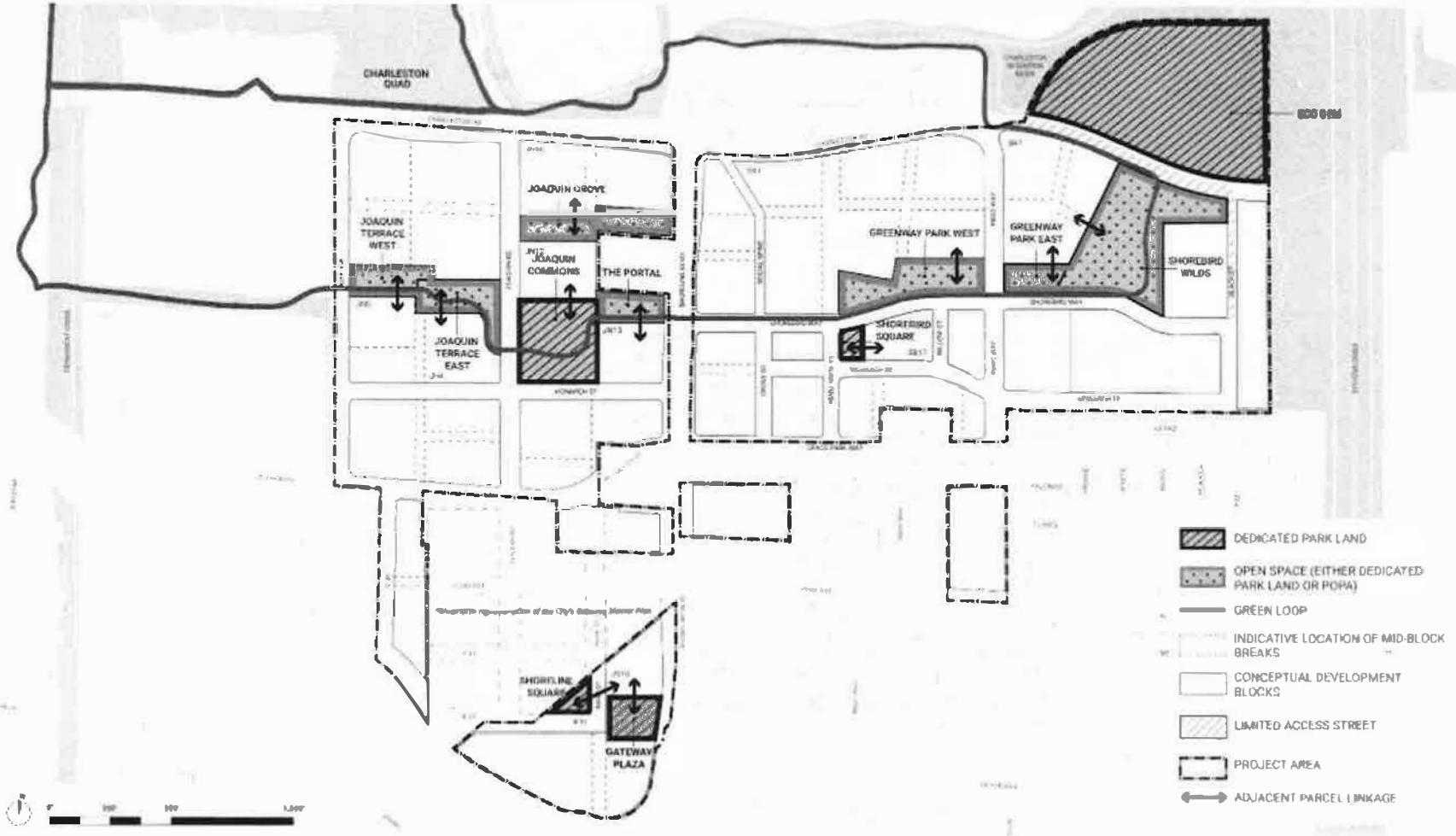

EXHIBIT G - Parks Delivery Plan

EXHIBIT R

Transportation Demand Management Agreement

Framework for Transportation Demand Management ("TDM") Agreement Provisions

Below are the office TDM framework provisions to be included in the TDM Agreement, which shall apply to all Google occupied buildings located in the North Bayshore Precise Plan area (both within and outside of the North Bayshore Master Plan area). It is the intent that Google, LLC and the City shall subsequently negotiate and mutually execute a formal TDM agreement prior to implementation of the Office Trip Cap (as defined below). The subsequent TDM agreement shall contain express provisions that said agreement will survive the term of the Development Agreement.

Developer shall comply with the provisions of this TDM Agreement. The purpose of this TDM Agreement is to establish an Office Trip Cap (defined below) that enables Developer to implement a comprehensive district-wide approach to TDM and parking management that supports the North Bayshore Precise Plan (NBPP) goal of reducing vehicle traffic and supporting non-driving modes.

Provided the conditions set forth herein are achieved, including compliance with the Office Trip Cap (defined below), and payment of penalties if required, Google shall be exempt from the monitoring requirements and penalties under the NBPP gateway trip cap policy for all properties occupied by Google in the NBPP area (including denial of building permits if gateway trip caps are exceeded).

The provisions of this DA TDM Agreement shall supersede all existing project trip and headcount caps and monitoring requirements applicable to all properties occupied by Google or its parent, subsidiaries, or affiliates (collectively, "Google") within the North Bayshore Precise Plan area. This includes, but is not limited to, the following conditions and resolutions (collectively "Existing Google Requirements"):

- North Bayshore Master Plan (Condition No. 264 (Transportation Demand Management Program for Non-Residential [Office] Development) and Condition No. 265 (Transportation Demand Management Monitoring for Non-Residential [Office] Development))
- Charleston East (Resolution No. 18128, approved March 7, 2017, Conditions of Approval Nos. 75,76 and 161)
- Landings (Resolution No. 18476, approved June 23, 2020, Conditions of Approval Nos. 47, 48, and 230); and
