



City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: October 12, 2021

TO: Honorable Mayor and Members of the City Council

FROM: Jovan D. Grogan, City Manager

PREPARED BY: Pamela Wu, Community and Economic Development Director

SUBJECT: Waive Second Reading and Adopt the following Ordinances associated with the Bayhill Specific Plan and Google LLC's Phase 1 Development Located in the Bayhill Office Park:

- Waive Second Reading and Adopt Ordinance Adding Chapter 12.290, Bayhill Specific Plan Districts, to the City of San Bruno Municipal Code Establishing Regulations for Parcels Within the Bayhill Specific Plan.
- Waive Second Reading and Adopt Ordinance Amending the City of San Bruno Zoning Map for the Bayhill Specific Plan Area.
- Waive Second Reading and Adopt Ordinance Approving a Development Agreement Between the City of San Bruno and Google LLC, A California Limited Liability Company for the Google Project Located in the Bayhill Office Park.

BACKGROUND

On September 28, 2021, the City Council held a public hearing, waived the first reading and introduced the following ordinances associated with the Bayhill Specific Plan and Google/YouTube's Phase 1 Development located in the Bayhill Office Park:

- An ordinance adding Chapter 12.290, Bayhill Specific Plan Districts, to the City of San Bruno Municipal Code establishing regulations for parcels within the Bayhill Specific Plan.
- An ordinance amending the City of San Bruno Zoning Map for the Bayhill Specific Plan Area.
- An ordinance approving a Development Agreement between the City of San Bruno and Google LLC, a California Limited Liability Company for the Google Project located in the Bayhill Office Park.

The ordinances referenced above are presented now for second reading and adoption. Should the City Council waive the second reading and adopt the ordinances at this meeting, the ordinances would go into effect 30 days after the second reading on November 11, 2021.

ITEM 5.I.

On September 28, 2021, the City Council also granted the following approvals associated with the Bayhill Specific Plan and Google/YouTube's Phase 1 development:

- Adopted a resolution approving the Water Supply Assessment Report for the proposed Bayhill Specific Plan.
- Adopted a resolution certifying an Environmental Impact Report and adopted CEQA findings, facts, Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program for the Bayhill Specific Plan and Google/YouTube's Phase 1 Project.
- Adopted a resolution amending the San Bruno General Plan to ensure consistency with the Bayhill Specific Plan.
- Adopted a resolution adopting the Bayhill Specific Plan for the Bayhill Area of the City.
- Adopted a resolution approving a Phased Vesting Tentative Tract Subdivision Map with Lot Line Adjustments, realignment of Grundy Lane involving vacation of current public roadway and utility easements and dedication of new roadway right-of-way in fee and granting of new utility easements, and vacation of a portion of Elm Avenue, as shown on the Map for Google LLC's property in the Bayhill area of the City.
- Adopted a resolution approving an Architectural Review Permit for Phase 1 of Google LLC's development plans in the Bayhill Area of the City.
- Adopted a resolution authorizing various curb marking changes along frontages of 900 Cherry Avenue and 1000 Cherry Avenue on Cherry Avenue and Grundy Lane in the Bayhill Area of the City for Phase 1 of Google LLC's development plans.

DISCUSSION

Ordinance Summary: Chapter 12.290, Bayhill Specific Plan Districts & San Bruno Zoning Map Amendment

Relationship Between Specific Plan and Zoning Ordinance

The Bayhill Specific Plan Zoning Code Chapter and associated Zoning Districts are established to ensure that the Bayhill Specific Plan Area is developed in a comprehensively planned manner, compatible with adjacent uses and consistent with the Bayhill Specific Plan policies. The Bayhill Specific Plan land use policies support infill development of new professional offices, hotels and ancillary commercial uses to serve employee needs, the creation of new housing along San Bruno Avenue and mixed-use development of the Bayhill Shopping Center, while preserving retail and service uses in the Bayhill Shopping Center.

While the General Plan and Bayhill Specific Plan establish policy framework, the Bayhill Zoning Ordinance prescribes standards, rules, and procedures for development. The Zoning Ordinance translates Specific Plan Policies into specific use regulations, development standards, and performance criteria that govern development on individual properties. The Bayhill Zoning Ordinance is included as Attachment 1 – Exhibit A.

Establishment of Zoning Districts

The Bayhill Zoning Ordinance would implement the Bayhill Specific Plan by establishing the following zoning districts consistent with the land use designations of the Specific Plan:

- **Bayhill Regional Office (BRO) Zoning District.** The BRO district facilitates regional office and hotel development to be located in a campus-style setting (Bayhill Office Park). Such development should be designed to encourage cohesive environments for safe and pleasant

pedestrian movement, connectivity, greenways and plazas, and cohesive streetscapes and landscaping, as described in policies and standards in the Bayhill Specific Plan. Other uses such as daycare are permitted; retail sales and services, personal services, business services, and restaurants are permitted as ancillary uses.

- **Bayhill Neighborhood Commercial (BNC) Zoning District.** The BNC district allows for a mixture of convenience and retail commercial uses including retail sales and services, restaurants, personal services, business services, health and exercise clubs, and offices.
- **Bayhill Residential (BR) Overlay Zoning District.** The BR Overlay Zoning District allows for residential development on certain properties along San Bruno Avenue that are located within the Bayhill Regional Office (BRO) Zoning District. Residential development can be allowed with uses that are otherwise permitted in the BRO Zoning District. Residential development can also be allowed as a stand-alone use.
- **Bayhill Mixed-Use (BMU) Overlay Zoning District.** The BMU Overlay Zoning District allows for mixed-use (residential and commercial) development within the Bayhill Neighborhood Commercial Zoning District, either side-by-side (horizontal) or with housing above commercial (vertical). However, vertical mixed-use development with ground-floor commercial uses shall be provided for properties that front Cherry Avenue. The current square footage of commercial space may not be reduced as a result of housing development.

Land Use Regulations and Permitted Land Uses

Table 12.290-1 within the Bayhill Zoning Ordinance prescribes the land use regulations for the four Bayhill zoning districts. Specifically, the Table identifies whether a specific land use is permitted, conditionally permitted, or prohibited within the four Bayhill Specific Plan zoning districts. The land uses identified in this table are organized within the following five general land use categories: residential; public/quasi-public; commercial; industrial; and transportation, communication and utilities. If a specific land use or activity is not defined, the Community and Economic Development Director shall assign the proposed land use or activity to a use type that is substantially similar in character. Use types not listed in the table or not substantially similar to the uses in the table are prohibited unless the Community and Economic Development Director make a written determination that an unlisted proposed use is equivalent to a permitted or a conditionally permitted use and is either permitted or conditionally permitted if all of the following can be made:

- The use is not greater in density or intensity than other uses in the applicable zoning district.
- The use is compatible with permitted or conditionally permitted uses in the applicable zoning district.
- The use is consistent with the purpose and intent of the applicable zoning district and Bayhill Specific Plan.
- The use is consistent with applicable goals and policies of the General Plan and Bayhill Specific Plan.
- The use will not be detrimental to the public health, safety, or welfare.

Allocation of Development

Bayhill Specific Plan Table 2-2 allocates 2,245,029 square feet for regional office development on a parcel-by-parcel basis. Per Table 2-2, 180,718 square feet is unallocated to specific parcels and may be allocated among hotel, retail, and/or office uses for expansion in the future. The process for assigning unallocated square footage is summarized in Section 12.290.050(C) and 12.290.050(D) of

the Bayhill Specific Plan Zoning Ordinance. Specifically, assignment of the 180,718 square feet of unallocated square footage shall be made on a first-come first-serve basis and shall be approved by the Planning Commission, based on the following findings:

- The total amount of assigned unallocated square footage is consistent with the Regional Office Development Equivalents for Non-Residential Land Uses as referenced in Table 12.290-2;
- The total square footage on the receiving parcels does not exceed 2.0 FAR;
- The site(s) considered for assignment of unallocated square footage are adequate in size and shape to accommodate proposed land uses;
- The assignment of unallocated square footage will not be detrimental to the public health, safety, or welfare; and
- The assignment of unallocated square footage will not have a substantial adverse effect on surrounding property and will be compatible with the existing and planned land use character of the surrounding area.

Transfer of Development

Bayhill Specific Plan Policy 2-14 allows transfer of office development between parcels in the Plan Area. For parcels under common ownership, Section 12.290.050(G) in the Bayhill Zoning Ordinance specifies transfer of up to 20 percent of the maximum permitted square footage of a designated Bayhill Regional Office parcel may be approved by the Community and Economic Development Director for transfer to another designated Bayhill Regional Office parcel based on the following findings:

- The total amount of development resulting on the receiving parcel does not exceed 2.0 FAR;
- The transfer produces a public benefit, such as increasing the amount of publicly accessible open space or making the construction of housing more feasible on the donating parcel;
- The additional development on the receiving parcel is consistent with all applicable Bayhill Specific Plan standards and policies; and
- The owner of both the transferring and the receiving properties are the same.

For parcels under different ownership, Section 12.290.050(H) in the Bayhill Zoning Ordinance specifies up to 20 percent of the maximum permitted square footage of the designated Bayhill Regional office parcel may be approved by the City Council for transfer to another designated Bayhill Regional Office parcel based on the following findings:

- The total amount of development resulting on the receiving parcel does not exceed 2.0 FAR;
- The transfer produces a public benefit that is unlikely to be achieved without this transfer, such as increasing the amount of publicly accessible open space or making the construction of housing more feasible; and
- The additional development on the receiving parcel is consistent with all applicable Bayhill Specific Plan standards and policies.

Development and Design Standards

The Bayhill Zoning Ordinance establishes development standards and regulations to implement the Specific Plan's policies for shaping the form and design of development in the Bayhill zoning districts. Requirements regulating development intensity, building mass, building placement (setbacks),

Greenway width, separation between buildings, building height, ground floor window placement, and first floor ceiling height are included in Table 12.290-3 within the Bayhill Zoning Ordinance.

Additional Development Regulations

Additional development regulations covering the following subject matters are covered in Section 12.290.070 of the Bayhill Zoning Ordinance: Building mass, height of first floor above adjacent sidewalk, lighting, roof overhangs, rooftop mechanical equipment, pedestrian bridges over public streets, landscaping requirements, greenway requirements, Cherry Avenue plaza, residential outdoor space within the BR and BMU overlay zoning districts, anti-reflective glass, and the private multi-modal transportation hub.

The Bayhill Zoning Ordinance also refers to other sections of the San Bruno Municipal Code (SBMC). Specifically, any new buildings or major façade modifications to any existing buildings will require an Architectural Review Permit per Chapter 12.108 of the SBMC. All development proposed in the Bayhill Specific Plan Area shall also comply with the vehicle access, parking, and off-street loading requirements set forth in Chapter 12.100 of the SBMC. Lastly, all signage in the Bayhill Specific Plan Area will be subject to the existing sign regulations that are included in Chapter 12.104 of the SBMC.

Zoning Map Amendment

As previously noted, the Bayhill Zoning Ordinance would implement the Bayhill Specific Plan by establishing four new Zoning Districts (Bayhill Regional Office, Bayhill Neighborhood Commercial, Bayhill Residential Overlay, and Bayhill Mixed-Use Overlay). As such, the associated Zoning District Map will be amended, which is included as Attachment 2 – Exhibit B.

Additional Changes Post September 28, 2021 City Council Meeting

Minor updates without any substantive changes including typos and grammatical edits have been made to this Ordinance since introduction, which are highlighted below:

- The Text Amendments now refer to Bayhill Specific Plan Table 2-2 at the following locations:
 - Chapter 12.290.030(B)
 - Chapter 12.290.050(F)
 - Chapter 12.290.050(G)
 - Chapter 12.290.050(H)
- Chapter 12.290.050(E) now refers to Bayhill Specific Plan Figure 2-2.
- The Text Amendments now refer to the correct Table Numbers at the following locations:
 - Chapter 12.290.050(B) now refers to “Table 12.290-2” instead of “Table 12.290-3.”
 - Chapter 12.290.050(C)(1) now refers to “Table 12.290-2” instead of “Table 12.290-3.”
 - Chapter 12.290.060 now refers to “Table 12.290-3” instead of “Table 12.290-4.”
- Table 12.290-1 was updated by making Hotel/Motels a conditional use in the Bayhill Neighborhood Commercial and Bayhill Mixed Use Overlay Zoning Districts, consistent with the Bayhill Specific Plan.
- Additional Note #4 located at the bottom of Table 12.290-1 was modified as follows:
“~~Neighborhood Serving~~ Office uses are allowed by right in the Bayhill Shopping Center. The total combined area for all ~~neighborhood serving~~ office uses shall be limited ~~limits~~ to no more than 30,000 square feet.”

- The following text was removed from Chapter 12.290.050(D): “(Section 12.78 Zoning Administration is a proposed/new section in the San Bruno Municipal Code and is attached for reference.)”

Ordinance Summary: Development Agreement

California Government Code Section 65864, et seq., and City Resolution 1986-77 authorize the City to enter into a voluntary, binding, long-term development agreement establishing certain development rights in the property. Development Agreements can provide certainty, definition, and commitment as to proposed development and as to necessary public improvements required by development and can provide public benefits to the City. In San Bruno, Development Agreements are common for larger projects to be built in at least two phases that will require multiple years to construct.

Google/YouTube requested a Development Agreement (DA), which has been negotiated by City staff. The purpose of the DA is to establish that the development regulations set forth in the Bayhill Specific Plan, General Plan (as amended), Zoning Ordinance (as amended) and other City codes and regulations will govern development of Google/YouTube's properties for an extended period of time. The DA is included as Attachment 3 – Exhibit A. The major provisions of the DA are summarized as follows:

Term:

- The initial term is 15 years.
- The initial term is subject to Google/YouTube paying all of the development fees (Community Benefits, Development Impact, and other fees) to the City for Phase 1 plus Lot 2 (the Lakes Property) of the project at the time the foundation permit is approved for Phase 1. The total payment is approximately \$56.2 Million (Lot 2 fees of \$22.9 million which will be prepaid).
- An additional five-year extension is granted upon the completion of construction of Phase 1, Lot 2 and a third lot (one of lots three, four or five).
- Total possible term is 20 years.

Property Development:

- The DA provides vested rights to develop the property pursuant to the project approvals (General Plan amendments, Specific Plan, Zoning Ordinance amendments, Vesting Tentative Map, Phase 1 Architectural Review Permit, and conditions of approval) for the term of the DA.
- Changes to local regulations will not apply to the project for the term of the agreement (except for health and safety or other limited reasons), but changes to regional, State or Federal laws will apply.
- The project will not be subject to local moratorium or referendum after the initial approval appeal period has expired.

Fees and Benefits:

- Google/YouTube will pay the fees set forth in the Specific Plan including Community Benefit Payments, City-wide Development Impact Fees, Area Impact Fees (for Bayhill specific public improvements), Affordable Housing Impact / Commercial Linkage Fees, City Art Fees, and applicable shoring permit fees.
- Fees will be paid as a condition prior to issuance of foundation permits (which is earlier

than the core and shell permit for the actual building when the City otherwise would require payment).

- The fees will be subject to annual cost adjustments per an inflation index.
- Google/YouTube may prepay fees for any lot as identified in the Development Agreement in order to set the fee at the then current level and avoid inflation index increases that might occur before the fee otherwise would be due. Fees that are prepaid but not used due to a reduction in the amount of square feet to be developed in a particular lot, will be credited against fees for the next lot to be developed.
- Google/YouTube will receive a credit in fees against the Community Benefits fee for 75% of the cost advanced by Google/YouTube for preparation of the General Plan amendment, Specific Plan, Zoning amendment, and EIR.

Other Provisions:

- Sales Tax Allocation – Google/YouTube agrees to cause its contractors to list the City as the point of sale of materials purchased for allocation of sales taxes to the City for materials used to construct the project, to the extent allowed by law.
- Subsequent Approvals – The City agrees to process subsequent approvals on a timely basis.
- Amendment of DA – provisions are included to define how the DA is amended in the future, what is a ministerial approval at the staff level, and amendments that require City Council approval.
- Insurance and Indemnity – clauses are included to protect the City from Developer actions and third-party claims arising from implementing the agreement and constructing the project.
- Assignment and Transfer – clauses are included requiring City approval for transfer of the agreement to subsequent owners of the property if sold by the developer and allowing transfer to other Google corporate entities.
- Mortgagee Protections – provisions are made to allow the property to be encumbered with a mortgage, and lenders are not required to fulfill the developer's obligations under the DA; provided, no senior liens that could be foreclosed and remove the DA from title.
- Default and Termination – procedures are included for the process to be followed in the event of a default or termination of the agreement.

Environmental Clearance

A Draft Environmental Impact Report (EIR) was prepared that provides a program-level review of the proposed project (i.e., buildout under the Specific Plan) and a project-level review of the Phase 1 development, which includes the Vesting Tentative Map and Development Agreement. As such, the Draft EIR serves as a single CEQA document that provides environmental clearance for both adoption of the Bayhill Specific Plan and approval and entitlement of the Phase 1 development. Future development projects within the Bayhill Specific Plan Area will be subject to individual, site-specific environmental review, as required by State Law. As a programmatic EIR, the Draft EIR could be used to provide streamlined environmental review for future development projects within the Bayhill Specific Plan Area. Future projects will be evaluated for their conformance with the Draft EIR analysis to determine whether later activities may be cleared under or may tier from the Draft EIR and what – if any – additional environmental review will be required.

The Draft EIR evaluates eleven (11) areas of potential environmental impact in detail: Visual Resources, Air Quality, Energy Use, Greenhouse Gases, Hydrology and Water Quality, Land Use and Planning, Noise, Population and Housing, Public Services and Recreation, Transportation, and Utilities and Service Systems. The proposed project's potential impacts and recommended mitigation measures are summarized in the Draft EIR Executive Summary, Table ES-1. The Draft EIR concluded that nearly all of the proposed project's potential impacts could be mitigated. However, the Draft EIR identified a total of five (5) impacts that are significant and unavoidable for the proposed project (buildout under the Bayhill Specific Plan). As previously noted, on September 28, 2021 the City Council adopted a resolution certifying the Environmental Impact Report and adopted CEQA findings, facts, Statement of Overriding Consideration and a Mitigation Monitoring and Reporting Program from the Bayhill Specific Plan and YouTube/Google's Phase 1 Project.

FISCAL IMPACT:

Per Section 2.2.1 of the Development Agreement, the initial Development Agreement term is subject to Google/YouTube paying all of the development fees (Community Benefits, Development Impact, and other fees) to the City for Phase 1 plus Lot 2 (the Lakes Property) of the project at the time the foundation permit is approved for Phase 1. The total payment is approximately \$56.2 Million (Lot 2 fees of \$22.9 million which will be prepaid). An additional five-year extension is granted upon the completion of construction of Phase 1, Lot 2 and a third lot (one of lots three, four or five).

Per Section 4.8 of the Development Agreement (Credit for Plan Preparation Costs), credits shall be applied to Developer's monetary obligations for 75% of the monies contributed by Developer toward preparation of the General Plan Amendment and related Bayhill Specific Plan and nexus study. Developer agrees that 25% of the funds that it paid City for such planning work is deemed spent to process approvals for Phase 1 and does not warrant any credit. Credits shall be applied in equal one-third (1/3) shares against existing Impact Fees and Community Benefits Payments otherwise owed for Phase 1, and the next two Lots that are developed by Developer.

NEXT STEPS

If the City Council waives the second reading and adopts the attached ordinances, the ordinances would go into effect 30 days after the second reading (November 11, 2021). The effective date of the Vesting Tentative Map, Architectural Review Permit and associated curb markings would go into effect concurrently with the Ordinances.

ALTERNATIVES

1. Do not adopt the proposed ordinances
2. Propose changes to the ordinances

RECOMMENDATION

Waive Second Reading and Adopt the following Ordinances associated with the Bayhill Specific Plan and Google LLC's Phase 1 Development Located in the Bayhill Office Park:

- Waive Second Reading and Adopt Ordinance Adding Chapter 12.290, Bayhill Specific Plan Districts, to the City of San Bruno Municipal Code Establishing Regulations for Parcels Within the Bayhill Specific Plan.

- Waive Second Reading and Adopt Ordinance Amending the City of San Bruno Zoning Map for the Bayhill Specific Plan Area.
- Waive Second Reading and Adopt Ordinance Approving a Development Agreement Between the City of San Bruno and Google LLC, A California Limited Liability Company for the Google Project Located in the Bayhill Office Park.

DISTRIBUTION:

None

ATTACHMENTS:

1. Ordinance Adding Chapter 12.290, Bayhill Specific Plan Districts, to the City of San Bruno Municipal Code Establishing Regulations for Parcels Within the Bayhill Specific Plan.
Exhibit A: Bayhill Zoning Text Amendments
2. Ordinance Amending the City of San Bruno Zoning Map.
Exhibit A: Parcels Affected by Zone Change
Exhibit B: Proposed Zoning Map
3. Ordinance Approving a Development Agreement Between the City of San Bruno and Google LLC, A California Limited Liability Company for the Google Project Located in the Bayhill Office Park.
Exhibit A: Development Agreement

DATE PREPARED:

October 7, 2021

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO ADDING CHAPTER 12.290, BAYHILL SPECIFIC PLAN DISTRICTS, TO THE CITY OF SAN BRUNO MUNICIPAL CODE ESTABLISHING REGULATIONS FOR PARCELS WITHIN THE BAYHILL SPECIFIC PLAN

(ZA21-001)

(**APNS:** 020-011-430, 020-011-420, 020-011-330, 020-011-370, 020-015-020, 020-015-030, 020-015-040, 020-011-360, 020-019-070, 020-018-010, 020-017-020, 020-017-010, 020-12-120, 020-012-190, 020-012-160, 020-012-170)

The City Council of the City of San Bruno **ORDAINS** as follows:

SECTION 1. Chapter 12.290 (Bayhill Specific Plan Districts) is hereby added to Title 12 (Land Use) Article III (Zoning) of the San Bruno Municipal Code

SECTION 2. FINDINGS.