- 1625 Plymouth Street (Resolution No. 18083, approved June 21, 2016, Conditions of Approval Nos. 58 and 59) which Google, as tenant, is obligated per the lease agreement to abide by and will not apply if Google's occupancy ends, the provisions of Conditions of Approval Nos. 58 and 59 shall apply to any successor occupant.

If a property owned by Google and subject to the Office Trip Cap is sold or leased to a non-affiliated third party and no longer occupied by Google ("Divested Property"), this DA TDM Agreement shall not apply to said Divested Property. Instead, said Divested Property shall be: (1) subject to North Bayshore Master Plan Condition of Approval Nos. 264 and 265 (Transportation Demand Management Program for Non-Residential [Office] Development) if the property contains an office building that was (a) either rebuilt or newly-constructed by Google and (b) located in the North Bayshore Master Plan, or (2) subject to the Conditions of Approval applicable to the Divested Property prior to the effectiveness of this TDM

Agreement (e.g., the recorded conditions on the property that were imposed as a condition of the project's approval, or as subsequently amended) if the property contains an office building that is either (a) located within the North Bayshore Master Plan and not rebuilt, or (b) located outside of the North Bayshore Master Plan but within the North Bayshore Precise Plan area.

Office Trip Cap:

Google agrees to implement a North Bayshore district-wide office vehicle trip cap ("Office Trip Cap") that shall apply to all office buildings in the North Bayshore Precise Plan area that are occupied by Google or its parent, subsidiaries, or affiliates (collectively, "Google") as such occupancy may change from time to time. Based on Google's changing building occupancy, Google shall be allowed to add building(s), remove building(s), or modify the portion of a building subject to the Office Trip Cap without adjustments to the Office Trip Cap number so long as the cumulative office square footage occupied by Google in the North Bayshore Precise Plan area does not exceed the total Office Square Footage set forth in Table A below. Subject to Google and City's mutual agreement, the Office Trip Cap may be modified if needed to accommodate changes to Google's occupancy, Google's development plans, or implementation of the City's Priority Transportation Improvements. At the time of the annual DA TDM Reporting (as defined below), Google shall provide the City with a report showing any Divested Property and in such case(s), the Total Office Square Footage used to calculate the Office Trip Cap shall be modified accordingly.

Table A: Total Office Square Footage Included in the Office Trip Cap

Category	Office Square Footage
A) North Bayshore Master Plan	3,117,931
B) Existing office buildings occupied by Google in the NBPP area as of June 27, 2023;*	*To be calculated as part of Office Trip Cap Implementation Plan*
C) Currently entitled Google offices (but not constructed or complete) within the North Bayshore Precise Plan area (e.g. Landings, Charleston East)**	
Total:	*To be calculated as part of Office Trip Cap Implementation Plan*

*Excludes office square footage included in the North Bayshore Master Plan

** Landings Office shall not be included in the Office Trip Cap allowance until the Landings Office project receives Certificate of Occupancy.

The Office Trip Cap shall apply to the a.m. and p.m. Peak Periods[i] and shall be calculated based on the following assumptions:

(i) A 35% single-occupancy vehicle (SOV) mode-share target for existing, rebuilt and net new office

[i] The peak period shall be initially defined as 8:00-11:00 a.m. and 4:00-7:00 p.m. on all weekdays ("Peak Period") but the three hour periods may be adjusted as conditions warrant. For means of clarification, the AM and PM Peak Periods shall not be expanded beyond a three (3) hour period but the periods may be changed to a different three (3) hour period during the day as conditions warrant.

square footage in the NBPP Area that Google occupies at the time of full build-out and occupancy of the North Bayshore Master Plan, as shown in Table A;

(ii) Consistency with the peak period vehicle trip generation rate that was used in the North Bayshore Master Plan Subsequent Environmental Impact Report (SEIR) Transportation Analysis or the North Bayshore Multimodal Transportation Analysis;

(iii) A.m. and p.m. trip caps shall be based on peak-direction trips (inbound a.m. trips and outbound p.m. trips): and

(iv) A trip generation rate based on 4 person trips per 1,000 square feet of office space.

The Office Trip Cap number shall be proposed by Google and approved by the City as part of the Office Trip Cap Implementation Plan.

Office Trip Cap Implementation Plan:

Google shall submit an Office Trip Cap Implementation Plan to the City's TDM Coordinator no later than submission of the initial building permit application for the first North Bayshore Master Plan office building. The Office Trip Cap Implementation Plan must be reviewed and approved by the Community Development Director and Public Works Director prior to issuance of the core and shell permit for the first North Bayshore Master Plan office building. Notwithstanding the foregoing, Google may submit the Office Trip Cap Implementation Plan to the City at an earlier date if desired by Google and shall be timely reviewed and approved by the City. Approval by the City of the Office Trip Cap Implementation Plan will constitute formal adoption of the Office Trip Cap, at which point Existing Google Requirements shall no longer apply and those properties shall be subject to the Office Trip Cap while occupied by Google. Google shall adhere to the approved Office Trip Cap Implementation Plan.

The Office Trip Cap Implementation Plan shall include the following:

a. The Office Trip Cap, as defined above, including the list of buildings with square footage and details on how the proposed Office Trip Cap was calculated.

b. A detailed plan to collect driveway traffic count data per the requirements of this condition, including the driveway locations and monitoring technology to be used. For shared driveways that have a mix of office and non-office trips, the Office Trip Cap Implementation Plan shall include a methodology to estimate the percentage of trips attributable to office buildings and district parking locations.

c. An acknowledgment that the Office Trip Cap, when approved, shall supersede all Existing Google Requirements.