WHEREAS, Google, Inc. (now Google LLC) ("**Developer**") approached the City in 2017 regarding its desire to develop additional office buildings on eight of the ten parcels it owns (APNs 020-011-430, 020-015-020, 020-015-030, 020-018-010, 020-011-330, 020-015-040, 020-019-070, and 020-011-370, collectively the "**Google Property**") in Bayhill Office Park (the "**Google Project**"). Developer's existing buildings in Bayhill Office Park are occupied by YouTube, a Google subsidiary company, and Developer envisions that YouTube will occupy new buildings on the Google Property. Google has submitted applications for its first phase of developing the Google Project ("**Phase 1**").

WHEREAS, the City determined that Developer's proposal warranted preparation of a comprehensive plan integrating development and use of the Google Property with Developer's existing buildings and other properties in the area. In Summer 2017, the City of San Bruno initiated the process of developing a specific plan (the "**Bayhill Specific Plan**") encompassing the Google Property, the remainder of Bayhill Office Park, and Bayhill Shopping Center (together, the "**Bayhill Specific Plan Area**").

WHEREAS, the City prepared a Draft Bayhill Specific Plan. Among other things, the Bayhill Specific Plan creates two principal land use designations and two overlay designations for properties in the Bayhill Specific Plan Area (the "**Specific Plan Land Use Designations**").

WHEREAS, the City determined that certain amendments to the City of San Bruno General Plan text and Land Use Diagram (General Plan Figure 2.1) are required to reflect the City's intentions for the Bayhill Specific Plan Area as shown in the proposed Bayhill Specific Plan and achieve consistency between the General Plan and the Bayhill Specific Plan, and City prepared such amendments (GPA21-002) (the "**Bayhill General Plan Amendments**").

ADDITION OF CHAPTER 12.290: BAYHILL SPECIFIC PLAN ZONING DISTRICTS

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WHEREAS, the City determined that new zoning districts and regulations are desired to implement the Bayhill Specific Plan, requiring certain additions to the City of San Bruno Zoning Ordinance (the “**Bayhill Zoning Text Amendments**”) and certain changes to the Zoning Map (the “**Bayhill Zoning Map Amendments**”), and the City has prepared such amendments (ZA21-001) (together, the “**Bayhill Zoning Amendments**”).

WHEREAS, on January 14, 2021, the Draft Bayhill Specific Plan, Bayhill General Plan Amendments and Bayhill Zoning Amendments were made available for public review and comment.

WHEREAS, on March 11, 2021, the Draft Bayhill Specific Plan was presented to the San Mateo County Airport Land Use Commission (“**ALUC**”), as required by state law for any plan or project proposed within certain zones near an airport, and the ALUC provided comments.

WHEREAS, as a result of comments on the Draft Bayhill Specific Plan from the ALUC, the Bay Area Air Quality Management District, Google, and members of the public, and corrections and refinements identified by the City, City staff recommended certain modifications to the draft Bayhill Specific Plan (the “**Specific Plan Revisions and Corrections**”) (which have not yet been made), and to the Bayhill Zoning Text Amendments (which have been incorporated in the updated Bayhill Zoning Text Amendments currently before the City Council for consideration as shown in **Exhibit A** attached hereto and incorporated by this reference) and to the Bayhill Zoning Map Amendments (which have been incorporated in the updated Bayhill Zoning Map Amendments concurrently before the City Council for consideration).

WHEREAS, Pursuant to the California Environmental Quality Act (“**CEQA**”), the City conducted environmental review of the Bayhill Specific Plan at a programmatic level and project-level environmental review of Phase 1 of the Google Project, and prepared and duly processed an Environmental Impact Report (“**Specific Plan EIR**”) consisting of a Draft EIR dated January 2021, a Final EIR response to comments document dated August 2021, and a Final EIR Errata dated September 2021, and the City prepared a Mitigation Monitoring and Reporting Program for implementation of mitigation measures specified in the EIR (“**Specific Plan MMRP**”). As part of the environmental review process, the City prepared a Water Supply Assessment pursuant to state law, which was included in the Specific Plan EIR.

WHEREAS, on August 17, 2021, the Planning Commission held a duly noticed public hearing to consider the Bayhill Specific Plan and the Bayhill Zoning Amendments among other actions related to the Bayhill Specific Plan and the Google Project, after which the Planning Commission adopted its Resolution No. 2021-04 recommending that the City Council adopt the Bayhill Zoning Amendments to ensure consistency with and reflect the intentions of the Bayhill Specific Plan.

WHEREAS, a Notice of Public Hearing was mailed to properties within a 600-foot radius of the Bayhill Specific Plan Area and to other parties on September 17, 2021, and duly published in the San Mateo Daily Journal on September 18, 2021, providing notice of the City Council’s September 28, 2021 public hearing regarding the Bayhill Specific Plan and the

ADDITION OF CHAPTER 12.290: BAYHILL SPECIFIC PLAN ZONING DISTRICTS

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Google Project, including City Council consideration of the Bayhill Zoning Text Amendments and Bayhill Zoning Map Amendments.

WHEREAS, on September 28, 2021, the City Council conducted a duly noticed public hearing on the Bayhill Specific Plan and related approvals, where the public were able to participate and comment remotely via Zoom, and on said date the City Council waived the first reading of the Bayhill Zoning Text Amendments and introduced this Ordinance, and the public hearing was opened, held and closed.

WHEREAS, by Resolution adopted on September 28, 2021, the City Council approved the Water Supply Assessment and found that the City will have sufficient water supply to serve development authorized by the Bayhill Specific Plan Including Phase 1 of the Google Project.

WHEREAS, by Resolution adopted on September 28, 2021, the City Council adopted certain CEQA Findings regarding the Specific Plan EIR and its evaluation of the Bayhill Specific Plan and Phase 1 of the Google Project, certified the Specific Plan EIR as adequate in accordance with CEQA, recognized certain environmental impacts of the Bayhill Specific Plan as significant and unavoidable despite feasible mitigation measures, adopted a Statement of Overriding Considerations concluding that approval of the Bayhill Specific Plan is appropriate despite such impacts, and adopted the Specific Plan MMRP.

WHEREAS, by Resolution adopted on September 28, 2021, the City Council adopted the Bayhill General Plan Amendments.

WHEREAS, by Resolution adopted on September 28, 2021, the City Council adopted the Bayhill Specific Plan.

WHEREAS, the proposed Bayhill Zoning Text Amendments will be in general conformance with the General Plan of the City as amended by the Bayhill General Plan Amendments.

WHEREAS, the proposed Bayhill Zoning Text Amendments will be consistent with the Bayhill Specific Plan.

WHEREAS, the Specific Plan EIR adequately addresses any potential environmental impacts of the Bayhill Zoning Text Amendments.

WHEREAS, the public necessity, convenience and general welfare support adoption of the Bayhill Zoning Text Amendments.

SECTION 3. REGULATION. The Bayhill Zoning Text Amendments contained in **Exhibit A** are added to San Bruno Municipal Code Title 12 (Zoning), Article III (Land Use) .

SECTION 4. NO MANDATORY DUTY OF CARE. This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or parties within the city

ADDITION OF CHAPTER 12.290: BAYHILL SPECIFIC PLAN ZONING DISTRICTS

or outside of the city, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 5. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, invalid or ineffective by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days from and after the date of its final passage and adoption.

SECTION 7. PUBLICATION. The City Clerk is directed to cause publication of this Ordinance as required by law.

Exhibit A: Bayhill Zoning Text Amendments

Dated:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk
Melissa Thurman

City Attorney
Marc Zafferano

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I, Melissa Thurman, City Clerk, do hereby certify that the foregoing **Ordinance** No. _____ was introduced at a regular meeting of the San Bruno City Council on September 28, 2021 and adopted by the San Bruno City Council at a regular meeting on October 12, 2021, by the following vote:

AYES: Councilmembers: _____

NOES: Councilmembers: _____

RECUSED: Councilmembers: _____

ABSENT: Councilmembers: _____

Melissa Thurman, MMC
City Clerk

Chapter 12.290 - Bayhill Specific Plan Districts

Sections:

- 12.290.010 Purpose and Intent of Bayhill Specific Plan Districts
- 12.290.020 Establishment of Districts
- 12.290.030 Terms and Definitions
- 12.290.040 Land Use Regulations
- 12.290.050 Allocation of New Development and Transfer of Development
- 12.290.060 Development and Design Standards
- 12.290.070 Additional Development Regulations
- 12.290.080 Architectural Review Permit
- 12.290.090 Vehicle Access and Parking
- 12.290.100 Signage

12.290.010 Purpose and Intent of Bayhill Specific Plan Districts

The Bayhill Specific Plan Zoning Code Chapter and associated Zoning Districts are established to assure that the Bayhill Specific Plan Area is developed in a comprehensively planned manner, compatible with adjacent uses and consistent with the Bayhill Specific Plan policies that support infill development of new professional offices, hotels and ancillary commercial uses to serve employee needs, the creation of new housing along San Bruno Avenue and mixed use development of the Bayhill Shopping Center, while preserving retail and service uses in the Bayhill Shopping Center.

12.290.020 Establishment of Districts

The Specific Plan establishes four land use designations including two overlay designations. The zoning districts established in this Zoning Ordinance implement the Specific Plan by establishing the following zoning districts consistent with the land use designations of the Specific Plan (Refer to Specific Plan Figure 2-6.)

- A. **Bayhill Regional Office (BRO) Zoning District.** The BRO district facilitates regional office and hotel development to be located in a campus-style setting (Bayhill Office Park). Such development should be designed to encourage cohesive environments for safe and pleasant pedestrian movement, connectivity, greenways and plazas, and cohesive streetscapes and landscaping, as described in policies and standards in the Bayhill Specific Plan. Other uses such as daycare is allowed and retail sales and services, personal services, business services, and restaurants, are permitted only as ancillary uses.
- B. **Bayhill Neighborhood Commercial (BNC) Zoning District.** The BNC district allows for a mixture of convenience and retail commercial uses including retail sales and services, restaurants, personal services, business services, health and exercise clubs, and offices.
- C. **Bayhill Residential (BR) Overlay Zoning District.** The BR Overlay Zoning District allows for residential development on certain properties along San Bruno Avenue that are located

within the Bayhill Regional Office (BRO) Zoning District. Residential development can be allowed with uses that are otherwise permitted in the BRO Zoning District. Residential development can also be allowed as a stand-alone use.

- D. **Bayhill Mixed-Use (BMU) Overlay Zoning District.** The BMU Overlay Zoning District allows for mixed-use (residential and commercial) development within the Bayhill Neighborhood Commercial Zoning District, either side-by-side (horizontal) or with housing above commercial (vertical). However, vertical mixed-use development with ground-floor commercial uses shall be provided for properties that front on Cherry Avenue. The current square footage of commercial space may not be reduced as a result of housing development.

Chapter 12.290.030 Terms and Definitions

The following shall be defined when used in this Chapter:

- A. **Greenway:** A linear green space extending along the frontage of multiple parcels, incorporating a sidewalk/walkway, expansive curbside planting area(s), expansive landscaped area(s), seating, lighting, sculpture and/or other amenities for community use and enjoyment.
- B. **Unallocated Development:** Square footage that is allowed by Bayhill Specific Plan Table 2-2 that has not been allocated to any particular parcel and is available for expansion of hotel and retail commercial development and regional office on a first-come, first-served basis, with a priority for hotel and retail commercial development that is consistent with the Bayhill Specific Plan Policies.
- C. **Average Front Setback:** The dimension that results from dividing the area between the front façade of a building and the back edge of the sidewalk by the length of the property frontage.
- D. **Pedestrian Oriented Lighting:** Pedestrian-oriented lighting has as its primary function the illumination of pedestrian ways and spaces. Pedestrian-oriented lighting is designed with a light source that is above and/or directed toward a pedestrian way or space, and a quality of light that is attractive for pedestrians and encourages pedestrian activity.
- E. **Landscaping:** “Landscaping” means living vegetation, planted in the ground at ground level, in pots or planters. Landscaping does not include footprints of building structures, sidewalks, driveways, parking lots, decks, patios, gravel/stone walks, or other pervious or non-pervious hardscapes.

12.290.040 Land Use Regulations

Table 12.290-1 prescribes the land use regulations for the four Bayhill zoning districts. The regulations for each district are established by letter designations as shown in the table.

- A. The use types are defined in Chapter 12.80, Definitions of the San Bruno Zoning Ordinance. If a specific land use or activity is not defined, the Community and Economic Development Director shall assign the land use or activity to a use type that is substantially similar in character. Use types not listed in the table or not substantially similar to the uses below are prohibited unless the Community and Economic Development Director make a written determination that an unlisted proposed use is equivalent to a permitted or conditionally listed use and is either permitted or conditionally permitted if all of the following findings can be made.
 - 1. The use is no greater in density or intensity than other uses in the applicable zoning district;
 - 2. The use is compatible with permitted or conditionally permitted uses in the applicable zoning district;
 - 3. The use is consistent with the purpose and intent of the applicable zoning district and Bayhill Specific Plan;
 - 4. The use is consistent with applicable goals and policies of the General Plan and Bayhill Specific Plan;
 - 5. The use will not be detrimental to the public health, safety, or welfare.
- B. When the Community and Economic Development Director determines that a proposed use is equivalent to a permitted or conditionally permitted listed use, the proposed use shall be treated in the same manner as the listed use with respect to development standards, permits required (including the need for a Conditional Use Permit or any other Planning entitlement), and all applicable requirements of the Zoning Ordinance.
- C. Conditional Land Uses
 - 1. Those land uses specified as conditionally permitted uses in the Bayhill Specific Plan may be permitted subject to approval of a use permit in accordance with Chapter 12.112.
 - 2. Where a use is classified as a “Conditional Use” under the Bayhill Specific Plan and exists as a permitted use at the effective date of this chapter, it shall be considered a legal and conforming use, without further approval.

TABLE 12.290-1: PERMITTED LAND USES—BAYHILL ZONING DISTRICTS				
P DESIGNATES PERMITTED LAND USES				
C DESIGNATES CONDITIONAL LAND USES				
- DESIGNATES LAND USES THAT ARE NOT ALLOWED				
AN ARCHITECTURAL REVIEW PERMIT SHALL BE REQUIRED FOR ANY NEW BUILDINGS OR FOR MAJOR FACADE MODIFICATIONS TO ANY EXISTING BUILDINGS, AS REQUIRED IN CHAPTER 12.108.				
	<i>Districts</i>			
<i>Land Uses</i>	<i>Bayhill Regional Office</i>	<i>Bayhill Neighborhood Commercial</i>	<i>Bayhill Residential Overlay</i>	<i>Bayhill Mixed Use Overlay</i>
Residential				
Duplex Homes, Mobile Home Parks, Single-Family Homes	-	-	-	-
Boarding House	-	-	C	C
Live/Work	-	-	P	P
Multi-Family Homes	-	-	P	P
Residential Care Facilities, Large	-	-	C	C
Residential Care Facilities, Small	-	-	P	P
Accessory Dwelling Units	-	-	P	P
Public/Quasi-Public				
Cemeteries	-	-	-	-
Colleges and Universities; Schools; Trade and Vocational Schools	C	C	C	C
Community Facilities, Private	-	-	C	-
Community Facilities, Public	-	-	C	-
Day Care Center	P	P	P	P
Emergency Shelters	-	-	-	-
Home Day Care, Small and Large	-	-	P	P
Hospitals	-	-	-	-
Nursing and Convalescent Homes	-	-	-	-

TABLE 12.290-1: PERMITTED LAND USES—BAYHILL ZONING DISTRICTS				
P DESIGNATES PERMITTED LAND USES				
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	<i>Districts</i>			
<i>Land Uses</i>	<i>Bayhill Regional Office</i>	<i>Bayhill Neighborhood Commercial</i>	<i>Bayhill Residential Overlay</i>	<i>Bayhill Mixed Use Overlay</i>
Parks and Recreational Facilities	P	P	P	P
Places of Worship	-	C	-	C
Public Safety Facilities	P	-	P	-
Pubic Maintenance Facilities	-	-	-	-
Social Services and Charitable Institutions	-	C	-	C
Commercial				
Adult Businesses	-	-	-	-
Banks and Other Financials	P [1]	P	P [1]	P
Bars, Nightclubs and Lounges	-	C	-	C
Business Services	P [1]	P	P [1]	P
Check Cashing Establishments	-	-	-	-
Commercial Recreation and Entertainment	-	C	-	C
Drive-Through Facilities	-	-	-	-
Firearm Dealers	-	-	-	-
Health and Exercise Clubs	P [1]	P/C [2]	P [1]	P/C [2]
Hotels and Motels	C	C	C	C
Office	P	P [4]	P	P [4]
Personal Services	P [1]	P	P [1]	P
Personal Storage	-	-	-	-
Pet Boarding Overnight	-	C	-	C
Pet Day Care Facility	C [1]	C	C [1]	C

TABLE 12.290-1: PERMITTED LAND USES—BAYHILL ZONING DISTRICTS				
P DESIGNATES PERMITTED LAND USES				
C DESIGNATES CONDITIONAL LAND USES				
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AN ARCHITECTURAL REVIEW PERMIT SHALL BE REQUIRED FOR ANY NEW BUILDINGS OR FOR MAJOR FACADE MODIFICATIONS TO ANY EXISTING BUILDINGS, AS REQUIRED IN CHAPTER 12.108.				
	<i>Districts</i>			
<i>Land Uses</i>	<i>Bayhill Regional Office</i>	<i>Bayhill Neighborhood Commercial</i>	<i>Bayhill Residential Overlay</i>	<i>Bayhill Mixed Use Overlay</i>
Research and Development	P	-	P	-
Restaurants	P [1]	P [3]	P [1]	P [3]
Outdoor Dining	P [1]	P	P [1]	P
Retail Sales and Services	P [1]	P	P [1]	P
Vehicle Sales and Rental	--	-	-	-
Vehicle Service Stations	-	-	-	-
Vehicle Repair and Maintenance	-	-	-	-
Industrial Uses				
<i>(Construction, Maintenance and Repair services; Heavy Equipment Sales and Rental; Lumberyards; Manufacturing and Processing (Light and General); Warehousing, Wholesaling, and Distribution)</i>	-	-	-	-
Transportation, Communication, and Utilities				
Alternative Energy Structures	C	C	C	C
Ground Transportation Provider	-	-	-	-
Parking Lots, Commercial	-	-	-	-
Parking Structures, Commercial	-	-	-	-

TABLE 12.290-1: PERMITTED LAND USES—BAYHILL ZONING DISTRICTS				
P DESIGNATES PERMITTED LAND USES				
C DESIGNATES CONDITIONAL LAND USES				
- DESIGNATES LAND USES THAT ARE NOT ALLOWED				
AN ARCHITECTURAL REVIEW PERMIT SHALL BE REQUIRED FOR ANY NEW BUILDINGS OR FOR MAJOR FACADE MODIFICATIONS TO ANY EXISTING BUILDINGS, AS REQUIRED IN CHAPTER 12.108.				
	<i>Districts</i>			
<i>Land Uses</i>	<i>Bayhill Regional Office</i>	<i>Bayhill Neighborhood Commercial</i>	<i>Bayhill Residential Overlay</i>	<i>Bayhill Mixed Use Overlay</i>
Recycling Collection Facilities	-	C	-	C
Recycling Processing Facilities	-	-	-	-
Transportation Terminals	P	P	P	P
Utilities, Major	C	C	C	C
Utilities, Minor	P	P	P	P

Notes:

[1] Permitted only as an ancillary use to the main office use.

[2] Health and Exercise Clubs less than or equal to 15,000 square feet in total area are permitted. Health and Exercise Clubs greater than 15,000 square feet in total area require a Conditional Use Permit.

[3] Restaurant uses are allowed by right in the Bayhill Shopping Center. The total combined area for all Restaurant uses shall be limited to no more than 30,000 gross square feet.

[4] Office uses are allowed by right in the Bayhill Shopping Center. The total combined area for all office uses shall be limited to no more than 30,000 gross square feet.

12.290.050 Allocation of New Development and Transfer of Development

- A Development in the Bayhill Specific Plan is allocated on a parcel-by-parcel basis, as depicted within Table 2-2 in the Bayhill Specific Plan. As indicated in Bayhill Specific Plan Table 2-2, 180,718 square feet is unallocated to specific parcels and may be allocated among hotel, retail, and/or office uses for expansion in the future. Hotel and retail are priority uses, and allocation would be assigned on a first-come, first-serve basis. The amount of development permitted for hotel and retail would be in the form of regional office equivalents.

B. Regional Office Equivalents: Regional Office Equivalents listed in Table 12.290-2 shall be used to convert the amount of unallocated square feet of regional office development to hotel and retail square footage. Regional office land uses shall also be permitted to use this unallocated square footage, but with a lower priority than hotel and retail uses.

Table 12.290-2: Regional Office Development Equivalents for Non-Residential Land Uses		
Land Use	Conversion Factor per Sq. Ft. of Regional Office ¹	Equivalent per 1,000 Sq.Ft. Regional Office
Professional Services Office	1.00	1,000 sq. ft.
Retail Commercial	0.19	190 sq. ft.
Hotel	0.64	640 sq. ft. ²
Civic Use	1.00	1,000 sq. ft.
Notes		
[1] Equivalent factors maintain development within the EIR analysis envelope based on quantitative analysis of: 1) Operational traffic, 2) Operational water, wastewater, and solid waste, 3) Operational criteria air/GHG pollutants, and 4) Operational roadway noise.		
[2] Each hotel room is assumed an average size of 595 sq. ft. Therefore, each 1,000 sq. ft. of office development is equivalent to 1.08 hotel rooms (640 sq. ft. /595 sq. ft. = 1.08).		