Other TDM Measures:
Other required TDM measures include:

a. Join and maintain ongoing membership in the Mountain View Transportation Management Association (MVTMA) for the life of the project.

b. Provide an on-site Employee Transportation Coordinator (ETC) to implement, manage and monitor the TDM program and to serve as a liaison between the employer/ tenant and the MVTMA. Annual monitoring reports will be submitted to the City's TDM Coordinator. The ETC shall carry out the following tasks in

coordination with third parties, such as the MVTMA, vendors, and independent consultants, to ensure successful implementation of the TDM program:

i. Organizing and implementing promotional programs; Develop and distribute marketing and information materials to inform employees and visitors about the TDM program and encourage their participation.

ii. Updating information in physical locations and via the online Intranet/employee HR resource pages;

iii. Providing trip-planning assistance and/or ride-matching assistance to employees and visitors;

iv. Promotion and presentation of transportation alternative choices at new hire/intern orientations (including public/private transit options, Carshare, and bike share etc);

v. Managing and facilitating annual employee commute mode share surveys, visitor surveys, and conducting annual driveway counts with an independent consultant as specified below for TDM monitoring. For district parking locations, the ETC shall refine the commute survey methodology to identify the office buildings with which the trips at garage driveways are associated;

vi. Supplying up-to-date transit schedules, parking availability data, route maps and stop locations for commuter last mile shuttles, VTA transit lines, MVgo, and Caltrain.

c. Provide a flexible, alternative work schedule program to allow employees to travel outside of peak periods; provide telecommute work options.

d. Provide a Guaranteed Ride Home program to encourage use of alternative transportation.

e. Provide publicly accessible shuttle services to connect employees and visitors to existing public transit stops/hubs, either directly or through the MVTMA.

f. Provide bicycle parking, along with showers and changing facilities, as defined in the Precise Plan; Provide sufficient self-repair station(s) for bikes.

h. Provide ride-share matching services to encourage carpooling by employees and provide bike matching services to encourage employees to bike to work together.

g. Include site design features to further alternative modes of travel, such as: (i) give priority parking locations to carpools and vanpools as defined in the Precise Plan; (ii) provide car share parking as defined in the Precise Plan; and (iii) orient building entrances toward sidewalks, transit stops, and bicycle facilities.

Additional measures that shall be considered as needed to maintain compliance with the Office Trip Cap:(i) provide access to a fleet of shared vehicles; (ii) provide subsidized membership to external car sharing organizations; (iii) provide a bike loaner program to provide bikes on an extended basis to visiting or short-term employees for commuting; (iv) for carpool services, employers provide vans, fuel, toll expenses, and vehicle maintenance; (v) provide monetary incentive for employees to purchase bikes; (vi) provide a parking cash out program to encourage use of alternative modes in accordance with California state law AB 2206; (vii) provide commuter shuttle service for employees.

TDM Monitoring:

Google shall prepare an annual Transportation Demand Management (TDM) report and submit it to the

City's TDM Coordinator to document the effectiveness of their TDM program in maintaining compliance with the Office Trip Cap. The TDM report shall be prepared by an independent consultant and paid for by Google; the consultant shall work with Google's TDM coordinator. To verify the details of the TDM program, the City can hire a third-party consultant to review, which shall be funded by Google (at contract cost plus the City's administrative fee).

TDM Reporting: The initial TDM report for the project will be submitted to the City's TDM Coordinator on December 1, or the following business day thereafter if a weekend, the earlier of one year after approval of the Office Trip Cap Implementation Plan or one year after the granting of the Certificate of Occupancy for the first North Bayshore Master Plan new office building. Subsequent reports will be submitted to the City's TDM Coordinator annually on December 1.