C. Assignment of Unallocated Square Footage. Assignment of the 180,718 square feet of unallocated square footage shall be made on a first-come first serve basis and shall be approved by the Planning Commission at a noticed public hearing, based on the following findings:

1. The total amount of assigned unallocated square footage is consistent with the Regional Office Development Equivalents for Non-Residential Land Uses as referenced in Table 12.290-2;
2. The total square footage on the receiving parcels does not exceed 2.0 FAR;
3. The site(s) considered for assignment of unallocated square footage are adequate in size and shape to accommodate proposed land uses;
4. The assignment of unallocated square footage will not be detrimental to the public health, safety, or welfare;
5. The assignment of unallocated square footage will not have a substantial adverse effect on surrounding property and will be compatible with the existing and planned land use character of the surrounding area.

- D. **Assignment of Unallocated Square Footage Appeals.** Appeals are subject to procedures set for in Section 12.78.060 (Appeals).
- E. **Residential and Office Development Conversion in the BR Overlay Zoning District.** The Bayhill Residential (BR) Overlay Zoning District allows residential uses along San Bruno Avenue at 801-851 Traeger Avenue and 1111 Bayhill Drive, shown as Parcels 4 and 13 in Bayhill Specific Plan Figure 2-2. The total allowed residential units in the BR Overlay Zoning District is 363 dwelling units; with a maximum of 205 units allowed for the 6.06 acres at 801-851 Traeger and a maximum of 158 units allowed for the 3.95 acres at 1111 Bayhill. When residential square footage is developed on these parcels, the Office Development square footage permitted on these parcels shall be reduced using the conversion factors listed below:
1. **801-851 Traeger:** The amount of office development square footage shall be reduced by 1,267 square feet for each dwelling unit proposed.
 2. **1111 Bayhill:** The amount of office development square footage shall be reduced by 1,454 square feet for each dwelling unit proposed.
- F. **Residential Development in the BMU Overlay Zoning District.** The Bayhill Mixed Use (BMU) Overlay Zoning District allows for future transformation of the Bayhill Shopping Center site into a mixed-use development by permitting residential uses onto neighborhood-serving retail and service uses. The Bayhill Mixed-Use Overlay Zoning District allows up to a maximum of 210 dwelling units, as shown in Bayhill Specific Plan Table 2-2. Residential uses are allowed as a standalone use or with a mixed-use development; however, along Cherry Avenue, ground-floor commercial use with residential uses above shall be required. The current square footage of neighborhood commercial uses may not be reduced as required by Bayhill Specific Plan Policy 2-6.
- G. **Transfer of Development – Properties with Common Ownership.** When the transferring and receiving properties are under common ownership, up to 20 percent of the maximum permitted square footage of a designated Bayhill Regional Office parcel as listed in Bayhill Specific Plan Table 2-2 may be approved by the Community and Economic Development Director for transfer to another designated Bayhill Regional Office parcel based on all of the following findings:
1. The total amount of development resulting on the receiving parcel does not exceed 2.0 FAR;
 2. The transfer produces a public benefit, such as increasing the amount of publicly accessible open space or making the construction of housing more feasible on the donating parcel;
 3. The additional development on the receiving parcel is consistent with all applicable Bayhill Specific Plan standards and policies; and
 4. The owner of both the transferring and the receiving properties are the same.

H. **Transfer of Development – Properties with Different Ownership.** When transferring properties that are under different ownerships, up to 20 percent of the maximum permitted square footage of the designated Bayhill Regional Office parcel as listed in Bayhill Specific Plan Table 2-2 may be approved by the City Council for transfer to another designated Bayhill Regional Office parcel based on all of the following findings:

1. The total amount of development resulting on the receiving parcel does not exceed 2.0 FAR;
2. The transfer produces a public benefit that is unlikely to be achieved without this transfer, such as increasing the amount of publicly accessible open space or making the construction of housing more feasible;
3. The additional development on the receiving parcel is consistent with all applicable Bayhill Specific Plan standards and policies.

12.290.060 Development and Design Standards

Table 12.290-3 establishes standards and regulations to implement the Specific Plan's policies for shaping the form and design of development in the Bayhill zoning districts. In addition to the standards in this Chapter, all development is subject to all applicable requirements of the San Bruno General Plan, Zoning Ordinance, City of San Bruno Standard Engineering Specifications and Details, and all other applicable requirements for managing stormwater flows and discharge, as well as the Specific Plan Policies.

TABLE 12.290-3 DEVELOPMENT AND DESIGN STANDARDS—BAYHILL ZONING DISTRICTS				
<i>District</i>	<i>Bayhill Regional Office - BRO</i>	<i>Bayhill Neighborhood Commercial - BNC</i>	<i>Bayhill Residential Overlay - BR</i>	<i>Bayhill Mixed Use Overlay - BMU</i>
Development Intensity				
Minimum Lot Size (square feet)	35,000 square feet	25,000 square feet	1 acre	25,000 square feet
Maximum Lot Coverage	Commercial or retail 80 % Office 70 % ¹ Residential or hotel 80 %			
Building Mass				
Maximum Building Length	Office – 600 ft. Commercial – 400 ft. Residential – 300 ft.			
Building Placement (Setbacks) - Street side building setbacks are measured from the property line, ROW or sidewalk easement line, whichever encompasses the entire width of the planned sidewalk. Other setbacks, such as side yard setbacks, are measured from the property line. All required setbacks shall be unobstructed from ground level to the sky, except as otherwise provided in this title.				
Setbacks (ft.) Along Street Frontages	Bayhill Drive-- 10 feet minimum/30 feet average ^{2, 4} Grundy Lane – 10 feet minimum/30 feet average ⁴ Cherry Avenue – 10 feet minimum/30 feet average ² Elm and Trager Avenues – 10 feet minimum/30 feet average ⁴ San Bruno Avenue –10 feet minimum/30 feet average ⁴ , 20 feet minimum for Residential ³			
Side, Interior	10 feet minimum			
Side, Street	10 feet minimum/30 feet average			
Rear	10 feet minimum; 20 feet for residential			
Greenway Frontage (feet)	30 feet minimum in width to 60 feet minimum in width to incorporate public use areas. Refer to Bayhill Specific Plan Figure 3-1 (Public Realm Concept Map) for the location of the greenways. Greenway width is measured from the back edge of the sidewalk as depicted in Bayhill Specific Plan Figure 3-2b (Bayhill Drive Greenway). Exceptions can be granted to allow greenways to be narrower than 30 feet minimum when the design of a proposed greenway ensures that the narrower space will be publicly accessible, inviting to the public and of a sufficient width dimension to incorporate amenities for the public's use, and the narrower greenway meets the following width and area parameters: 1) Greenway width averages 40 feet minimum, and; 2) Maximum square footage of building footprint extending into the required base 30-foot Greenway area is not more than 2% of total building footprint, and; 3) Minimum width of Greenway is no less than 12.5 feet.			

TABLE 12.290-3 DEVELOPMENT AND DESIGN STANDARDS—BAYHILL ZONING DISTRICTS				
<i>District</i>	<i>Bayhill Regional Office - BRO</i>	<i>Bayhill Neighborhood Commercial - BNC</i>	<i>Bayhill Residential Overlay - BR</i>	<i>Bayhill Mixed Use Overlay - BMU</i>
Separation (feet)	Office – 15 feet minimum Residential – 15 feet minimum Between Office and Residential or Office and Commercial Lodging – 30 feet minimum Between Commercial/Retail – None required			
Building Height				
Maximum shall be 50 ft. or three stories, whichever is most restrictive, per City of San Bruno Ordinance 1284.				
Ground Floor				
Windows	At least 50 percent of ground floor retail commercial frontage shall include windows, located between 2 ½ and 7 feet above the sidewalk.			
Ceiling Height (ft.)	At least 15 feet for ground floor retail spaces.			
ADDITIONAL REGULATIONS				
<ol style="list-style-type: none"> 1. The maximum lot coverage for a single office building shall not exceed 110,000 square feet. 2. As measured from the face of curb, improvements shall include curbside planting area of 6 feet and a sidewalk of 14 feet at Bayhill Shopping Center frontages. Minimum setback from new back-of-walk is 0 feet at Bayhill Shopping Center frontages. 3. Residential ground-floor entry stoops may project into the setback area but must be set back at least 2 feet from the back of sidewalk. Window bays, balconies, and other architectural features may extend up to 4 feet. 4. ADA Ramps, stairs, landscaping features, pedestrian bridges extending over public streets, and other similar features are allowed to encroach into the required setbacks. 				

12.290.070 Additional Development Regulations

- A. **Building Mass.** Building mass shall be recessed, projected, notched, or otherwise modified to maintain an attractive pedestrian scale of development along street and Greenway frontages consistent with Urban Design Guidelines in the Bayhill Specific Plan. The offset at the required break in each building mass shall be a minimum of two feet. Maximum length allowed for a continuous/unbroken building mass parallel to greenways or the street shall be:
1. Office and Commercial Development – 100 feet
 2. Residential Development – 50 feet
- B. **Height of the First Floor above Adjacent Sidewalk.** The first-floor building elevation located at the primary entrance shall be within 6 feet of the grade of the adjacent sidewalk. Grading and first floor building elevations shall be designed and clearly delineated in the development phasing plans(s). Underground and basement parking garage walls that extend above grade shall be screened by landscape materials and/or earthwork .

- C. **Lighting.** Site lighting shall provide a sense of safety for pedestrians without producing glare or light pollution on adjacent properties.
1. All lighting fixtures shall be Dark Sky compliant
 2. Light Level. (As measured on the surface) min. 0.8 foot-candles along pedestrian paths with Maximum Uniformity Ratio (E average/E Minimum) = 6.0, 1.0 foot-candles at pedestrian path nodes and vehicle surfaces with Maximum Uniformity Ratio of 4.0, documented by photometric plan.
 3. Luminaire Height - 18 ft. max.
 4. Source Type and Temperature - LED, 3200 K max.
 5. Pedestrian-oriented lights are required along all street frontages. Maximum average spacing shall be 100 feet on center.
 6. Pedestrian-oriented lights are required along all pedestrian paths located on private property. Maximum average spacing shall be 75 feet on center.
- D. **Roof Overhangs.** Roof features including overhang, cornices, fascia panels, and cantilevered slabs may encroach up to 4 feet into required setback areas.
- E. **Rooftop Mechanical Equipment.** Rooftop mechanical equipment shall be screened from views of any nearby public right-of-way. Such screening may include additional parapet, other segment of pitched roof, or equipment enclosure that are consistent and are complementary to the overall architectural elevation style and materials of the principal building. The total height of such screening, including the roof, shall not exceed the maximum height of 50-feet. Minimum height of such screening shall be the same height as the equipment to be screened.
- F. **Pedestrian Bridges over Public Streets.** The design of pedestrian bridges over public streets shall be reviewed on a case-by-case basis at the discretion of the approval body in conjunction with the planning application for the project to which the bridge will connect.
- Pedestrian bridges shall maintain a minimum 18-foot clearance from all portions of the roadway surface below, and shall be a maximum 20 feet in width, as measured from the exterior edges of the pedestrian bridge.
- G. **Landscaping.** A minimum of 15 percent of the total building site (land area) shall be landscaped, where only ground floor level landscaping would count towards the 15% minimum requirement. Any landscaping either above or below ground level does not count toward the 15% minimum requirement. An individual building site or lot can provide less than 15 percent landscaping, if the building site/lot incorporates a public amenity that is approved, such as a publicly accessible plaza. However, in no case shall an individual building site or lot provide less than 12.5% of landscaping.
1. **Street trees.** Street trees shall be planted in accordance with the Urban Design policies and guidelines per the Bayhill Specific Plan and the City of San Bruno Street Trees and Plantings Ordinance (Chapter 8.24.) Canopy trees shall be the

dominant landscape material used in order to complement the Bayhill hillside setting, and to reduce heat gain of roadways and buildings. Additional plantings shall be selected in accordance with the Bay-Friendly Landscape Guidelines.

2. **Landscaping above underground and basement parking garages.** Landscaping around garages shall be designed to merge with surrounding environment to minimize the appearance of a parking garage below.
 3. **Landscaping adjacent to sidewalks.** Landscaping and other amenities designed for any new development adjacent to sidewalks shall complement curbside planting areas, street trees and lighting. Such landscaping design shall frame sidewalks as attractive and continuous public space. Complementary landscaping may include installation of the same or similar plant species that are used along the roadway. Amenities may include benches and trash receptacles at regular intervals, supplementary sidewalk lighting, and other elements.
- H. **Greenway.** A wide linear green space shall be established in portions of properties with frontage on Bayhill Drive, Traeger Avenue, and Elm Avenue as indicated by the Specific Plan. The Greenway shall be developed in accordance with the provisions identified in Bayhill Specific Plan Policy 3-4. See Figure 3-1(Public Realm Concept Map), in the Bayhill Specific Plan for a visual representation of the Greenway locations.
- I. **Cherry Avenue Plaza.** A privately-owned publicly accessible open space (POPO) shall be provided at the northeast corner of Cherry Avenue and Grundy Lane. The Plaza shall be developed in accordance with the provisions identified in Bayhill Specific Plan Policy 3-5.
- J. **Residential Outdoor Space within BR and BMU Overlay Zoning Districts.** A minimum of 40 sq. ft. of private outdoor space in the form of a porch, balcony, deck, patio, or fenced yards shall be provided for each residential unit, or 60 sq. ft. per unit shall be provided as part of common usable outdoor space for all residential development. Private outdoor space shall not be less than six (6) feet in any dimension. Common outdoor space shall be located behind or within buildings as courtyards, and/or screened from street view by plant materials, elevation changes, and/or other techniques as appropriate.
- K. **Anti-Reflective Glass.** Anti-reflective glass with a reflectivity rating of 10% – 20%, or its equivalent is required for office, commercial, and other building types when more than 50% of an exterior elevation/wall contains glazing.
- L. **Private Multi-Modal Transportation Hub.** A centrally-located multi-modal transportation hub shall be provided on private property for new office development exceeding a cumulative total of 200,000 square feet in the Specific Plan Area. The multi-modal transportation hub shall be off-street, designed to accommodate private shuttles, buses, and boarding-related activity without vehicle queuing on public streets, and shall be expanded or additional hubs added as needed to accommodate each phase of development through to buildout. The facility shall include supplemental alternative transportation modes such bike and scooter share facilities (subject to City authorization

to operate in the City) and may include transportation network company (TNC) pickup and drop-off, subject to City review and approval.

12.290.080 Architectural Review Permit

An Architectural Review Permit shall be required for any new buildings or for major façade modifications to any existing buildings, as required in chapter 12.108.

12.290.090 Vehicle Access & Parking

All development proposed in the Bayhill Specific Plan Area shall comply with requirements set forth in Chapter 12.100 of the Zoning Ordinance.

12.290.100 Signage

All signages including advertisement and building identification signs proposed in the Bayhill Specific Plan Area shall comply with requirements set forth in Section 12.104 of the Zoning Ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO AMENDING THE CITY OF SAN BRUNO ZONING MAP

(ZA21-001)

(**APNS:** 020-011-430, 020-011-420, 020-011-330, 020-011-370, 020-015-020, 020-015-030, 020-015-040, 020-011-360, 020-019-070, 020-018-010, 020-017-020, 020-017-010, 020-12-120, 020-012-190, 020-012-160, 020-012-170)

The City Council of the City of San Bruno **ORDAINS** as follows:

SECTION 1. The City of San Bruno Zoning Map is hereby amended to correspond to new Chapter 12.290 (Bayhill Specific Plan Districts) of the San Bruno Municipal Code which implements the Bayhill Specific Plan.

SECTION 2. FINDINGS.

WHEREAS, Google, Inc. (now Google LLC) ("**Developer**") approached the City in 2017 regarding its desire to develop additional office buildings on eight of the ten parcels it owns (APNs 020-011-430, 020-015-020, 020-015-030, 020-018-010, 020-011-330, 020-015-040, 020-019-070, and 020-011-370, collectively the "**Google Property**") in Bayhill Office Park (the "**Google Project**"). Developer's existing buildings in Bayhill Office Park are occupied by YouTube, a Google subsidiary company, and Developer envisions that YouTube will occupy new buildings on the Google Property. Google has submitted applications for its first phase of developing the Google Project ("**Phase 1**").

WHEREAS, the City determined that Developer's proposal warranted preparation of a comprehensive plan integrating development and use of the Google Property with Developer's existing buildings and other properties in the area. In Summer 2017, the City of San Bruno initiated the process of developing a specific plan (the "**Bayhill Specific Plan**") encompassing the Google Property, the remainder of Bayhill Office Park, and Bayhill Shopping Center (together, the "**Bayhill Specific Plan Area**").

WHEREAS, the City prepared a Draft Bayhill Specific Plan. Among other things, the Bayhill Specific Plan creates two principal land use designations and two overlay designations for properties in the Bayhill Specific Plan Area (the "**Specific Plan Land Use Designations**").

WHEREAS, the City determined that certain amendments to the City of San Bruno General Plan text and Land Use Diagram (General Plan Figure 2.1) are required to reflect the City's intentions for the Bayhill Specific Plan Area as shown in the proposed Bayhill Specific Plan and achieve consistency between the General Plan and the Bayhill Specific Plan, and City prepared such amendments (GPA21-002) (the "**Bayhill General Plan Amendments**").

WHEREAS, the City determined that certain amendments to the City of San Bruno Zoning Ordinance (the "**Bayhill Zoning Text Amendments**") and Zoning Map (the "**Bayhill**

AMENDMENTS TO CITY OF SAN BRUNO ZONING MAP

Page 2 of 5

Zoning Map Amendments") are required to implement the Bayhill Specific Plan, and City prepared such amendments (ZA21-001) (together, the "**Bayhill Zoning Amendments**").

WHEREAS, on January 14, 2021, the Draft Bayhill Specific Plan, Bayhill General Plan Amendments and Bayhill Zoning Amendments were made available for public review and comment.

WHEREAS, on March 11, 2021, the Draft Bayhill Specific Plan was presented to the San Mateo County Airport Land Use Commission ("**ALUC**"), as required by state law for any plan or project proposed within certain zones near an airport, and the ALUC provided comments.

WHEREAS, as a result of comments on the Draft Bayhill Specific Plan from the ALUC, the Bay Area Air Quality Management District, Google, and members of the public, and corrections and refinements identified by the City, City staff recommended certain modifications to the draft Bayhill Specific Plan (the "**Specific Plan Revisions and Corrections**") (which have not yet been made), and to the Bayhill Zoning Text Amendments and the Bayhill Zoning Map Amendments (which have been incorporated in the updated Bayhill Zoning Text Amendments and updated Bayhill Zoning Map Amendments currently before the City Council for consideration).

WHEREAS, Pursuant to the California Environmental Quality Act ("**CEQA**"), the City conducted environmental review of the Bayhill Specific Plan at a programmatic level and project-level environmental review of Phase 1 of the Google Project, and prepared and duly processed an Environmental Impact Report ("**Specific Plan EIR**") consisting of a Draft EIR dated January 2021, a Final EIR response to comments document dated August 2021, and a Final EIR Errata dated September 2021, and the City prepared a Mitigation Monitoring and Reporting Program for implementation of mitigation measures specified in the EIR ("**Specific Plan MMRP**"). As part of the environmental review process, the City prepared a Water Supply Assessment pursuant to state law, which was included in the Specific Plan EIR.

WHEREAS, on August 17, 2021, the Planning Commission held a duly noticed public hearing to consider the Bayhill Specific Plan and the Bayhill Zoning Amendments among other actions related to the Bayhill Specific Plan and the Google Project, after which the Planning Commission adopted its Resolution No. 2021-04 recommending that the City Council adopt the Bayhill Zoning Amendments to ensure consistency with and reflect the intentions of the Bayhill Specific Plan.

WHEREAS, a Notice of Public Hearing was mailed to properties within a 600-foot radius of the Bayhill Specific Plan Area and to other parties on September 17, 2021, and duly published in the San Mateo Daily Journal on September 18, 2021, providing notice of the City Council's September 28, 2021 public hearing regarding the Bayhill Specific Plan and the Google Project, including City Council consideration of the Bayhill Zoning Text Amendments and the Bayhill Zoning Map Amendments.

WHEREAS, on September 28, 2021, the City Council conducted a duly noticed public hearing on the Bayhill Specific Plan and Google Project and related approvals, where the

AMENDMENTS TO CITY OF SAN BRUNO ZONING MAP

Page 3 of 5

public were able to participate and comment remotely via Zoom, and on said date the City Council waived the first reading of the Bayhill Zoning Map Amendments and introduced this Ordinance, and the public hearing was opened, held and closed.

WHEREAS, by Resolution adopted on September 28, 2021, the City Council approved the Water Supply Assessment and found that the City will have sufficient water supply to serve development authorized by the Bayhill Specific Plan, including Phase 1 of the Google Project.

WHEREAS, by Resolution adopted on September 28, 2021, the City Council adopted certain CEQA Findings regarding the Specific Plan EIR and its evaluation of the Bayhill Specific Plan and Phase 1 of the Google Project, certified the Specific Plan EIR as adequate in accordance with CEQA, recognized certain environmental impacts of the Bayhill Specific Plan as significant and unavoidable despite feasible mitigation measures, adopted a Statement of Overriding Considerations concluding that approval of the Bayhill Specific Plan is appropriate despite such impacts, and adopted the Specific Plan MMRP.

WHEREAS, by Resolution adopted on September 28, 2021, the City Council adopted the Bayhill General Plan Amendments.

WHEREAS, by Resolution adopted on September 28, 2021, the City Council adopted the Bayhill Specific Plan.

WHEREAS, on September 28, 2021, prior to introduction of this Ordinance, the City Council introduced its Ordinance to adopt the Bayhill Zoning Text Amendments.

WHEREAS, the proposed Bayhill Zoning Map Amendments will be in general conformance with the General Plan of the City as amended by the Bayhill General Plan Amendments.