Office Trip Cap Compliance: To monitor compliance with the Office Trip Cap, driveway traffic counts shall be prepared and provided by an independent, licensed consultant and paid for by Google. The driveway counts and resulting data shall be included in the TDM report provided to the City's TDM Coordinator. The monitoring period will consist of one full work week (5 days), Monday through Friday

- Driveway traffic counts shall be collected for peak-direction traffic (inbound a.m. trips and outbound p.m. trips) during the a.m. and p.m. three-hour peak periods Monday through Friday
- To monitor compliance with the Office Trip Cap, individual driveway traffic counts shall be added together and compared to the cumulative Office Trip Cap number:
    - A.m. peak period driveway traffic counts shall be added together and compared to the a.m. Office Trip Cap
    - P.m. peak period driveway traffic counts shall be added together and compared to the p.m. Office Trip Cap
- Compliance with the Office Trip Cap shall be calculated using the average of the three highest volume weekdays of a.m./p.m. counts to determine compliance for the a.m./p.m. peak period
- Any penalty amount would be the greater of either the a.m. or the p.m. exceedance
    - For example, if the 3-day average for the a.m. peak period counts show an exceedance of the a.m. trip cap, and 3-day average for the p.m. peak period counts show an exceedance of the p.m. trip cap, applicant shall pay the greater of the two exceedances

The City may conduct vehicle counts on its own accord at the same driveway locations used for Google's counts, under contract with an independent consultant, to verify compliance with Google's district trip cap. Should the City's counts exceed Google's counts by 2% or more and result in non-compliance with the trip cap and the applicant does not accept calculation of penalties based on City's count, a third-party traffic consultant mutually acceptable to the City and Google, and paid for by Google, shall be hired to assess the validity of the count data for purposes of determining compliance with the district trip cap and any applicable penalties for non-compliance.

Report Conclusions/Program Modifications:

The TDM report shall either state: (1) the total trips of all office buildings subject to the Office Trip Cap are below the required peak period Office Trip Cap, providing supporting statistics and analysis to establish attainment of the goal; or (2) the total trips of all office buildings subject to the Office Trip Cap exceed the peak period Office Trip Cap, providing an explanation of how and why the goal has not been reached and a description of additional measures that will be adopted in order to attain the TDM goal required to remain below the Office Trip Cap.

If the Office Trip Cap is exceeded, Google shall submit a revised TDM plan to the City's TDM Coordinator identifying new programs or measures to address the exceedance and reduce the number of site-specific

vehicle trips. If the following annual monitoring report indicates that, despite changes to the TDM program, the site still does not comply with the Office Trip Cap, then the City will assess Google a financial penalty.

Penalty for Noncompliance: If, after an initial TDM report shows noncompliance, the next annual TDM report indicates that, in spite of the changes in the TDM program, the Office Trip Cap is still not being met, or if Google fails to submit such a TDM report at the times described above, the City may assess a penalty in the maximum amount of Three Hundred Thousand Dollars ($300,000) for the first percentage point above the specified Office Trip Cap and an additional One Hundred Thousand Dollars ($100,000) for each additional percentage point above thereafter ("TDM Penalty"). The penalty applies whether a.m. or p.m. trips are exceeded; the monetary penalty is based on whichever trip cap is the highest percent above the Office Trip Cap. In determining whether the TDM Penalty is appropriate, the City may consider whether Google has made a good-faith effort to meet the TDM goals and allow a six (6) month "grace period" to implement additional TDM measures to meet the Office Trip Cap. If the project does not achieve the necessary reductions to meet the Office Trip Cap after the six (6) month grace period, the City may require Google to pay a TDM Penalty as shown in the sample table below. Any expenses that are put toward achieving the Office Trip Cap can be offset against the TDM Penalty. Google will be required to provide invoices of said expenses to offset a corresponding amount of the TDM penalty. The TDM Penalty, which shall not exceed the sum of Five Million Dollars ($5,000,000) in a calendar year, shall be paid to the MVTMA or other entity identified by City, consistent with the NBPP as amended, and used to promote alternatives to single-occupancy vehicle use in the City.

Should Google fail to achieve its district trip reduction target and exceed the Office Trip Cap by 4 percent or more over three consecutive monitoring periods, Google and the City will meet and confer to develop additional strategies for compliance with the Office Trip Cap.

Percent Above Office Trip Cap	Penalty Amount
0%	-0-
1%	$300,000
2%	$400,000
3%	$500,000