WHEREAS, the proposed Bayhill Zoning Map Amendments will be consistent with the Bayhill Specific Plan.

WHEREAS, the proposed Bayhill Zoning Map Amendments are intended to be consistent with and will implement the Bayhill Zoning Text Amendments.

WHEREAS, the Specific Plan EIR adequately addresses any potential environmental impacts of the Bayhill Zoning Map Amendments.

WHEREAS, the public necessity, convenience and general welfare require adoption of the Bayhill Zoning Map Amendments.

SECTION 3. REGULATION. The Zoning Map for the City of San Bruno is hereby amended as described within **Exhibit A** and shown within **Exhibit B**.

SECTION 4. NO MANDATORY DUTY OF CARE. This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City, or any

AMENDMENTS TO CITY OF SAN BRUNO ZONING MAP

officer or employee thereof, a mandatory duty of care towards persons or parties within the city or outside of the city, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 5. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, invalid or ineffective by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days from and after the date of its final passage and adoption.

SECTION 7. PUBLICATION. The City Clerk is directed to cause publication of this Ordinance as required by law.

Exhibit A: Parcels Affected by Zone Change

Exhibit B: Proposed Zoning Map

Dated:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk
Melissa Thurman

City Attorney
Marc Zafferano

---oOo---

I, Melissa Thurman, City Clerk, do hereby certify that the foregoing **Ordinance** No. _____ was introduced at a regular meeting of the San Bruno City Council on September 28, 2021 and adopted by the San Bruno City Council at a regular meeting on October 12, 2021, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers: _____

AMENDMENTS TO CITY OF SAN BRUNO ZONING MAP

Page 5 of 5

RECUSED: Councilmembers: _____

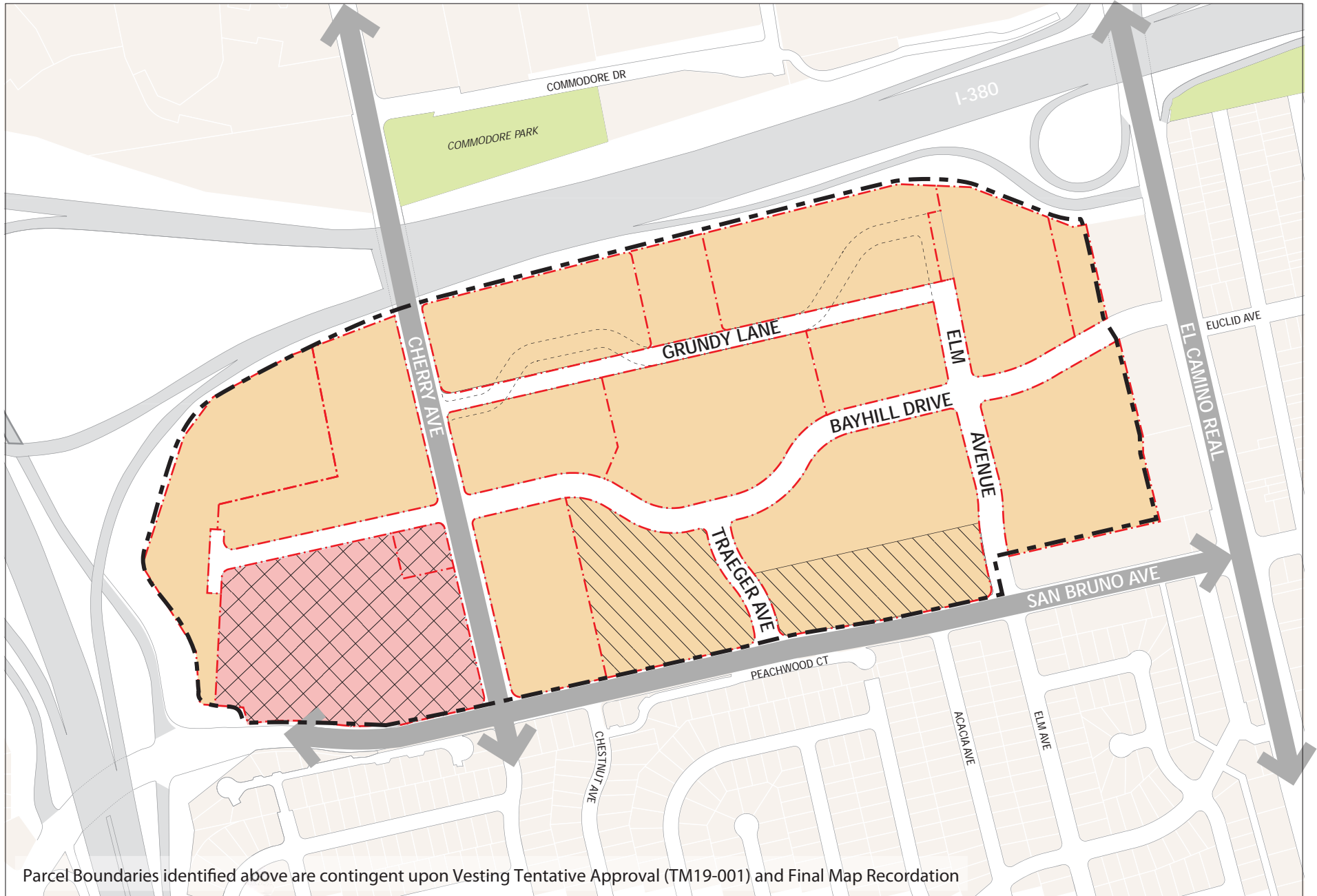
ABSENT: Councilmembers: _____

Melissa Thurman, MMC
City Clerk

Attachment 2- Exhibit A

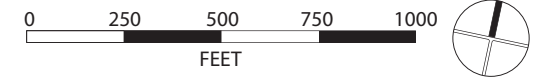
Assessor's Parcel Number	Prior Zoning District	Amended Zoning District
020-011-330	P-D (Planned Development)	BRO (Bayhill Regional Office)
020-011-360	C-O (Community Office)	BRO (Bayhill Regional Office)
020-011-370	C-O (Community Office)	BRO (Bayhill Regional Office)
020-011-420	P-D (Planned Development)	BRO (Bayhill Regional Office)
020-011-430	P-D (Planned Development)	BRO (Bayhill Regional Office)
020-012-120	C (General Commercial)	BNC (Bayhill Neighborhood Commercial) / BMU (Bayhill Mixed-Use Overlay)
020-012-160	P-D (Planned Development)	BRO (Bayhill Regional Office)
020-012-170	P-D (Planned Development)	BRO (Bayhill Regional Office)
020-012-190	P-D (Planned Development)	BNC (Bayhill Neighborhood Commercial) / BMU (Bayhill Mixed-Use Overlay)
020-015-020	P-D (Planned Development)	BRO (Bayhill Regional Office)
020-015-030	P-D (Planned Development)	BRO (Bayhill Regional Office)
020-015-040	P-D (Planned Development)	BRO (Bayhill Regional Office)
020-017-010	P-D (Planned Development)	BRO (Bayhill Regional Office)
020-017-020	P-D (Planned Development)	BRO (Bayhill Regional Office) / BR (Bayhill Residential Overlay)
020-018-010	P-D (Planned Development)	BRO (Bayhill Regional Office) / BR (Bayhill Residential Overlay)
020-019-070	C-O (Community Office)	BRO (Bayhill Regional Office)

Attachment 2 - Exhibit B (Proposed Zoning Map)



Parcel Boundaries identified above are contingent upon Vesting Tentative Approval (TM19-001) and Final Map Recordation

- | | | | | | |
|---|---------------------------------|---|-----------------------------|---|-----------------------------|
|  | Bayhill Regional Office |  | Bayhill Residential Overlay |  | Specific Plan Area Boundary |
|  | Bayhill Neighborhood Commercial |  | Bayhill Mixed-Use Overlay | | |



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN BRUNO AND GOOGLE LLC, A CALIFORNIA LIMITED LIABILITY COMPANY FOR THE GOOGLE PROJECT LOCATED IN THE BAYHILL OFFICE PARK

(DA21-002)

(**APNS:** 020-011-430, 020-015-020, 020-015-030, 020-018-010, 020-011-330, 020-015-040, 020-019-070, and 020-011-370)

The City Council of the City of San Bruno **ORDAINS** as follows:

SECTION 1. FINDINGS.

WHEREAS, in order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs and risks of development, the Legislature of the State of California enacted section 65864 et seq. of the Government Code (the “**Development Agreement Statute**”) which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement establishing certain development rights in the property.

WHEREAS, a Development Agreement can provide certainty, definition and commitment as to proposed development and necessary public improvements required by development.

WHEREAS, as authorized by Governmental Code Section 65865(c), the City has adopted City Council Resolution 1986-77 (the “**Development Agreement Resolution**”) authorizing the execution of Development Agreements and establishing the procedures and requirements for said Development Agreements within the City.

WHEREAS, Google, Inc. (now Google LLC) (“**Developer**”) approached the City in 2017 regarding its desire to develop additional office buildings on eight of the ten parcels it owns (APNs 020-011-430, 020-015-020, 020-015-030, 020-018-010, 020-011-330, 020-015-040, 020-019-070, and 020-011-370, collectively the “**Google Property**”) in Bayhill Office Park (the “**Google Project**”). Developer’s existing buildings in Bayhill Office Park are occupied by YouTube, a Google subsidiary company, and Developer envisions that YouTube will occupy new buildings on the Google Property.

WHEREAS, the City determined that Developer’s proposal warranted preparation of a comprehensive plan integrating development and use of the Google Property with Developer’s existing buildings and other properties in the area. Consequently, the City prepared a specific plan (the “**Bayhill Specific Plan**”) encompassing the Google Property, the remainder of Bayhill Office Park, and Bayhill Shopping Center (together, the “**Bayhill Specific Plan Area**”).

APPROVAL OF DEVELOPMENT AGREEMENT

Page 2 of 7

WHEREAS, while the City prepared the Bayhill Specific Plan, Developer submitted applications to begin development of the Google Property, consisting of (a) architectural review for construction of office buildings on two lots (APNs 020-011-430, 020-015-020), referred to as “**Phase 1**” (AR19-004) (the “**Phase 1 Architectural Review Permit**”), which plans include curb marking changes requiring separate approval by the City Council (the “**Phase 1 Curb Markings**”), (b) a phased vesting tentative map to merge and resubdivide the Google Property and realign and vacate certain public streets and easements (TM19-001) (the “**Vesting Tentative Map**”), and (c) a request that the City negotiate a statutory development agreement granting Developer certain rights regarding development of its properties in return for certain benefits for the City (DA21-002) (the “**Development Agreement**”) (the Phase 1 Architectural Review Permit, Phase 1 Curb Markings, Vesting Tentative Map and Development Agreement collectively, the “**Google Development Approvals**”).

WHEREAS, the City determined that certain amendments to the City of San Bruno General Plan text and Land Use Diagram (General Plan Figure 2.1) are required to reflect the City’s intentions for the Bayhill Specific Plan Area as shown in the proposed Bayhill Specific Plan and achieve consistency between the General Plan and the Bayhill Specific Plan, and City prepared such amendments (GPA21-002) (the “**Bayhill General Plan Amendments**”).

WHEREAS, the City determined that certain amendments to the City of San Bruno Zoning Ordinance (the “**Bayhill Zoning Text Amendments**”) and Zoning Map (the “**Bayhill Zoning Map Amendments**”) are required to implement the Bayhill Specific Plan, and City prepared such amendments (ZA21-001) (together, the “**Bayhill Zoning Amendments**”).

WHEREAS, on January 14, 2021, the Draft Bayhill Specific Plan, Bayhill General Plan Amendments and Bayhill Zoning Amendments were made available for public review and comment.

WHEREAS, on March 11, 2021, the Draft Bayhill Specific Plan was presented to the San Mateo County Airport Land Use Commission (“**ALUC**”), as required by state law for any plan or project proposed within certain zones near an airport, and the ALUC provided comments.

WHEREAS, as a result of comments on the Draft Bayhill Specific Plan from the ALUC, the Bay Area Air Quality Management District, Google, and members of the public, and corrections and refinements identified by the City, City staff recommended certain modifications to the draft Bayhill Specific Plan (the “**Specific Plan Revisions and Corrections**”) and to the draft Bayhill Zoning Text Amendments (which have been incorporated in the proposed Bayhill Zoning Text Amendments currently before the City Council.

WHEREAS, Pursuant to the California Environmental Quality Act (“**CEQA**”), the City has conducted environmental review of the Bayhill Specific Plan at a programmatic level and project-level environmental review of Phase 1 of the Google Project, and has prepared and duly processed an Environmental Impact Report (“**Specific Plan EIR**”) consisting of a Draft EIR dated January 2021 and a Final EIR response to comments document dated August 2021,

APPROVAL OF DEVELOPMENT AGREEMENT

Page 3 of 7

and prepared a Mitigation Monitoring and Reporting Program for implementation of mitigation measures specified in the EIR (“**Specific Plan MMRP**”). As part of the environmental review process, the City prepared a Water Supply Assessment pursuant to state law, which was included in the Specific Plan EIR.

WHEREAS, on August 17, 2021, the Planning Commission held a duly noticed public hearing to consider the Bayhill Specific Plan and the Google Project, after which among other actions the Planning Commission adopted its Resolution No. 2021-05 recommending that the City Council approve the Development Agreement.

WHEREAS, a Notice of Public Hearing was mailed to properties within a 600-foot radius of the Bayhill Specific Plan Area and to other parties on September 17, 2021, and duly published in the San Mateo Daily Journal on September 18, 2021, providing notice of the City Council’s September 28, 2021 public hearing regarding the Bayhill Specific Plan and the Google Project, including City Council consideration of the Development Agreement.

WHEREAS, on September 28, 2021, the City Council conducted a duly noticed public hearing on the Bayhill Specific Plan and the Google Project and related approvals, including the Development Agreement, where the public were able to participate and comment remotely via Zoom, and on said date the City Council waived the first reading of the Development Agreement and introduced this Ordinance, and the public hearing was opened, held and closed.

WHEREAS, by Resolution adopted on September 28, 2021, prior to adoption of this Resolution, the City Council approved the Water Supply Assessment and found that the City will have sufficient water supply to serve development authorized by the Bayhill Specific Plan.

WHEREAS, by Resolution adopted on September 28, 2021, prior to adoption of this Resolution, the City Council adopted certain CEQA Findings regarding the Specific Plan EIR and its evaluation of the Bayhill Specific Plan and Phase 1 of the Google Project, certified the Specific Plan EIR as adequate in accordance with CEQA, recognized certain environmental impacts of the Bayhill Specific Plan as significant and unavoidable despite feasible mitigation measures, adopted a Statement of Overriding Considerations concluding that approval of the Bayhill Specific Plan is appropriate despite such impacts, and adopted the Specific Plan MMRP.

WHEREAS, by Resolution adopted on September 28, 2021, prior to adoption of this Resolution, the City Council adopted the Bayhill General Plan Amendments.

WHEREAS, by Resolution adopted on September 28, 2021, prior to adoption of this Resolution, the City Council adopted the Bayhill Specific Plan.

WHEREAS, on September 28, 2021, prior to introduction of this Ordinance, the City Council introduced its Ordinance to adopt the Bayhill Zoning Text Amendments.

APPROVAL OF DEVELOPMENT AGREEMENT

Page 4 of 7

WHEREAS, on September 28, 2021, prior to introduction of this Ordinance, the City Council introduced its Ordinance to adopt the Bayhill Zoning Map Amendments.

WHEREAS, Google LLC is a limited liability company organized under the laws of the State of California and is in good standing thereunder and is qualified to do business in the State of California.

WHEREAS, Google LLC is able to enter into and record a Development Agreement binding the Google Property, as it owns the Google Property.

WHEREAS, in conjunction with processing and consideration of the Bayhill Specific Plan and Developer's applications for development of the Google Project, the City has negotiated the terms of a Development Agreement attached to this Ordinance as **Exhibit A**, which provide certain rights and benefits for Google LLC as "Developer" and certain rights and benefits for the City if the City Council elects to approve the Bayhill Specific Plan and Developer's applications for the Google Project and enter into the Development Agreement.

WHEREAS, the proposed Development Agreement will commit Developer to the following "Public Benefits":

- Community Benefits payments to the City's General Fund of \$35 per square foot of new office development in the Google Project (subject to annual inflation index increases). The estimated Community Benefits payment for Phase 1 is \$15.4 million (plus an estimated \$18 million in impact, housing and other fees).
- Advance payment of the Community Benefits for Developer's second building project (on Lot 2), at the same time as Phase 1 fees, regardless of when Lot 2 is developed. The estimated advance Community Benefits payment for Phase 2 is \$10.6 million (plus an estimated \$12.3 million in other fees) – resulting in fees paid at the time of the Phase 1 permit totaling approximately \$56.3 million.
- All Community Benefits payments and other fees will be payable when Foundation Permits are issued for each building in the Google Project, which is earlier than the core and shell permit otherwise used by the City to trigger impact fee payment.
- Developer may prepay fees at any time (to avoid the inflation increase), which if it occurs will provide funds for City projects earlier than otherwise anticipated.
- Construction and permanent maintenance of Cherry Plaza at the northeast corner of Cherry Avenue and Grundy Lane, as a publicly accessible open space providing a link with Commodore Park to the north and Bayhill Shopping Center and the local community to the south.
- Tax Point of Sale Designation for construction goods purchases, which may result in additional tax revenue to the City during construction.

WHEREAS, in order to provide assurance for the City that the Google Project will proceed and produce the anticipated Community Benefits payments in a timely manner, the initial term of the Development Agreement is limited to 15 years. Developer must actually construct Phase 1 plus two other portions of the Google Project to add 5 years for a total 20-year term to complete the Google Project.

APPROVAL OF DEVELOPMENT AGREEMENT

Page 5 of 7

WHEREAS, the proposed Development Agreement and Developer's commitments to build the Google Project will strengthen Bayhill Office Park's role as the principal employment center in the City with its attendant economic benefits for the entire city, and will solidify San Bruno as home of YouTube headquarters.

WHEREAS, in exchange for the substantial Public Benefits being agreed to in the Development Agreement, Developer desires to receive assurances that the City will grant permits and approvals required for development of the Google Project over the Google Project's estimated up to twenty-year development horizon, in accordance with procedures provided by law and in the Development Agreement, and that Developer may proceed with the Google Project in accordance with the existing City laws and subject only to identified fees and charges and other identified carve outs to Developer's vested rights as described in the Development Agreement.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN BRUNO, AS FOLLOWS:

SECTION 2. This Ordinance incorporates, and by this reference makes a part hereof, that certain Development Agreement by and between the City of San Bruno and Google LLC, the substantive form of which is attached to this Ordinance as **Exhibit A**.

SECTION 3. This Ordinance is adopted under the authority of the Development Agreement Statute and pursuant to the provisions of the Development Agreement Resolution, both of which provide for the ability of the City to adopt development agreements and set forth procedures and requirements for the consideration of those agreements. The City Council hereby finds that the proposed Development Agreement is consistent with the requirements of the Development Agreement Statute and the Development Agreement Resolution

SECTION 4. The City Council hereby finds and determines that the Development Agreement is consistent with the General Plan of the City of San Bruno (as amended by the Bayhill General Plan Amendments), as explained in and supported by the "Consistency Findings" attached to the Specific Plan staff report. The City Council further finds and determines that the Development Agreement is consistent with the Bayhill Specific Plan, the San Bruno Zoning Ordinance (as amended by the Bayhill Zoning Text Amendments) and the San Bruno Zoning Map (as amended by the Bayhill Zoning Map Amendments).

SECTION 5. For the Google Project, the City Council hereby approves the development impact fees and other methods of satisfying the Municipal Code's requirements with respect to development impact fees as set forth in the Development Agreement, and waives any inconsistent provision in the Municipal Code.

SECTION 6. The City Council hereby finds that the Specific Plan EIR adequately identifies and considers any potential environmental effects of the Development Agreement, including on the basis that: (a) the Development Agreement does not authorize or allow any development or other activity that might cause environmental effects, but only incorporates and facilitates implementation of the other Google Development Approvals, which have been adequately considered for purposes of CEQA; and (b) any environmental effects that might be

APPROVAL OF DEVELOPMENT AGREEMENT

attributable to the Development Agreement are adequately identified and considered by the Specific Plan EIR. The City Council further finds that the Specific Plan MMRP and the mitigation measures contained therein are adequate under CEQA to mitigate any environmental effects of the Development Agreement.

SECTION 7. The City Council hereby approves the proposed Development Agreement, including all exhibits attached thereto, and authorizes and directs the City Manager to execute the Development Agreement between the City of San Bruno and Google LLC on behalf of the City, substantially in the form attached hereto as **Exhibit A**, subject to minor conforming, clarifying or technical revisions as may be approved by the City Manager and City Attorney, as soon as this Ordinance becomes effective, and to record the Development Agreement against title to the Google Property with the County Recorder of the County of San Mateo no later than ten days following the effective date of this Ordinance.

SECTION 8. The City Manager or his or her designee is hereby authorized and directed to perform all acts required to be performed by the City in the administration and implementation of the Development Agreement, including, without limitation, approving assignments and executing other agreements or documents necessary to carry out the purposes of the Development Agreement.

SECTION 9. NO MANDATORY DUTY OF CARE. This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or parties within the city or outside of the city, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 10. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, invalid or ineffective by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 11. EFFECTIVE DATE OF ORDINANCE. This Ordinance shall take effect thirty (30) days from and after the date of its final passage and adoption.

SECTION 12. PUBLICATION. The City Clerk is directed to cause publication of this Ordinance as required by law.

EXHIBIT A: Development Agreement

Dated:

Mayor

APPROVAL OF DEVELOPMENT AGREEMENT

Page 7 of 7

ATTEST:

APPROVED AS TO FORM:

City Clerk
Melissa Thurman

City Attorney
Marc Zafferano

---oOo---

I, Melissa Thurman, City Clerk, do hereby certify that the foregoing **Ordinance** No. _____ was introduced at a regular meeting of the San Bruno City Council on September 28, 2021 and adopted by the San Bruno City Council at a regular meeting on October 12, 2021, by the following vote:

AYES: Councilmembers: _____

NOES: Councilmembers: _____

RECUSED: Councilmembers: _____

ABSENT: Councilmembers: _____

Melissa Thurman, MMC
City Clerk

**RECORDING REQUESTED BY AND WHEN
RECORDED RETURN TO:**

**City of San Bruno
City Attorney
567 El Camino Real
San Bruno, CA 94066**

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103 AND 27383

(Space above this line for Recorder's use)

Assessor's Parcel Nos:

020-011-430, 020-015-020, 020-015-030, 020-018-010, 020-011-330, 020-015-040,
020-019-070, 020-011-370

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF SAN BRUNO

AND

GOOGLE LLC, A DELAWARE LIMITED LIABILITY COMPANY

THE YOUTUBE PROJECT

Effective Date: _____, 2021

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LIST OF EXHIBITS

- Exhibit A: Property Legal Description
- Exhibit B: Depiction of the Property
- Exhibit C: Project Lot Development Plan
- Exhibit D: Lot Allotments, Existing Impact Fees & Community Benefits
- Exhibit E: Form of Assignment and Assumption Agreement
- Exhibit F: Architectural Review Permit Procedures
- Exhibit G: VMT Monitoring and Mitigation Plan

DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”) is dated for reference purposes as of October 12, 2021, by and between the City of San Bruno, a general law city and California municipal corporation (“**City**”) and Google LLC, a Delaware limited liability company (“**Developer**”). Developer and City are referred to individually in this Agreement as a “**Party**” and collectively as the “**Parties**.”

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties. The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Article 1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs and risks of development, the Legislature of the State of California enacted section 65864 *et seq.* of the Government Code (the “**Development Agreement Statute**”) which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement establishing certain development rights in the property.

B. In accordance with the Development Agreement Statute, the City Council of the City of San Bruno adopted Resolution No. 1986-77 (the “**City Development Agreement Regulations**”), which authorizes the execution of development agreements and specifies additional procedures and requirements supplementing the Development Agreement Statute. The provisions of the Development Agreement Statute and the City Development Agreement Regulations are collectively referred to herein as the “**Development Agreement Law**.”

C. Developer is the owner of that certain real property in the City of San Bruno described in Exhibit A and depicted in Exhibit B (the “**Property**”), consisting of a number of parcels scattered in Bayhill Office Park. Developer currently operates office buildings on other parcels it owns in Bayhill Office Park.

D. Developer approached City regarding its desire to develop additional office buildings on its Property in Bayhill Office Park. City determined that Developer’s proposal warranted preparation of a comprehensive plan integrating development and use of the Property with Developer’s existing buildings and other properties in the area. City subsequently prepared a specific plan (the “**Bayhill Specific Plan**”) encompassing the Property, the remainder of Bayhill Office Park, and Bayhill Shopping Center (together, the “**Bayhill Specific Plan Area**”).

E. Developer proposes to demolish existing buildings, grade and excavate portions of the Property, realign streets and utilities, and build approximately 2,510,881 total square feet of new office buildings (for a net increase of 1,818,029 square feet) and related parking and amenities, as described in the Existing Approvals (as defined below) (the “**Project**”). Developer anticipates developing the Project in discrete stages as generally depicted in Exhibit C: “**Phase 1**” (consisting of “**Lot 1N**” and “**Lot 1S**”), “**Lot 2**,” “**Lot 3**,” “**Lot 4**,” and “**Lot 5N**,” “**Lot 5S**,” and “**Lot 5E**.”

F. Phase 1 of the Project consists of the development of two three-story buildings totaling approximately 440,000 square feet of office and accessory space on Lot 1N and Lot 1S separated by Grundy Lane, adjacent to the existing buildings on the two parcels, built over three-level subterranean parking garages connected through a below-grade tunnel extending underneath and an above-ground bridge extending above Grundy Lane. Phase 1 also includes realignment of Grundy Lane, development of a privately owned publicly accessible community open space, demolition of adjacent buildings to provide space used as part of Phase 1, construction of a multi-modal transportation hub, City abandonment of a portion of Elm Avenue, and installation of other improvements and amenities, as further described in the Existing Approvals.

G. Developer submitted applications for the following City approvals for the Project (together, the “**Applications**”): (1) a phased vesting tentative map to merge and re-subdivide existing parcels, and approve abandonment of certain public streets and public easements (TM19-001) (the “**Vesting Tentative Map**”); (2) architectural review for development of Phase 1 of the Project (AR19-004) (the “**Architectural Review Permit**”) and approval of loading zone spaces around Phase 1; and (3) a Development Agreement (DA21-002) (this “**Agreement**”).

H. Pursuant to CEQA (as defined below), City conducted environmental review of the Bayhill Specific Plan at a programmatic level and Phase 1 of the Project at a project-specific level, prepared and duly processed an Environmental Impact Report (“**Specific Plan EIR**”), and prepared a Mitigation Monitoring and Reporting Program for implementation of mitigation measures specified in the EIR (“**Specific Plan MMRP**”) (the Specific Plan EIR and Specific Plan MMRP together, the “**Specific Plan CEQA Documentation**”).

I. Prior to or concurrently with approval of this Agreement, City has taken the following actions to review and plan for the future development of the Property and the Project (collectively, and together with this Agreement, the “**Existing Approvals**”):

1. Following adoption of a Water Supply Assessment for the Bayhill Specific Plan by Resolution No. 2021-_____, adopted by the City Council on September 28, 2021, confirming there will be sufficient water supplies to serve the Bayhill Specific Plan and the City of San Bruno, certification of the Specific Plan EIR, confirmation that it provides proper environmental review pursuant to CEQA for the Bayhill Specific Plan, Phase 1 of the Project, and each of the other Existing Approvals, adoption of a Statement of Overriding Considerations regarding approval of the other Existing Approvals, adoption of the MMRP and its incorporation as conditions to the Existing Approvals, and determination that the Existing Approvals are expressly addressed by the Specific Plan CEQA Documentation, as set forth in Resolution No. 2021-_____, adopted by the City Council on September 28, 2021 (the “**Project CEQA Approval**”).

2. Approval of General Plan amendments reflecting City’s intentions for the Bayhill Specific Plan Area (GPA21-002), by Resolution No. 2021- _____, adopted by the City Council on September 28, 2021.

3. Approval of the Bayhill Specific Plan by Resolution No. 2021-_____, adopted by the City Council on September 28, 2021

4. Approval of text amendments to the Zoning Code by Ordinance No. _____ and amendments to the Zoning Map by Ordinance No. _____ for the Bayhill Specific Plan Area (ZA21-001) (together, the “**Bayhill Zoning**”), intended to implement the Bayhill Specific Plan, introduced by the City Council on September 28, 2021, and adopted on October 12, 2021.

5. Approval of the Vesting Tentative Map and abandonment of certain public streets and public easements, and allowing the filing of multiple final maps for the Project, including all Vesting Tentative Map Conditions of Approval attached thereto (the “**VTM Conditions**”), by Resolution No. 2021-_____, adopted by the City Council on September 28, 2021; and

6. Approval of the Architectural Review Permit, including all Architectural Review Permit Conditions of Approval attached thereto (the “**ARP Conditions**”), by Resolution No. 2021-_____, adopted by the City Council on September 28, 2021.

7. Approval of Resolution No. 2021-_____, adopted by the City Council on September 28, 2021, modifying curb markings to authorize loading zone spaces around the perimeter of Phase 1 (the “**Loading Zone Approval**”).

J. It is the intent of City and Developer to establish certain conditions and requirements related to review, approval, development and operation of the Project, which are or will be the subject of this Agreement and subsequent development applications and land use entitlements.

K. City specifically finds, as required by the Development Agreement Law and as reflected in the Enacting Ordinance (as defined in Recital O), that approving this Agreement for the Project will promote orderly growth and quality development in accordance with the goals and policies set forth in the General Plan; is compatible with the uses authorized in, and the regulations prescribed for, the Specific Plan and zoning district in which the Property is located; will promote the public convenience, general welfare, and good land use practice; will promote development which is not detrimental to the health, safety and general welfare; will not adversely affect the orderly development of property or the preservation of property value; and will promote and encourage development of the Project by providing a greater degree of requisite certainty. City also finds that the Project will provide substantial Community Benefits as described in this Agreement.

L. City finds that this Agreement and its terms satisfy the requirement for a Financing and Phasing Plan for the Project pursuant to Policy 7.2a of the Bayhill Specific Plan, as of the Effective Date and for the length of the Term as it may be extended.

M. City and Developer have reached mutual agreement and desire to voluntarily enter into this Agreement to facilitate development and operation of the Project subject to the conditions and requirements set forth herein.

N. City has given the required notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to Government Code section 65867 and the City Development Agreement Regulations. City has reviewed and evaluated this Agreement in accordance with the Development Agreement Law and has determined that the provisions of this

Agreement and its purposes are consistent with the Development Agreement Law and the goals, policies, standards and land use designations specified in the General Plan.

O. Following a duly noticed public hearing, on September 28, 2021 the City Council introduced Ordinance No. _____ approving this Agreement and authorizing its execution, and the City Council adopted that Ordinance on October 12, 2021 (the “**Enacting Ordinance**”).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other valuable consideration, the Parties hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions.

“*Area Development Impact Fees*” or “*ADIF*” is defined in Section 4.6.

“*Administrative Project Amendment*” is defined in Section 8.2.1.

“*Affiliated Party*” is defined in Section 10.1.2.

“*Agreement*” or “*Development Agreement*” means this Development Agreement between City and Developer, including all Exhibits hereto.

“*Agreement Amendment*” is defined in Section 8.3.2.

“*Allotment(s)*” means the amount of office and accessory space authorized by the Bayhill Specific Plan for a Lot or parcel, as shown on Exhibit C and described in Exhibit D.

“*Applicable City Regulations*” means the ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations of City that are applicable to the Property and the Project and in effect on the Effective Date.

“*Applicable Law*” means the Applicable City Regulations and all regional, State and Federal laws and regulations applicable to the Property and the Project as such regional, State and Federal laws and regulations may be enacted, adopted and amended from time to time, as more particularly described in Section 3.8 (Changes in the Law).

“*Applications*” is defined in Recital G.

“*Architectural Review Permit*” is defined in Recital G.

“*ARP Conditions*” is defined in Recital I.

“*Assignment and Assumption Agreement*” is defined in Section 10.1.3 and Exhibit E.

“*Assignor*” is defined in Section 12.4.

“**Bayhill Specific Plan Area**” means all the land subject to the Bayhill Specific Plan, as described in Recital D.

“**Bayhill Zoning**” is defined in Recital I.

“**Building**” means the portion of the Project to be constructed and occupied on each Lot.

“**Business Day**” means a day that is not a Saturday, Sunday, federal holiday or state holiday under the laws of the State of California.

“**CalTrans**” means the California Department of Transportation.

“**CEQA**” means the California Environmental Quality Act, California Public Resources Code section 21000, *et seq.*, as amended from time to time.

“**CEQA Guidelines**” means the State CEQA Guidelines (California Code of Regulations, Title 14, section 15000, *et seq.*), as amended from time to time.

“**Certificate**” is defined in Section 6.1.4.

“**Changes in the Law**” is defined in Section 3.8.

“**Cherry Plaza**” is defined in Section 5.1.2.

“**Chief Building Official**” means the Chief Building Official of the City of San Bruno or his or her designee.

“**City**” means the City of San Bruno.

“**City Council**” means the City Council of the City of San Bruno.

“**City Development Agreement Regulations**” is defined in Recital B.

“**City Manager**” means the City Manager of the City of San Bruno or his or her designee.

“**City Parties**” means and includes City and its elected and appointed officials, officers, employees, contractors and representatives.

“**Claims**” means third-party liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including reasonable attorneys’ fees and costs.

“**Community Benefits**” generally means public facilities, improvements, and/or services that benefit and serve the City as a whole, not just the Property or Bayhill Specific Plan Area. Community Benefit contributions must be over and above those required by existing City requirements or policies as part of typical project approvals and/or to mitigate Project impacts. Developer will provide both monetary (see Section 4.7) and non-monetary (see Section 5.1) Community Benefits.

“Community Benefits Payment” is defined in Section 4.7.1.

“Connection Fees” means those fees charged by City on a citywide 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.

“Default” is defined in Section 12.1.

“Developer” means Google LLC, a Delaware limited liability company and its permitted successors, assigns, Transferees and Affiliated Parties (as defined in Section 10.1.2).

“Development Agreement” or **“Agreement”** means this Development Agreement between City and Developer, including all Exhibits hereto.

“Development Agreement Law” 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. Notwithstanding section 65928 of the California Government Code, Development Project shall also include all ministerial approvals required to carry out, construct, reconstruct, and occupy such a development project.

“Director” means the Director of Community and Economic Development of the City of San Bruno, or his or her designee.

“Effective Date” is defined in Section 2.1.

“Enacting Ordinance” is defined in Recital O.

“Exactions” means non-monetary exactions that may be imposed by the City as a condition of developing the Project, including requirements for acquisition, dedication or reservation of land; 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, mitigation measures in connection with environmental review of the Project, or impositions made under Applicable City Regulations. For purposes of this Agreement, Exactions do not include Impact Fees or Community Benefits Payments.

“Existing Approvals” means and includes those permits and approvals for the Project granted by City to Developer as of the Effective Date as set forth in Recital I, plus this Agreement.

“Existing Impact Fees” is defined in Section 4.1.1.

“Force Majeure” or **“Force Majeure Event”**, as further described in Section 2.2.3, means, for purposes of this Agreement, any event or condition that: (a) is beyond a Party’s control, (b) prevents the Party’s performance of this Agreement; (c) the Party could not have reasonably foreseen; and (d) arises from one of the following: an act of war or terrorism; insurrection; strikes, walkouts or other material labor disturbances that affect a specific trade on a national or regional level, to the extent not caused by the acts or omissions of the Party; riots or other civil commotion; floods; earthquakes; fires; unusually severe and abnormal climatic conditions (as compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration (NOAA) for the time of year and locality of the Property), but only to the extent that such weather or its effects (including without limitation dry out time) result in delays that cumulatively exceed twenty (20) days for any winter season; casualties; acts of God; governmental restrictions imposed or mandated by governmental entities; enactment of conflicting laws by governmental entities; the general unavailability of construction materials for projects similar to the Project (I.e., a large scale office project) that causes significant construction delays, where Developer is unable to obtain alternative or replacement materials within the same or substantially similar time period at substantially the same cost; and a local, state or federal declaration of emergency based on an epidemic or pandemic, including any quarantine or other health-related orders, laws or other requirements implemented in response to such epidemic or pandemic; in each case provided it actually results in the suspension of development or construction activities. Neither the inability of Developer to obtain construction or other financing for the Project, nor the condition of or changes in the real estate market, nor adverse economic conditions generally, nor other financial circumstances shall constitute a Force Majeure Event.

“General Plan” means City’s General Plan, as amended through the Effective Date.

“Impact Fees” means the monetary amount charged by City in connection with a Development Project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the Development Project or development of the public facilities related to the Development Project, including, any “fee” as that term is defined by Government Code section 66000(b). For purposes of this Agreement, a fee that meets both the definitions of an Impact Fee and an Exaction will be considered to be an Impact Fee. Impact Fees do not include Other Agency Fees or Community Benefits Payments.

“Litigation Challenge” is defined in Section 9.3.

“Litigation Extension” is defined in Section 2.2.3.

“Loading Zone Approval” is defined in Recital I.

“Lot” means a parcel of property in the Bayhill Specific Plan Area that has been designated for development by the Bayhill Specific Plan, and more specifically refers to the Lots owned by Developer as listed in Recital E and depicted in Exhibit E.

“Major Project Amendment” is defined in Section 8.2.2.

“Material Condemnation” is defined in Section 13.1.

“**Mortgage**” means any mortgage, deed of trust, security agreement, and other like security instrument encumbering all or any portion of the Property or any of the Developer’s rights under this Agreement.

“**Mortgagee**” means the holder of any Mortgage, and any successor, assignee or transferee of any such Mortgage holder.

“**Municipal Code**” means and refers to the City of San Bruno’s Municipal Code, as amended from time to time.

“**New City Laws**” means any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through their power of initiative or otherwise) after the Effective Date.

“**Notice of Breach**” is defined in Section 12.1.

“**Operating Memorandum**” is defined in Section 8.3.1.

“**Other Agency Fees**” is defined in Section 4.3.

“**Other Agency Subsequent Approvals**” means approvals, entitlements and permits required for development or use of the Project to be obtained from governmental or quasi-governmental entities other than the City.

“**Overlap Liability Acknowledgment**” is defined in Section 9.2.2.

“**Overlapping Improvements**” is defined in Section 9.2.2.

“**Parking In-Lieu Fee**” is defined in Section 7.3.3.

“**Payment Obligation Permit**” means the foundation permit required to construct a foundation for a Building on a Lot, the receipt of which by Developer requires payment or prepayment of Existing Impact Fees and Community Benefits Payments pursuant to the terms of this Agreement.

“**Phase 1**” applies to the portions of the Property labeled in **Exhibit C** as Lots 1N and 1S. Without limiting potential uses of the Property as may be authorized by the Existing Approvals, the two Lots in Phase 1 are authorized by the Bayhill Specific Plan for development of new office and accessory space of up to 248,000 square feet on Lot 1N (the “**Lot 1N Allotment**”) and up to 192,000 square feet on Lot 1S (the “**Lot 1S Allotment**”), totaling 440,000 square feet of new office and accessory space (the “**Phase 1 Allotment**”), subject to potential adjustments in size pursuant to the Existing Approvals. Notwithstanding that Phase 1 consists of two separate parcels, Lot 1N and Lot 1S may not be developed separately but must be built together pursuant to the Existing Approvals in a coordinated construction plan including realignment of Grundy Lane between the parcels and connection of the garages beneath the new buildings.

“**Party**” and “**Parties**” means City and/or Developer.

“Permitted Delay” is defined in Section 13.4.

“Planning Commission” means the City of San Bruno Planning Commission.

“Prepay” and **“Prepayment”** are defined in Section 4.1.4.

“Prevailing Wage Laws” is defined in Section 9.2.1.

“Processing Agreement” means an agreement between City and Developer regarding funding and reimbursement for City processing of Project Approval applications, as referenced in Section 4.2 and Section 7.3.2.

“Processing Fees” means all fees for processing Development Project applications, including but not limited to any required supplemental or other further environmental review, plan checking and inspection and monitoring for land use approvals, design review, grading and building permits, and other permits and entitlements required to implement the Project, as addressed in further detail in Section 4.2.

“Project” is defined in Recital E.

“Project Approvals” means the Existing Approvals and all Subsequent Approvals as and when approved.

“Project CEQA Approval” is defined in Recital I.

“Property” is defined in Recital C.

“Public Utility Easement” or **“PUE”** is defined in Section 9.2.2.

“Shoring Fee” is defined in Section 4.10.

“Shoring Mechanism” is defined in Section 4.10.

“Specific Plan CEQA Documentation” is defined in Recital H.

“Specific Plan EIR” is defined in Recital H.

“Specific Plan MMRP” is defined in Recital H.

“Street Abandonment” means abandonment and vacation of public street and easement rights as shown in the Vesting Tentative Map pursuant to the Project Approvals to enable use of the rights-of-way as part of the Project, and abandonment and dedication of certain other public street and easement rights and private property rights to enable street alignments through the Property, as further addressed in Section 7.5.

“Subdivision Document” is defined in Section 2.3.

“Subsequent Approvals” is defined in Section 7.1.

“**Target**” is defined in Section 7.3.2.

“**Term**” is defined in Section 2.2.

“**Transfer**” is defined in Section 10.1.1.

“**Transferee**” is defined in Section 10.1.1.

“**Vested Elements**” is defined in Section 3.1.

“**Vesting Tentative Map**” is defined in Recital G.

“**VTM Conditions**” is defined in Recital I.

ARTICLE 2 EFFECTIVE DATE AND TERM

2.1 Effective Date. The “**Effective Date**” of this Agreement shall be the later of (a) the date that is thirty (30) days after the date the Enacting Ordinance is adopted, or (b) in the event that the Agreement is the subject of one or more judicial challenges or a referendum petition, the date that all such judicial challenges and/or referenda petitions have been fully adjudicated, with no further rights of appeal, to the satisfaction of the Parties. The Parties acknowledge that Section 65868.5 of the Development Agreement Statute requires this Agreement to be recorded in the Official Records of the San Mateo County Recorder’s Office no later than ten (10) days after the City enters into this Agreement, and that the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all permitted successors in interest to the Parties to this Agreement. The City Clerk will cause such recordation.

2.2 Term of Agreement. Subject to the following qualifications, the “**Term**” of this Agreement shall be fifteen (15) years, commencing on the Effective Date and expiring on the fifteenth (15th) anniversary of the Effective Date, unless earlier terminated or extended in accordance with the provisions of this Agreement.

2.2.1 Initial Term Conditions. Upon obtaining the Payment Obligation Permit for Phase 1, and as a condition to City issuing such permit, Developer shall: (a) pay all Existing Impact Fees, Community Benefits Payments and other fees or charges that may be applicable to Phase 1 and the Payment Obligation Permit; and (b) prepay all Existing Impact Fees and Community Benefits Payments for Lot 2, in the amounts of each Existing Impact Fee and the Community Benefits Payments applicable as of the payment date taking into consideration CCI adjustments, calculated based on the Allotment for each property. In the event that Developer subsequently elects to develop other Lots before Lot 2, the prepayments made under this Section 2.2.1.1 for Lot 2 may be applied to reduce the payments otherwise owed.

2.2.2 Extended Term. Provided neither City nor Developer have terminated this Agreement and Developer has fully complied with all terms of this Agreement, the Term shall be extended an additional five (5) years if both of the following events occurs before expiration of the 15-year Term: (a) Developer has obtained a Temporary Certificate of Occupancy for Phase

1, Lot 2, and one of either Lot 3, Lot 4, Lot 5N or Lot 5S (but not Lot 5E); and (b) Developer previously satisfied the terms of Section 2.2.1.

2.2.3 Extension Due to Legal Action or Force Majeure.

2.2.3.1 Litigation Extension. If any litigation is filed challenging this Agreement or the Project Approvals having the direct or indirect effect of delaying this Agreement or any Approval (including but not limited to any CEQA determinations), including any challenge to the validity of this Agreement or any of its provisions, or if this Agreement or a Project Approval is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and all Project Approvals shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension (or as to Project Approvals, the date of the initial grant of such Project Approval) to the end of such litigation or suspension (a “**Litigation Extension**”); provided, however, that if any litigation is filed challenging any Subsequent Approval which has the effect of delaying any Subsequent Approval, the term of this Agreement solely as it applies to the specific Subsequent Approval(s) shall receive a Litigation Extension. The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates; provided, however, that with respect to any litigation to which the City is a party, there shall be no need for the Parties to document the start of such litigation.

2.2.3.2 Permitted Delay. The Term, the Project Approvals, and a Party’s performance of its obligations under this Agreement shall be excused during, and extended for a period of time equal to, any period of delay caused by reason of Force Majeure beyond the reasonable control of the Party affected, to the extent permitted by the terms of this Agreement (“**Permitted Delay**”). Upon the request of any Party, an extension of time will be granted for the period of delay caused by a Force Majeure Event and no Party shall be deemed to be in default under this Agreement where delays in performance or failure to perform are caused by a Force Majeure Event and authorized pursuant to this Section. Promptly after learning of the occurrence of a Force Majeure Event that actually causes or is reasonably anticipated (by the affected Party) to cause delay, the affected Party shall notify the other Party in writing of the occurrence of such Force Majeure Event, the manner in which such occurrence is likely to cause delay, and the anticipated length of delay in performance resulting from the Force Majeure Event. Upon the other Party’s receipt of such notice, the Term of this Agreement then in effect shall be extended by a period of time equal to the number of days during which performance is delayed due to the specified Force Majeure; provided, if a Party provides such notice more than thirty (30) days after commencement of the claimed Force Majeure Event, the Term extension shall commence upon receipt of such notice. Notwithstanding the above, the Term of this Agreement shall not be extended more than two (2) years cumulatively.

2.3 Relation to Vesting Tentative Map.

2.3.1 Pursuant to Government Code section 66452.6(a) and this Agreement, the term of any vesting tentative map or final maps, or any new such map or any amendment to any such map, or any resubdivision (collectively referred to as “**Subdivision Document**”) relating to the Project shall automatically be extended to and until the later of the following: (1) the end of the Term of this Agreement; or (2) the end of the term or life of any such Subdivision Document

otherwise given pursuant to the Subdivision Map Act or local regulation not in conflict with the Subdivision Map Act as though this Agreement had never applied to extend the life of the Subdivision Document.

2.3.2 If this Agreement terminates or expires for any reason prior to the expiration of vested rights otherwise given under the Subdivision Map Act to any Subdivision Document as described in Section 2.3.1, such termination or expiration of this Agreement shall not affect Developer's right to proceed with development under such Subdivision Document in accordance with the Applicable Law in effect as of the Effective Date, and after expiration of such vested rights development under such Subdivision Document shall be subject to the Applicable Law as may be in effect at the time of such development. Developer acknowledges and agrees that the Property, Project and any Subdivision Document shall be subject to the terms and conditions in the Bayhill Specific Plan and the Bayhill Zoning in effect as of the Effective Date notwithstanding and following expiration or termination of this Agreement, including but not limited to requirements regarding payment of the ADIF and Community Benefits Payments, and Developer expressly waives any right to claim vested rights to Applicable Law preceding the Effective Date or to claim the Property, Project and Subdivision Document are not subject to the Bayhill Specific Plan and Bayhill Zoning based on the Vesting Tentative Map application being deemed complete prior to the effective dates of the Bayhill Specific Plan and Bayhill Zoning. The terms of this Section 2.3 shall survive termination or expiration of this Agreement.

2.3.3 City and Developer affirm that the Vesting Tentative Map and Bayhill Specific Plan are intended to be consistent with each other regarding public improvement requirements and Developer's obligations thereto. To that end, the VTM Conditions include requirements that phased final maps revise certain details in the Vesting Tentative Map that are intended to conform to details in the Bayhill Specific Plan, and approval of the Bayhill Specific Plan included a "Revisions and Corrections" table with edits to certain details in the Bayhill Specific Plan that are intended to ensure consistency with details in the Vesting Tentative Map. Notwithstanding these revisions, the Parties acknowledge that differences may remain between the Vesting Tentative Map and the Bayhill Specific Plan, or one may show or describe improvements and details not shown or described in the other and that adjudicatory subdivision approvals usually provide greater site-specific details than legislative actions such as specific plans. For purposes of illustration but not limitation, the Bayhill Specific Plan requires and shows greenways and bicycle lanes that are not depicted in the Vesting Tentative Map, and the Vesting Tentative Map shows additional street sections that are not depicted in the Bayhill Specific Plan. Furthermore, the Bayhill Specific Plan includes policies and illustrative diagrams of City's intentions for improvements which may not be included in the Vesting Tentative Map or may not be shown in sufficient detail, and are subject to refinement in final maps or construction drawings. If an inconsistency between the Bayhill Specific Plan and the Vesting Tentative Map is determined to affect improvement requirements or Developer obligations, the Parties agree to meet and confer in good faith to resolve the inconsistency. If such resolution does not occur, the provisions and details in the Bayhill Specific Plan shall be deemed to control, and Developer acknowledges that the Bayhill Specific Plan is intended to be the primary land use and development regulation governing development of the Property and the Specific Plan Area.

2.4 City Representations and Warranties. City represents and warrants to Developer that, as of the Effective Date:

2.4.1 City is a municipal corporation, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

2.4.2 The execution and delivery of this Agreement and the performance of the obligations of the City hereunder have been duly authorized by all necessary City Council action and all necessary City approvals have been obtained.

2.4.3 This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

2.4.4 The Existing Approvals constitute all of the necessary City-granted discretionary approvals to develop Phase 1 of the Project, except for those encroachment permits which City treats as discretionary and which shall be considered by City as discretionary Subsequent Approvals subject to the terms of this Agreement.

During the Term of this Agreement, City, upon learning of any fact or condition which would cause of any of the warranties and representations in this Section 2.4 not to be true, will immediately give written notice of such fact or condition to Developer.

2.5 Developer Representations and Warranties. Developer represents and warrants to City that, as of the Effective Date:

2.5.1 Developer is duly organized or incorporated and validly existing under the laws of the State of California, and is in good standing and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

2.5.2 The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary corporate action and all necessary corporate authorizations have been obtained.

2.5.3 This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

2.5.4 Developer has not (a) made a general assignment for the benefit of creditors; (b) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors; (c) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets; (d) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets; or (e) admitted in writing its inability to pay its debts as they come due.

2.5.5 There is no existing lien or encumbrance recorded against any portion of the Property that, upon foreclosure or the exercise of remedies, would permit the beneficiary of

the lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with the applicable land.

During the Term of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.5 not to be true, immediately give written notice of such fact or condition to City.

ARTICLE 3 DEVELOPMENT OF THE PROPERTY

3.1 Vested Rights. The Property is hereby made subject to the provisions of this Agreement. During the Term of this Agreement, Developer shall have the vested right to develop the Property and the Project in conformance with the Project Approvals, Applicable Law and this Agreement, which shall control the permitted uses of the Property, density and intensity of use of the Property and the maximum height and size of buildings on the Property, the provisions for reservation or dedication of land for public purposes, and the design, improvement, and the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development applicable to the Property as set forth in Applicable Law, the Project Approvals, and this Agreement (collectively, the “**Vested Elements**”). In the event of a conflict between any terms or conditions set forth in the Vested Elements, this Agreement shall take priority over the Project Approvals.

3.2 Life of Approvals. Pursuant to Government Code section 66452.6(a) and this Agreement, the life of the Project Approvals shall automatically be extended to and until the later of the following: (1) the end of the Term of this Agreement, as it may be earlier terminated or extended pursuant to the terms set forth herein; or (2) the end of the term or life of any such Project Approval as though this Agreement had never applied to extend the life of the Project Approval.

3.3 Permitted Uses. The permitted uses for the Property and the Project are those set forth in the Existing Approvals and as may be set forth in the Subsequent Approvals, including but not limited to accessory uses such as an employee event center, cafeteria, fitness center or similar uses. Changes to the Project use are subject to the Project Approval and Agreement amendment processes as set forth in Sections 8.2 and 8.3. In the event of a conflict between the Project Approvals and the terms of this Section 3.3, the Project Approvals shall govern.

3.4 Governing Rules. Except as otherwise explicitly provided in this Agreement, development of the Property shall be subject to (a) the Project Approvals, and (b) the Applicable Law. Notwithstanding the foregoing, the following New City Laws shall apply to the development of the Property as follows:

3.4.1 Except as may be addressed in the Project Approvals and this Agreement, New City Laws that relate to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure imposed at any time, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of Development Projects and properties, and such procedures are not

inconsistent with procedures set forth in the Project Approvals or this Agreement. Notwithstanding the foregoing, the process for Architectural Review Permits shall be governed by the provisions of Municipal Code section 12.108.020 in effect on the Effective Date as clarified in **Exhibit F**.

3.4.2 Other New City Laws that revise City's uniform construction codes, including City's building code, plumbing code, mechanical code, electrical code, fire code, grading code and other uniform construction codes, as of the date of permit issuance, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of Development Projects and properties; and provided further, that during the Term of this Agreement the Property and the Project shall not be subject to any New City Law enacted after the Effective Date that would impose new building standards or requirements for improved energy efficiency and sustainability (commonly known as "green" standards) that are in excess of what is mandatory under applicable California Green Building Standards (CALGreen) or other uniformly applicable green building standards enacted by California or the Federal government (commonly known as "reach" standards);

3.4.3 Other New City Laws that are determined by City to be reasonably required in order to protect residents of the Project, and/or residents of the City, from a condition dangerous to their health or safety, or both;

3.4.4 Other New City Laws that do not conflict with the Vested Elements, this Agreement or the Project Approvals pursuant to Section 3.7, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of Development Projects and properties; and

3.4.5 Other New City Laws that do not apply to the Property and/or the Project due to the limitations set forth above, but only to the extent that such New City Laws are accepted in writing by Developer in its sole discretion.

3.5 Timing of Development.

3.5.1 Pardee and the Intent of the Parties. Developer shall have no obligation to develop or construct the Project or any component of the Project. Without any limitation of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider, and expressly provide for, the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the desire of the Parties to avoid that result. Therefore, notwithstanding the adoption of any initiative after the Effective Date by City's electorate to the contrary, the Parties acknowledge that, except as otherwise provided for in this Agreement, Developer shall have the vested right during the Term to develop the Project at such time as Developer deems appropriate in the exercise of its sole and subjective business judgment, subject to the terms of this Agreement.

3.5.2 Moratorium. No City-imposed moratorium or other limitation (whether relating to the rate, timing, phasing, sequencing, height or density of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative,

resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within City, or portions of City, shall apply to the Property; provided, however, the provisions of this Section shall not affect City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations.

3.5.3 No Other Requirements. Nothing in this Agreement is intended to create any affirmative development obligations to develop the Project at all, or in any particular order or manner except as such order or manner may be specified in this Agreement if the Project is developed, or liability in Developer under this Agreement if the development fails to occur. Developer may, at its sole discretion, develop the Lots in the Project in such order and at such rate and times as Developer deems appropriate, subject to any requirements in the Project Approvals as to the order, rate or timing of Project construction or installation of improvements that are Developer's obligation under this Agreement and the Project Approvals.

3.6 Compliance with Laws. Developer, at its sole cost and expense, shall comply with the requirements of, and obtain all permits and approvals required by local, regional, State and Federal agencies having jurisdiction over the Property or Project. Furthermore, Developer shall carry out the Project work in conformity with all Applicable Law, including: applicable state labor laws and standards; Applicable City Regulations; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. section 12101, *et seq.*, Government Code section 4450, *et seq.*, Government Code section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code section 51, *et seq.*

3.7 No Conflicting Enactments. Except as otherwise provided in this Agreement, for the Term of this Agreement City will not impose on the Project (whether by action of the City Council or by initiative, referendum or other means, including development moratorium or additional Project conditions on Subsequent Approvals) any New City Law that is in conflict with this Agreement or the Existing Approvals or, once approved, the Subsequent Approvals. Without limiting the generality of the foregoing, for the purposes of this Article 3, "conflict" means any New City Law that would (a) apply to the Property any change in land use designation or permitted use, density or intensity of development of the Property; (b) apply to the Property any change in off-site infrastructure or utility requirements or limit or control the availability of or ability to obtain public utilities, services, infrastructure or facilities for the Project (provided, however, nothing herein shall be deemed to exempt the Project or the Property from any water use rationing requirements that may be imposed from time to time in the future and nothing herein shall be deemed a commitment to reserve potable water or sanitary sewer capacity which the Parties acknowledge City does not control); (c) modify or control development standards, including building setbacks, square footages or heights; the location of buildings and structures; parking requirements; or grading in a manner that is inconsistent with or more restrictive than the terms included in the Existing Approvals or this Agreement; (d) limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project; (e) limit, reduce or change the location of vehicular access or parking from that permitted under this Agreement, the Applicable City Regulations, or the Project Approvals; (f) require the issuance of permits or approvals by City other than those

required under the Applicable City Regulations; (g) materially and adversely limit the processing or procuring of applications and approvals of Subsequent Approvals that are consistent with Project Approvals; or (h) impose or increase any Impact Fees, Exactions, or Community Benefits requirements, as they apply to the Project, except as permitted under the terms of this Agreement, including but not limited to Sections 3.4.3, 3.4.4 and 3.8. Developer reserves the right to challenge in court any New City Law that would conflict with the Vested Elements or this Agreement or reduce the development rights provided by this Agreement.

3.8 Changes in the Law. As provided in Section 65869.5 of the Development Agreement Statute, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in regional, State or Federal laws or regulations or by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than the City, created or operating pursuant to the laws of the State of California (“**Changes in the Law**”). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Nothing in this Agreement shall preclude Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project of any such Changes in the Law. In the event that a Change in the Law operates to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developer may terminate this Agreement; provided, to the extent that such frustration affects only a portion of the Project but other portions are developed, this Agreement shall remain in effect as to such built portion.

3.9 Initiatives and Referenda. If any New City Law is enacted or imposed by initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which New City Law would conflict with the Vested Elements or this Agreement or reduce the development rights provided by this Agreement and the Project Approvals, such New City Law shall not apply to the Project. City, except to submit to vote of the electorate initiatives and referendums required by Applicable Law to be placed on a ballot, shall not adopt or enact any New City Law, or take any other action which would violate the express provisions of this Agreement or the Project Approvals. Developer reserves the right to challenge in court any New City Law that would conflict with this Agreement or the Project Approvals or reduce the vested development rights provided by this Agreement. Notwithstanding the foregoing, the Parties acknowledge that City’s approval of this Agreement is a legislative action subject to referendum.

3.10 Regulation by Other Public Agencies. Developer acknowledges that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. City will cooperate with Developer in Developer’s effort to obtain such permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Property and/or the Project; provided, however, City will have no obligation to incur any costs, without compensation or reimbursement, or to amend any City policy, regulation or ordinance in

connection therewith. Developer will, at the time required in accordance with Developer's project and construction schedule, apply for all such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. Developer acknowledges that City does not control the amount of any fees imposed by such other agencies. In the event that such fees are imposed upon Developer and are in excess of those allowed by Applicable Law and Developer wishes to object to such fees, Developer may pay such fees under protest. City agrees not to delay issuance of permits or other Subsequent Approvals and entitlements under these circumstances, provided Developer provides City with proof of payment of such fees.

3.11 No Reservation of Sanitary Sewer or Potable Water Capacity. City has found the Project to be consistent with the Bayhill Specific Plan and the associated Water Supply Assessment (as amended) and Sewer Study, which anticipate that there will be sufficient potable water and sanitary sewer capacity to serve future development contemplated by the Bayhill Specific Plan, including the Project, through the Term. However, nothing in this Agreement is intended to provide any reservation of potable water or sanitary sewer capacity.

ARTICLE 4 FEES

4.1 Impact Fees.

1.1.1 Except as otherwise expressly provided herein, during the Term City will have the right to impose and Developer shall be obligated to pay, only such Impact Fees as City has adopted as of the Effective Date and that are set forth in the Existing Approvals and this Agreement (“**Existing Impact Fees**”), which are identified in Exhibit D.

4.1.1 Payment of the Existing Impact Fees shall be in the amounts set forth in Exhibit D, subject to adjustment annually beginning on the first anniversary of the Effective Date to recognize any increase or decrease in the Construction Cost Index, as specified in Exhibit D, from the previous year between the Effective Date and the date of payment, which shall be calculated as of the date paid pursuant to this Agreement and which shall be paid as a condition to issuance of the Payment Obligation Permit, unless prepaid. To the extent that City revises any Existing Impact Fee amount, rate or formula in a way that would result in Developer paying a lower Existing Impact Fee than specified in Exhibit D when payment is due under this Agreement, Developer shall pay the lower Existing Impact Fee.

4.1.2 Developer shall receive the benefit of any fee credits that are in effect as of the Effective Date and the amount of Existing Impact Fees that are payable by Developer hereunder shall be reduced by the amount of such credits. Developer shall receive full credit for all existing uses of the Property to be demolished as specified in the Architectural Review Permit application, subject to the provisions regarding the timing of such credit as to demolition on Lot 2 for Phase 1 development as specified in Section 4.1.5.

4.1.3 The following provisions shall apply regarding prepayment by Developer of Impact Fees and Community Benefits Payments as to any Lot, in whole or in part (“**Prepay**” or “**Prepayment**”).

4.1.3.1 In addition to the Prepayment required under Section 2.2.1 as to Lot 2, Developer may elect, in its sole and absolute discretion, to Prepay all or part of the Impact Fees and Community Benefits Payments for another Lot at any time before they would otherwise be due for payment and thereafter such Prepayment will not be subject to subsequent annual increases per Section 4.1.2. Developer agrees that such prepayment shall not be subject to any restrictions regarding the timing of payments or their expenditure by City that otherwise might apply to payment of Impact Fees, including but not limited to Government Code section 66000 *et seq.* (known as the Mitigation Fee Act).

4.1.3.2 If Developer Prepays based on Allotments but later develops the applicable portion of the Project with more square footage than paid for, including but not limited to as a result of using unallocated space under the Bayhill Specific Plan or transferring allotted square footage from another property, Developer shall pay the difference at the then applicable charge for unpaid Impact Fees and Community Benefits Payments.

4.1.3.3 If Developer Prepays for a Lot and later voluntarily elects to build less square footage on that Lot than was assumed in calculating such Prepayment. Developer shall be entitled to credit in the amount of the excess Prepayment against other fees or costs Developer might be obligated to pay City related to development of that Lot or other Lots in the Project.

4.1.3.4 If Developer Prepays as to the last undeveloped portion of the Property and later voluntarily elects to build less square footage on that portion of the Property, such Prepayment shall be at Developer's own risk and Developer shall not be entitled to any credit or refund by City for any excess Prepayment.

4.1.3.5 If Developer Prepays as to a Lot and thereafter a new regional, state or federal regulation prohibits development of the Lot or reduces such development below the amount Developer is authorized to build pursuant to this Agreement, and such prohibition or reduction results in an excess Prepayment by Developer, then if the regulation still allows development of other Lots in the Project, Developer shall be entitled to credits against other fees and costs Developer might be obligated to pay City related to development of other Lots. If the regulation does not allow development of other Lots in the Project, then if time remains before the Term expires Developer shall not be entitled to any immediate refund but instead shall wait two (2) years from the date Developer or City notifies the other in writing that the regulation prohibits or reduces such development, to determine if such regulation is revised to restore the full amount of development for which Prepayment was made. If the regulation continues to prevent or reduce development of the Lot after such two-year period and development of other Lots is not allowed so as to provide credits, City thereafter will refund the excess Prepayment as follows: (a) City will immediately refund those portions of the excess Prepayment that initially were paid for each Impact Fee (except for Community Benefit Payments) and are being held separately by City in an account earmarked for that Impact Fee, which City has not yet spent or committed to spend; and (b) as to any remaining unpaid portion of the excess Prepayment, City shall devote any unallocated funds from the applicable fee fund that may have been collected from another project which City has not yet spent or committed to spend toward the refund, and shall continue to do so until the refund is paid in full, which period shall not exceed five years. As to Prepayment of Community Benefit Payments, which City intends to merge into City's

general fund upon receipt, refunds of the excess Prepayment shall be in equal shares over the next five (5) years.

4.1.3.6 If Developer Prepays as to a Lot but City prevents development of the Lot or reduces such development below the amount Developer is authorized to build pursuant to this Agreement, Developer shall be entitled to credits or refunds of the excess Prepayment as follows. If City's action preventing or reducing development is based on a New City Law pursuant to Section 3.4.2 (regarding revisions to uniform construction codes) or Section 3.4.3 (regarding health or safety protection), then the provisions and procedures in Section 4.1.4.5 will apply regarding credits and/or refunds, Otherwise, the provisions and procedures in Section 4.1.4.5 will apply, except that Developer will not have to wait two (2) years before beginning to receive refunds.

4.1.3.7 Any credit or refund that may be owed to Developer shall be based on the original Prepayment amount, without any CCI or other escalator adjustment or interest accrual.

4.1.4 Notwithstanding Municipal Code section 12.260.060, Developer shall be entitled to credit against Impact Fees (including the ADIF) and Community Benefits Payments required for Lot 2 development, for the square footage of structures demolished after the Effective Date on the Lot 2 portion of the Property as part of Phase 1 development, regardless of the level or timing of occupation of the demolished structure prior to submission of an application for a building permit for Lot 2.

4.2 Processing Fees. Subject to Developer's right to protest and/or pursue a challenge in law or equity to any new or increased Processing Fee, City may charge and Developer is obligated to pay all Processing Fees for processing applications for Subsequent Approvals, at the rates which are in effect on a City-wide basis at the time those permits, approvals, entitlements, reviews or inspections are applied for, requested or required. Without limiting the above, by entering into this Agreement Developer accepts and shall not protest or challenge imposition of the types and amounts of Processing Fees in effect as of the Effective Date. Developer acknowledges that: (a) certain application processing fees are set in fixed amounts for each application or task as stated in City's Master Fee Schedule, which is charged at the amount in effect as of application submission and paid as a condition to City accepting an application; (b) certain application processing fees are based on actual staff time worked, which is charged at the hourly rate set by City for the work at the time the work occurs, which may be increased from time to time, and which shall be paid by advance deposit as may be supplemented pursuant to the Processing Agreement; and (c) certain application processing fees are required to pay for third party assistance, including but not limited to plan checkers, environmental consultants and outside counsel, which also shall be paid in full prior to commencement of such work pursuant to the Processing Agreement,

4.3 Other Agency Fees. Nothing in this Agreement shall preclude City from collecting fees from Developer that are lawfully imposed on the Project by another agency having jurisdiction over the Project, which the City is required to collect on behalf of such other agencies ("**Other Agency Fees**").

4.4 Taxes and Assessments.

4.4.1 As of the Effective Date, assessments are in effect and applicable to the Property or the Project as shown on the latest property tax bill for the Property. City is not aware of any pending efforts to initiate or consider new or increased assessments that would apply to the Property or the Project.

4.4.2 City reserves the right to impose new, modified or increased taxes and assessments on the Property or the Project, as distinguished from Impact Fees which are otherwise subject to the terms of this Agreement, in accordance with the laws in effect and at the rates in effect at the time; provided, nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property or the Project.

4.5 Connection Fees. Subject to Developer's right to protest and/or pursue a challenge in law or equity to any new or increased Connection Fee, City may charge and Developer shall pay any Connection fee that is lawfully adopted.

4.6 Area Development Impact Fees. City may charge and Developer shall pay Area Development Impact Fees ("**ADIF**") applicable to the Project, notwithstanding adoption of the ADIF will occur following the Effective Date; provided, by entering into this Agreement Developer accepts and shall not protest or challenge imposition of the ADIF in an amount up to Seven Dollars (\$7.00) per square foot of the Project's net new development (subject to credit for demolition) if supported by a nexus study, subject to annual adjustment as specified in Section 4.1.2 and which shall be paid as a condition to issuance of the Payment Obligation Permit. For purposes of this Agreement, the ADIF shall be deemed an Existing Impact Fee as of the Effective Date, even if not formally adopted by City as of such date. If Developer pays the ADIF as to any Lot before it is formally adopted by City, Developer shall pay the amount specified in this Section 4.6, and Developer shall be entitled to credit against future payments to the extent the adopted ADIF per square foot rate is lower.

4.7 Community Benefits Payments.

4.7.1 In consideration of the rights and benefits conferred by City to Developer under this Agreement, Developer shall pay to City Thirty Five Dollars (\$35) per square foot of the Project's net new development above that which was allowed under zoning prior to the adoption of the Bayhill Specific Plan (the "**Community Benefits Payment**"), which zoning allowance square footage is set forth in Exhibit D. Community Benefits Payments shall be subject to annual adjustment as specified in Section 4.1.2 and shall be paid as a condition to issuance of the Payment Obligation Permit.

4.7.2 Notwithstanding the above, pursuant to Section 7.3 of the Bayhill Specific Plan, Developer may request City Council approval to satisfy part or all of its Community Benefits Payments obligations through direct provision of facilities or improvements that the Council in its sole discretion deems desired to benefit and serve the City as a whole and not just the Bayhill Specific Plan Area, subject to City determining what work qualifies and the value to be applied. Without limiting the foregoing, Developer agrees that the Cherry Plaza obligation

described in Section 5.1.2 and Greenway amenities specified in the Specific Plan shall not qualify for this credit. Credit shall be applied against the Community Benefits Payment otherwise owed for the next portion of the Property that is developed pursuant to this Agreement, with any remaining credit applied to the following portion(s) until fully used.

4.8 Credit for Plan Preparation Costs. Credits shall be applied to Developer's monetary obligations set forth in Exhibit D for seventy-five percent (75%) of the monies contributed by Developer toward preparation of the General Plan Amendment and related Bayhill Specific Plan and nexus study. Developer agrees that twenty-five percent (25%) of the funds it paid City for such planning work is deemed spent to process approvals for Phase 1 and does not warrant any credit. Credits shall be applied in equal one-third (1/3) shares against Existing Impact Fees and Community Benefits Payments otherwise owed for Phase 1, and the next two Lots that are developed by Developer.

4.9 Post-Termination Payment Obligations. Upon termination of the Agreement, Developer shall have no further obligation to make any further payments pursuant to Exhibit D, except for obligations due and payable but not yet paid, and except for obligations that may be owed independently of this Agreement, including but not limited to Processing Fees or other fees charged by City related to development or activities that Developer pursues on the Property. City will return to Developer any Processing Fee payments made by Developer but not expended or committed by City at the time of termination; provided, Developer shall remain obligated for and shall pay sums that may be owed for consulting or legal services for work performed, expenses incurred, or work or expenses committed to as of the date of termination, not yet invoiced to or paid by City.

4.10 Shoring Mechanism Fee. City may charge and Developer shall pay the fee specified in Exhibit D (the "Shoring Fee") for each tieback, soil nail or other shoring mechanism (each, a "Shoring Mechanism") installed by Developer that encroaches within twenty (20) feet of the finished surface of a public street, right-of-way, or public utility easement, which shall be payable as a condition of issuance of the Payment Obligation Permit. The Shoring Fee shall be subject to adjustment annually as set forth in Section 4.1.2 relating to Impact Fees. Developer accepts the Shoring Fee amount shown in Exhibit D, subject to annual adjustment as specified herein, to be a reasonable charge for City's costs and burdens related to encroachment by the Shoring Mechanisms.

ARTICLE 5 NON-MONETARY COMMUNITY BENEFITS

5.1 Purpose. In addition to the monetary Community Benefits Payments that Developer is providing to City per Section 4.7 of this Agreement, Developer is also providing the following non-monetary Community Benefits to City, each of which exceeds the nexus of the Project's impacts and which could not otherwise be required of Developer.

5.1.1 Tax Point of Sale Designation. Developer shall use best efforts to achieve tax allocations to the City of San Bruno pursuant to State of California Department of Tax & Fee Administration, Board of Equalization Publication #9 specific to tax allocation, including but not

limited to obtaining a sub-permit for eligible contracts to make a direct allocation of eligible tax to the City.

5.1.2 Cherry Plaza. As part of Phase 1 development, Developer shall construct and improve a publicly accessible, privately owned and maintained plaza at the northeast corner of Cherry Avenue and Grundy Lane, pursuant to Policy 3-5 of the Bayhill Specific Plan and Bayhill Zoning Section 12.290.070.I (“**Cherry Plaza**”). Pursuant to VTM Condition No. _____, as a condition to receiving certificates of occupancy for Phase 1, Developer shall enter into an agreement with City to be recorded against title to Lot 1N and Lot 1S , granting public rights to use Cherry Plaza, describing Developer’s obligations regarding construction and maintenance, and specifying terms for use of Cherry Plaza by Developer and the public.

ARTICLE 6 ANNUAL REVIEW

6.1 Annual Review.

6.1.1 Purpose. As required by California Government Code section 65865.1 and Sections 15-17 of the City Development Agreement Regulations, City will review this Agreement and all actions taken pursuant to the terms of this Agreement every twelve (12) months to determine good faith compliance with this Agreement. Specifically, City’s annual review will be conducted for the purposes of determining compliance by Developer with its obligations under this Agreement. Developer will pay City’s staff time costs and other expenses City may incur in conducting the review.

6.1.2 Conduct of Annual Review. The annual review will be conducted pursuant to the requirements and procedures specified in the City Development Agreement Regulations as they may be amended from time to time; provided, the Planning Commission at any time after conducting the first three (3) annual reviews may delegate review authority to the Director, who then in subsequent years will conduct the review at staff level with public notice but without a public hearing, and the Director’s decision may be appealed to the Planning Commission and then to the City Council pursuant to the City Development Agreement Regulations. In the event City determines that Developer is not in good faith compliance with the terms and conditions of this Agreement, City may give the Developer a written Notice of Breach, in which case the provisions of Section 12.1 shall apply.

6.1.3 Failure to Conduct Annual Review. Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review. Failure of City to conduct an annual review pursuant to the terms of this Article 6 shall not constitute or be asserted as a default by Developer.

6.1.4 Certificate of Compliance. If, at the conclusion of the annual review described in Section 6.1.2 or if Developer intends to seek financing or sell the Project and Developer is found to be in good faith compliance with the material terms and conditions of this Agreement, City will, upon request by Developer, issue a Certificate of Compliance

(“**Certificate**”) to Developer stating that after the most recent annual review and based upon the information actually known to an appropriate official of City specified in such Certificate that: (a) this Agreement remains in effect (for the remainder of the Term); (b) Developer has demonstrated good faith compliance with the terms and conditions of this Agreement for the applicable annual review period; and (c) Developer is not in Default of this Agreement, and to City’s knowledge no events exist that with the passage of time or giving of notice or both would be a Default under this Agreement. The Certificate will be in a recordable form, contain information necessary to communicate constructive record notice of the finding of compliance, and state the anticipated date of commencement of the next annual review. Developer may record the Certificate at its sole cost and expense without cost or expense to City.

ARTICLE 7 COOPERATION AND IMPLEMENTATION

7.1 Subsequent Approvals. Certain subsequent discretionary and ministerial land use approvals, entitlements, and permits other than the Existing Approvals may be necessary or desirable for implementation of the Project (“**Subsequent Approvals**”). The Subsequent Approvals may include, without limitation, the following: amendments of the Existing Approvals, use permits, demolition and grading permits, excavation permits, building permits, design review and architectural review permits, sign permits, sewer and water connection permits, encroachment permits, certificates of occupancy, lot line adjustments or lot merger, site plans, development plans, landscaping plans, improvement plans, land use plans, building plans and specifications, signage plans, transportation demand management programs, shoring permits, tree removal permits, foundation permits, superstructure permits, core and shell permits, tenant improvement permits, utility permits, and any amendments to, or repealing of, any of the foregoing. Except as otherwise expressly provided herein, the City will not impose requirements or conditions upon the development and construction of the Project that are inconsistent with the Existing Approvals and Applicable City Regulations, including but not limited to the Bayhill Specific Plan, including the terms and conditions of this Agreement, and any Subsequent Approvals as may be obtained from time to time.

7.2 Scope of Review of Subsequent Approvals. City, in approving the Existing Approvals and vesting the Project through this Agreement, acknowledges that it is limiting its future discretion with respect to the Project and Subsequent Approvals to determining whether the application for a Subsequent Approval is consistent with and meets the objective criteria set forth in the Applicable City Regulations, Existing Approvals, and where applicable, other Project Approvals previously granted. Subject to the foregoing, City reserves discretion to impose appropriate Exactions in connection with issuance of a Subsequent Approval, as necessary to bring the Subsequent Approval into compliance with any Applicable Law (excluding New City Laws not otherwise authorized by Section 3.4). For any part of a Subsequent Approval request that has not been previously reviewed or considered by City (such as additional details or plans), City shall exercise its discretion consistent with the Project Approvals and the requirements of this Agreement. Consequently, City shall not use its discretionary authority to change the policy decisions reflected by the Project Approvals and this Agreement or otherwise to prevent or to delay development of the Project as contemplated in the Project Approvals and this Agreement. For a Subsequent Approval request that would alter or avoid a requirement otherwise applicable to the Project (such as a variance to development standards), City retains its discretion to

approve, deny or modify such request. If City denies any application for a Subsequent Approval that implements the Project as contemplated by the Project Approvals, such denial must be consistent with Applicable Law. At such time as any Subsequent Approval applicable to the Property is approved by City, then such Subsequent Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be automatically vested and treated as a “Project Approval” under this Agreement without the need to amend this Agreement.

7.3 Processing Applications for Subsequent Approvals.

7.3.1 Timely Submittals by Developer. Developer acknowledges that City cannot begin processing applications for Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use diligent good faith efforts to (a) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (b) cause Developer’s planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals.

7.3.2 Timely Processing by City. Upon submission by Developer of all applicable applications, Processing Fees and any and all other fees and deposits for any pending and future Subsequent Approvals, City will, to the full extent allowed by Applicable Law, promptly and diligently subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer’s currently pending Subsequent Approval applications including: (a) providing, pursuant to the terms of a Processing Agreement between the Parties, staff assistance, additional staff and/or third-party consultants for concurrent, expedited planning and processing of each pending and future Subsequent Approval application; (b) if legally required, providing notice and holding public hearings; and (c) acting on any such pending and future Subsequent Approval application. To the greatest extent permitted by the Existing Approvals or Applicable Law, Subsequent Approvals will be processed administratively by City staff. Developer’s obligation to pay for the processing of Subsequent Approvals, including staff time, materials and third-party consultants, shall be based on the Processing Agreement executed between the Parties, and related addenda.

7.3.2.1 City shall use reasonable efforts to process and take final action on Developer’s applications for Subsequent Approvals within the following time periods (each a “**Target**” and together the “**Targets**”) after complete applications for such Subsequent Approvals have been delivered to the City and accepted as complete, or deemed complete pursuant to Government Code Section 65943 (or any successor statutes) which shall apply to all Subsequent Approvals, if requested by developer: (a) ministerial permits and encroachment permits – six (6) months; and (b) discretionary permits (except encroachment permits) – ten (10) months.

7.3.2.2 In the event that the Subsequent Approvals cannot be processed and issued by City within the Targets, City shall utilize an outside third party plan checker or

other consultant support, and City shall consider hiring additional City staff as City reasonably determines is feasible and desirable, all at the sole election and expense of Developer.

7.3.2.3 Processing of discretionary Subsequent Approvals (but not ministerial permits) shall be subject to the application review requirements set forth in Government Code section 65943.

7.3.2.4 The following provisions shall apply to City receipt and processing of applications for ministerial permits.

7.3.2.4.1 Subject to Section 7.3.2.4.2 below, within sixty (60) days after Developer's submission of an application for a ministerial permit to the City official or department responsible for approval of such permit, City will determine in writing whether the application is complete and transmit the determination to Developer. If City determines that the ministerial permit application is not complete, City's written determination shall provide a list that is as reasonably complete as possible of items that are missing or not complete. If City does not provide a written determination within sixty (60) days after receipt of the initial ministerial permit application or a supplemental ministerial permit application, thereafter Developer may send written notice following the noticing procedures in Section 13.3 to (a) the official in charge of the responsible City department (e.g., Chief Building Official, Fire Chief), and (b) the City Attorney, which notice shall prominently state in bold lettering that the permit application in question shall be deemed complete for purposes of City review if City fails to respond within ten (10) business days of receipt of the notice. If City does not respond in writing within such ten (10) business day period either with a determination of completeness or a list of items that are not complete, the application shall be deemed complete, and thereafter City shall consider approval or denial based on the application as submitted and the information it contains.

7.3.2.4.2 City will endeavor in good faith to concurrently process ministerial permits with discretionary permits for development of a Lot if so requested by Developer, subject to City's evaluation in its sole discretion of staff availability and workloads. If Developer submits a ministerial permit application for a Lot prior to approval of discretionary permits for development of that Lot, and City determines in its sole discretion that staff availability and workloads do not allow concurrent processing, the terms and timing provisions in Section 7.3.2.4.1 shall not apply until after final approval of the discretionary permits, unless City notifies Developer prior to such approval that it is able to begin processing the ministerial permit. Developer acknowledges that the processing of ministerial permits (and the costs Developer consequently may bear prior to approval of necessary discretionary permits) shall be at Developer's sole risk.

7.3.3 Miscellaneous.

7.3.3.1 Following issuance of the relevant Subsequent Approvals for development of a particular Lot in the Project or a Building and payment by Developer of the applicable Impact Fees and Community Benefits Payments for such development, City will not charge Developer any additional costs for such Lot or Building, except for City's Processing Fees, inspection fees and other fees set forth in the City's published Master Fee Schedule as of the date of the requested action, for the following actions: (a) issuance of any required ministerial

permits or approvals necessary for the construction and occupation of a Building, provided Developer's applications satisfy all applicable requirements; (b) authorization of year-round site work, provided it satisfies applicable requirements pursuant to Section 7.3.3.3; (c) temporary reductions in parking requirements during construction pursuant to Section 7.3.3.4, provided the reduction is approved in City's reasonable discretion; and (d) granting of encroachment permits, subject to City's reasonable discretion regarding such permits and subject to other costs as specified in Section 7.3.3.5.

7.3.3.2 If consistent with the Project's Vesting Tentative Map and applicable Final Maps, as part of applications for Subsequent Approvals for Lots 2 through 5, City will approve requests to construct garages and bridges that would encroach into PUE's and public street rights-of-way at the locations such garages and bridges cross PUE's and rights-of-way as shown on the applicable Final Map, as part of determining the required scope of PUE's and rights-of-way, taking into consideration City's then-current and possible future requirements regarding such easements and rights-of-way. Developer agrees (a) that designation in the Vesting Tentative Map of future garage and bridge locations does not automatically constitute approval of the depths and heights of such facilities unless and until the respective Final Maps are filed and approved, and (b) City approval of a maximum PUE depth for Phase 1 shall not be deemed City consent to the same or any maximum PUE depth applicable to future development, all of which shall be limited to the depth of top of the second sublevel of the respective subterranean garages; provided, Developer acknowledges that PG&E typically requires that PUE's provide a minimum clearance from its improvements of ten (10) feet vertically and horizontally, which may affect Developer's garage and Lot development designs; and provided further, if Developer does not require any subterranean garage to extend beneath a PUE, then the depth of that PUE will not be limited. Developer further agrees to be liable for and promptly reimburse City for any additional costs City may incur in its use of PUE's and rights-of-ways for utilities arising from Developer's construction encroachments.

7.3.3.3 City agrees that year-round site work, including but not limited to grading, excavation, and hauling, should be acceptable and permitted, upon Developer demonstrating that the necessary storm water pollution protection program ("SWPPP") measures are in effect, and any other applicable conditions, mitigation measures, requirements and regulations are satisfied.

7.3.3.4 City agrees to consider in City's reasonable discretion Developer requests to allow temporary reductions in City's off-street parking requirements during construction of the Project. City may require Developer to provide surveys or other documentation demonstrating to City's reasonable satisfaction that adequate parking will serve the Project during the temporary reduction, and that such reduction will not adversely affect other Specific Plan Area properties and businesses or the surrounding community.

7.3.3.5 Developer may, at its discretion, reduce the amount of permanent parking otherwise required for Project development on a Lot by up to one percent (1%) of the parking otherwise required (other than for Phase 1) without a requirement for additional studies or City approval, subject to paying City a Parking In-lieu Fee per parking space eliminated in the amount shown in Exhibit D as of the Effective Date, with such fee subject to adjustment annually as set forth in Section 4.1.2 relating to Impact Fees. Any further reduction in off-street

parking requirements for a Lot that Developer may desire must comply with the Applicable City Regulations.

7.3.3.6 City agrees that any grants of encroachment permits in City's right of way and easements for construction of the Project will be subject only to applicable Processing Fees, including for City inspections, but not subject to additional fees or costs, including but not limited to fees for temporary street closures; provided, notwithstanding Section 7.3.3.1, Developer shall be responsible for costs City may incur as a consequence of such street closures, including but not limited to Police Department or Public Works staff time needed to monitor or implement closure; and provided further, Developer acknowledges City's requirement that Developer pay any applicable Shoring Fee for the Shoring Mechanisms pursuant to Section 4.10.

7.3.3.7 City agrees to allow Developer to install enhanced security features at Building entrances and the Project's garages, so long as in compliance with Applicable Law and consistent with the Project Approvals.

7.3.4 CEQA. The Parties acknowledge that certain Subsequent Approvals may legally require additional analysis under CEQA. Nothing contained in this Agreement is intended to prevent or limit the City from complying with CEQA. In acting on Subsequent Approvals, City will rely on the Project CEQA Documentation to the fullest extent permissible by CEQA, including CEQA Guideline Sections 15168(c)(2), 15182, and 15183, as determined by City in the exercise of its independent judgment. In the event additional environmental review is required for a Subsequent Approval, City will limit such additional review to the scope of analysis mandated by CEQA and the subject matter of the Subsequent Approval, and will diligently conduct such additional review, all as determined by City as the lead agency under CEQA in the exercise of its independent judgment. City acknowledges that the California court decision in *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal. App. 5th 80, regarding mitigation of environmental impacts as a condition to architectural review of proposed development, limits the authority to require such mitigation to matters within the discretion available to condition approval under the applicable architectural review regulations. City further acknowledges that despite its characterization of encroachment permits as discretionary, grants of encroachment permits in City's right of way and easements for construction of the Project are actions addressed by the Project CEQA Documentation and should not require additional analysis under CEQA absent unusual circumstances.

7.4 Other Agency Subsequent Approvals. City will cooperate with Developer at no cost to City, to the extent appropriate and as permitted by Applicable Law, in Developer's efforts to obtain, as may be required, Other Agency Subsequent Approvals. Developer shall not submit applications for Other Agency Subsequent Approvals or material supporting such applications that are inconsistent, as reasonably determined by City, with this Agreement or the Project Approvals, except to the extent that Developer is also therewith requesting modifications to this Agreement or the Project Approvals that would make this Agreement or the Project Approvals consistent with the applications for the Other Agency Subsequent Approvals.

7.5 Effective Timing and Treatment of Street Abandonment. The Parties acknowledge that recording of the final map for Phase 1 of the Project will effect both (a) the

Street Abandonment with respect to the affected portions of Grundy Lane and Elm Avenue and easements identified on the final map and (b) Developer's offer to dedicate new easements and grant fee title to City for the new alignment of Grundy Lane as identified on the final map; provided, the Parties may agree to effectuate the Street Abandonment and new dedications at another time. Implementation of the Street Abandonment will conform to (a) the applicable requirements of the California Subdivision Map Act, (b) the applicable requirements of the California Streets and Highway Code if such Code applies to the Street Abandonment, and (c) such reasonable requirements as may be specified by City for the timing and manner of street closure that are consistent with this Agreement. To the extent useful or necessary, Developer shall grant temporary easements at the time the final map is recorded for existing utilities that are located within the public streets and easements that are abandoned in order to allow sufficient time for the removal and/or relocation of such utilities and the dedication and acceptance of new permanent easements for such utilities.

ARTICLE 8 AMENDMENT OF AGREEMENT AND PROJECT APPROVALS

8.1 Amendment by Written Consent. Except as otherwise expressly provided herein (including Section 6.1 relating to City's annual review and Section 12.3 relating to termination in the event of a breach), this Agreement may be terminated, modified or amended only by mutual written consent of the Parties hereto or their successors in interest or assignees and in accordance with the provisions of Government Code sections 65967, 65867.5 and 65868.

8.2 Project Approval Amendments. To the extent permitted by Applicable Law, Project Approvals (other than this Agreement) may, from time to time, be amended in the following manner:

8.2.1 Administrative Project Amendments. Upon Developer's written request for an amendment or modification to the Existing Approvals or Subsequent Approvals, the Director will determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement and Applicable Law. If the Director finds, in his or her sole discretion, that the proposed amendment or modification is minor, consistent with this Agreement and Applicable Law, and will result in no new significant impacts not addressed and mitigated in the Project CEQA Documentation, the amendment or modification shall be determined to be an "**Administrative Project Amendment**" and shall not require an amendment to this Agreement. Upon the Director's approval, any Administrative Project Amendment shall be automatically incorporated into the applicable Project Approvals and this Agreement and shall be automatically vested pursuant to this Agreement without requiring an amendment to this Agreement. Without limiting the foregoing, and by way of example, after City approval of the Existing Approvals, Developer requests for lot line adjustments, minor changes in improvement plans, minor changes in land uses involving minimal acreage, minor alterations in vehicle circulation patterns or vehicle access points, minor changes in VMT mitigation and monitoring, minor changes in the amount of parking and parking layout, changes in pathway alignments, substitutions of comparable landscaping for any landscaping previously shown, minor changes in conditions of approval, and variations in the location of structures that do not substantially alter

the infrastructure connections or facilities, that do not substantially alter the design concepts of the Project may be treated as Administrative Project Amendments.

8.2.2 Major Project Amendments. Any amendment to the Project Approvals (other than this Agreement) which is determined not to be an Administrative Project Amendment as set forth in Section 8.2.1 shall be deemed a “**Major Project Amendment.**” A Major Project Amendment shall be processed in the same manner and require the same approvals as the original Project Approval, including, where so required, giving of notice and a public hearing before the Planning Commission and City Council in accordance with Applicable Law. The Director will have the authority to determine if an amendment is a Major Project Amendment subject to this Section 8.2.2 or an Administrative Project Amendment subject to Section 8.2.1.

8.3 Amendment of this Agreement. This Agreement may be amended, refined or clarified from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest, as follows:

8.3.1 Refinement by Operating Memoranda.

8.3.1.1 The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation between City and Developer, and during the course of implementing this Agreement and developing the Project refinements and clarifications of this Agreement become appropriate and desired with respect to the details of performance of City and Developer. If and when, from time to time, during the Term of this Agreement, City and Developer agree that such a refinement is necessary or appropriate, City and Developer will effectuate such refinement through a memorandum (“**Operating Memorandum**”) approved in writing by City and Developer, which, after execution, shall be attached hereto as an addendum and become a part hereof. Any Operating Memorandum may be further refined from time to time as necessary with future approval by City and Developer. No Operating Memorandum shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, will make the determination on behalf of City whether a requested refinement may be effectuated pursuant to this Section 8.3.1 or whether the requested refinement is of such a character to constitute an amendment hereof pursuant to Section 8.3.2 below. The City Manager is authorized to execute any Operating Memoranda hereunder on behalf of City.

8.3.1.2 By way of illustration but not limitation of the above criteria for an Operating Memorandum, any refinement of this Agreement which does not substantially affect: (a) the Term; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms, restrictions or requirements for Subsequent Approvals; (e) increases in the density or intensity of the use of the Property or the maximum height or size of proposed buildings; (f) monetary contributions by Developer, including Impact Fees or Community Benefits Payments; or (g) the provision of Exactions or Community Benefits, shall be deemed suitable for an Operating Memorandum and the City Manager, except to the extent otherwise required by Applicable Law, may approve the Operating Memorandum without notice and public hearing.

8.3.2 Agreement Amendments. Any revision to this Agreement which is determined not to qualify for an Operating Memorandum as set forth in Section 8.3.1 shall be deemed an “**Agreement Amendment**” and shall require giving of notice and a public hearing before the Planning Commission and City Council in accordance with Applicable Law. The City Manager is authorized in her or her sole discretion to determine if an amendment is an Agreement Amendment subject to this Section 8.3.2 or qualifies for an Operating Memorandum subject to Section 8.3.1.

8.3.3 Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which refers expressly to this Agreement and is signed by duly authorized representatives of both Parties or their successors in interest. Each Operating Memorandum and Agreement Amendment shall upon approval and execution become part of this Agreement. A copy of any change will be provided to the City Council within thirty (30) days of its execution.

8.4 Amendments to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed as of the date of execution of this Agreement.

8.4.1 No amendment or addition to the Development Agreement Statute or any other federal or state law or regulation that would materially adversely affect the interpretation or enforceability of this Agreement or would prevent or preclude compliance with one or more provisions of this Agreement shall be applicable to this Agreement, unless such amendment or addition is specifically required by a Change in the Law or is mandated by a court of competent jurisdiction.

8.4.2 If such amendment or change is permissive (as opposed to mandatory), this Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Agreement to permit such applicability.

8.4.3 In the event that the application of such new law or regulation to this Agreement is mandatory (as opposed to permissive), the Parties will meet in good faith to determine the feasibility of any modification or suspension of this Agreement that may be necessary to comply with such new law or regulation and to determine the effect such modification or suspension would have on the purposes and intent of this Agreement and the Vested Elements. Following such meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended but only to the minimum extent necessary to comply with such new law or regulation. Developer and/or City will have the right to challenge any new law or regulation, or its application to this Agreement, that would prevent compliance with the terms of this Agreement, and in the event such challenge is successful this Agreement shall remain unmodified and in full force and effect except as the Parties may mutually agree.

8.4.4 During the time such new law or regulation or its application to this Agreement is challenged in good faith by a Party, the Term of this Agreement may be extended for up to six (6) years, after which if the Parties cannot mutually agree to a modification or suspension as described above either Party may terminate this Agreement.

ARTICLE 9
INSURANCE, INDEMNITY AND COOPERATION IN THE EVENT OF
LEGAL CHALLENGE

9.1 Insurance Requirements. Prior to commencement of construction activities (including demolition) and through completion of all construction activities for the Project, Developer shall procure and maintain, or cause its contractor(s) to procure and maintain, a commercial general liability policy in an amount not less than Five Million Dollars (\$5,000,000) combined single limit, including contractual liability together with a comprehensive automobile liability policy in the amount of Two Million Dollars (\$2,000,000), combined single limit. Such policy or policies shall be written on an occurrence form. Developer's insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-:VII or a rating otherwise approved by the City in its sole discretion. Developer shall furnish at City's request appropriate certificate(s) of insurance evidencing the insurance coverage required hereunder, and City Parties shall be named as additional insured parties in such policies. The certificate of insurance shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination (ten (10) days advance notice in the case of cancellation for nonpayment of premiums) where the insurance carrier provides such notice to the Developer. Coverage provided hereunder by Developer shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City. The insurance requirements under this Agreement may be adjusted by City (in consultation with its insurance advisors) not more often than once every five (5) years during the Term for the purpose of increasing the minimum limits of insurance from time to time, which increased limits shall be reasonable and customary for similar agreements in accordance with generally accepted insurance industry standards.

9.2 Indemnity and Hold Harmless.

9.2.1 Developer shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City Parties from and against any and all Claims, including Claims for any bodily injury, death, or property damage, resulting directly or indirectly from development or construction of the Project, from operation of the Project and the acts or omissions of Developer and Project tenants during occupancy of the Project, and from implementation of the Project Approvals by City or Developer, and, if applicable from compliance with the terms of this Agreement, and/or from any other acts or omissions of Developer under this Agreement, whether such acts or omissions are by Developer or any of Developer's contractors, subcontractors, agents or employees; provided that Developer's obligation to indemnify and hold harmless (but not Developer's duty to defend) shall be limited (and shall not apply) to the extent such Claims are found to arise from the gross negligence or willful misconduct of a City Party. This Section 9.2 includes any and all present and future Claims arising out of or in any way connected with Developer's or its contractors' or subcontractors' obligations to comply with any applicable State Labor Code requirements and implementing regulations of the Department of Industrial Relations pertaining to "public works" (collectively, "**Prevailing Wage Laws**"), including but not limited to all claims that may be made by contractors, subcontractors or other

third party claimants pursuant to Labor Code sections 1726 and 1781. Developer's obligations under this Section 9.2 shall survive expiration or earlier termination of this Agreement. In the event of an inconsistency between this Section 9.2.1 and any provision in any Project Approval or in the Municipal Code regarding Developer's obligations to indemnify, defend or hold harmless City and the City Parties, or Developer's lack of such obligations, the provision providing the broadest and strongest protection for City and the City Parties shall govern.

9.2.2 Construction of Project improvements within a public utility easement ("PUE") or public street right-of-way shall be subject to the following terms.

9.2.2.1 City's approval of Phase 1 includes (a) construction of underground garages serving Lot 1N and Lot 1S which will be located beneath two PUEs running parallel to and along each side of Grundy Lane, (b) construction of an underground tunnel beneath the Grundy Lane right-of-way and the two PUEs connecting the two garages, and (c) construction of a pedestrian bridge over the Grundy Lane right-of-way and the two PUEs connecting the new buildings on Lot 1N and Lot 1S (cumulatively, the "**Overlapping Improvements**"). Developer acknowledges that City and other utility providers may use the PUEs and Grundy Lane right-of-way to install underground utility lines, initially as part of Phase 1 development and thereafter as they may require from time to time, and that City and the other utility providers may require excavating within the PUEs and Grundy Lane right-of-way to maintain and replace such utility lines or install new utility lines. City has agreed to limit the depth of the PUEs within the Phase 1 portion of the Property to seven (7) feet below finished grade to accommodate Developer's Phase 1 garage improvements.

9.2.2.2 Developer acknowledges the risk that such work by City and other utility providers may directly or indirectly result in damage to the Phase 1 improvements, including but not limited to breaching garage waterproofing causing water infiltration. Developer also acknowledges the risk of damage resulting from placement of the Overlapping Improvements beneath utility lines, including but not limited to water from a leaking pipeline entering a garage. Developer hereby waives all claims against City and other utility providers, and against their contractors, subcontractors and others working on behalf of City and other utility providers, that may arise regarding such utility work or such damage, and Developer assumes such risk, accepts all liability, and shall indemnify, defend and hold City and the other utility providers harmless from any third-party claims that may arise from such work or such damage, Developer acknowledges ___ Condition No. __, which requires Developer to record against title to the Phase 1 portion of the Property as a condition to issuance of the Payment Obligation Permit, documentation acknowledging this risk and Developer's waiver of claims, acceptance of liability and indemnification commitment prior to (the "**Overlap Liability Acknowledgment**").

9.2.2.3 Depending on circumstances, Developer's plans for development of future portions of the Project also may include a request to build similar Overlapping Improvements within and beneath PUEs and public street rights-of-way, or to allow additional encroachments within PUEs. Developer agrees that City's willingness to consider and allow such encroachments will be conditioned on Developer recording a similar Overlap Liability Acknowledgment on title to the subject portion(s) of the Property. The City's review of tunnels, garages, and bridges shall be subject to Section 7.3.3.2 herein.

9.3 Defense and Cooperation in the Event of a Litigation Challenge. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging City's consideration and/or approval of this Agreement or the Project Approvals, or challenging the validity of any provision of this Agreement or the Project Approvals ("**Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. To the extent Developer desires to contest or defend such Litigation Challenge: (a) Developer shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice, with the costs of such representation, including Developer's administrative, legal and court costs, paid solely by Developer; (b) City may, in its sole discretion, elect to joint representation by Developer's counsel or be separately represented by an experienced litigation attorney of City's choosing, at billing rates no higher than those commensurate with the higher of (i) the billing rates of litigation attorneys at the law firm of Burke, Williams & Sorenson or (ii) the billing rates then charged to Developer by Developer's litigation attorney, with the costs of such representation including City's administrative, legal, and court costs and City Attorney oversight expenses, paid by Developer; (c) the Parties shall affirmatively cooperate in defending the Litigation Challenge and execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under applicable law; and (d) Developer shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys' fees or cost awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation. Any proposed settlement of a Litigation Challenge shall be subject to City's and Developer's approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City and Developer in accordance with Applicable Law, and City reserves its full legislative discretion with respect to any such City approval. If Developer opts not to contest or defend such Litigation Challenge, City will have no obligation to do so. To the extent that any Litigation Challenge (including but not limited to based on City's actions taken pursuant to CEQA) results in the entry of a final judgment or order preventing Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project commenced or not), Developer may elect to terminate this Agreement. Developer shall reimburse City for its costs incurred in connection with the Litigation Challenge within thirty (30) days following City's written demand therefor, which may be made from time to time during the course of such litigation. Developer's obligations under this Section 9.3 shall survive expiration or earlier termination of this Agreement.

9.4 Public Records Act Requests. Developer shall reimburse City for all costs and fees associated with City's response to Public Records Act requests related to this Agreement, the Project Approvals, the Property and the Project. City will confer with Developer prior to responding to any Public Records Act requests; provided, City will have full control and authority over its response.

ARTICLE 10
ASSIGNMENT, TRANSFER AND NOTICE

10.1 Assignment and Transfer. Material consideration and incentive for City agreeing to enter into this Agreement and agreeing to grant the Existing Approvals are those Community Benefits described in Article 5 and the Property being developed and operated as the Project. For that reason, certain restrictions on the right of Developer to assign or transfer its interest under this Agreement with respect to the Property during the Term are necessary in order to assure the achievement of the goals, objectives and Community Benefits of the Project and this Agreement. Developer agrees to and accepts the restrictions set forth in this Section 10.1 as reasonable and as a material inducement for City to enter into this Agreement.

10.1.1 Assignment Criteria. Except as otherwise provided in Section 10.1.2 and Section 10.3, during the Term, Developer shall have the right to assign or transfer (each a “**Transfer**”) in whole or in part, its rights, duties and obligations under this Agreement to any person, partnership, joint venture, firm, company, corporation or other entity (any of the foregoing, a “**Transferee**”), if Developer or the Transferee satisfies the following conditions, subject to prior review and written confirmation by City in its reasonable discretion that each condition is satisfied:

10.1.1.1 Such Transfer shall only occur together with a transfer of the Property, or portion thereof, and in the event of a Transfer involving only a portion of the Property Developer shall retain all rights, duties and obligations under this Agreement as to the retained portion of the Property;

10.1.1.2 The proposed Transferee provides acceptable and verifiable documentation that it has sufficient financial resources to undertake development and/or operation of the Project, and otherwise perform the payment and other obligations of Developer under this Agreement; and

10.1.1.3 Developer is not in Default under this Agreement, or the Transferee agrees to cure any Default promptly after the assignment.

10.1.2 Affiliate Assignment. Notwithstanding the foregoing criteria in Section 10.1.1, Developer may assign its rights under this Agreement to any corporation, limited liability company, partnership or other entity which is directly or indirectly controlling of, controlled by, or under common control with Developer, and “control,” for purposes of this definition, means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other owners of such entity (“**Affiliated Party**”). Developer shall provide verifiable documentation that the Transferee proposed pursuant to this Section 10.1.2 qualifies as an Affiliated Party, sufficient and acceptable in City’s reasonable discretion, and such Transfer shall not occur without City’s written confirmation of such qualification. A Transfer to a qualified Affiliated Party does not require City’s consent. The Parties acknowledge that the following are qualified as Affiliated Parties of Developer: (i) Alphabet, Inc., parent company of Google LLC; (ii) any affiliate of Google LLC or Alphabet, Inc.; and (iii) any entities related to Google LLC or Alphabet, Inc. as a result of merger, acquisition, operation of law or by order of a court of competent jurisdiction.

10.1.3 Notice. At least thirty (30) days prior to Developer's desired Transfer date, Developer shall provide City with written notice of any proposed Transfer together with such information needed to document satisfaction of the conditions in Section 10.1 required for a Transfer. Each such notice shall be accompanied by evidence of Transferee's assumption of Developer's obligations hereunder in the form of **Exhibit E** (the "**Assignment and Assumption Agreement**"), which shall be recorded in the Official Records of San Mateo County (assuming City approves the Transfer if required by Section 10.1) concurrent with Transfer to the Transferee. Developer specifically acknowledges that a Transfer to an Affiliated Party shall require an Assignment and Assumption Agreement.

10.1.4 City Consent. City will provide its written consent or other response within thirty (30) days of City's receipt of the notice and all documentation City may require in its reasonable discretion. City will not be liable for any delay in Developer completing a Transfer due to Developer's failure or delay in providing the documentation City reasonably requires to consent to the Transfer.

10.1.5 Payment of Costs. Developer shall pay the actual costs borne by City in connection with any review of the proposed Transfer, including costs of attorney review.

10.1.6 Non-Transfer. The following shall not be considered a Transfer and shall not be subject to Section 10.1: (i) leases, subleases, licenses, other occupancy agreements, or easements, so long as such arrangement does not involve construction of a portion of the Project; (ii) the granting of any mortgage or deed of trust or any foreclosure thereof or deed-in-lieu with respect thereto; provided, such actions shall not affect Developer's obligations under the Project Approvals and this Agreement or relieve any portion of the Property or Project from the terms and conditions of the Project Approvals and this Agreement; (iii) any change, directly or indirectly, in the ownership interests of Developer or any Affiliated Party or any Transferee or any of their respective affiliates, provided such change (a) does not materially adversely affect the ability of Developer, an Affiliated Party to whom a Transfer has been made, or another Transferee to satisfy the obligations of Developer under the Project Approvals and this Agreement, financial or otherwise, and (b) in the case of an Affiliated Party to whom a Transfer has been made, does not alter its status as an Affiliated Party as defined in Section 10.1.2; (iv) joint ventures in which Developer or any Affiliated Party has major decision rights; and (v) any transfer of land or improvements to City or City's designee or to non-profits in satisfaction of obligations under this Agreement or the Project Approvals.

10.2 Release of Transferring Developer. Notwithstanding any sale, Transfer or assignment of the Property, in whole or in part, Developer shall continue to be obligated under this Agreement as to all of the Property so transferred unless and until (a) City has consented to the assignment as provided above (except for a Transfer to an Affiliated Party which does not require City consent) and receives and records Transferee's Assignment and Assumption Agreement, or (b) with respect to Transfers entered into after the issuance of a certificate of occupancy pursuant to Section 10.4, City receives a fully executed and recordable Assignment and Assumption Agreement from Developer. Upon providing such Assignment and Assumption Agreement to City, any Default by a Transferee of any rights, duties, obligations or interests so transferred and assumed by the Transferee shall not thereby constitute a Default by Developer with respect to the rights, duties, obligations or interests not transferred.

10.3 Assignment to Financial Institutions or Mortgagee.

10.3.1 Notwithstanding any other provision of this Agreement, Developer may assign all or any part of its rights and duties under this Agreement to any financial institution or Mortgagee from which Developer has borrowed funds for use in acquiring the Property and constructing and/or operating the Project and neither such assignment nor the financing shall require consent from City; provided, City shall be given notice of such intended assignment at least ten (10) Business Days beforehand, and before such assignment may take effect such financial institution or Mortgagee shall either give City confirmation acknowledging and agreeing that its interest in the Property (or enter into a commercially reasonable subordination agreement agreeing that its interest in the Property) (a) is subject and subordinate to this Agreement, and (b) specifically is subject to Section 10.3.2 . Developer shall provide a copy of the deed of trust to City within ten (10) Business Days following execution thereof. A conditional assignment or other transfer by a financial institution or Mortgagee back to Developer as part of any financing transaction shall not require City's consent.

10.3.2 Assignment of this Agreement in connection with foreclosure of the Property or a deed in lieu of foreclosure shall not require the consent of City, provided that any person acquiring title or taking possession of the Property from a financial institution or Mortgagee following a foreclosure or deed in lieu of foreclosure must satisfy the criteria for a Transferee in Section 10.1.1, with documentation of such satisfaction provided to City before transfer of title or possession, to the extent there also is a proposed Transfer of an interest in this Agreement.

10.4 Consent Not Required After Issuance of Certificate of Occupancy. Upon the issuance of a certificate of occupancy for any development phase of the Project, the restrictions on Transfers set forth in this Article 10 shall no longer apply to any Transfer in whole or in part of Developer's rights, duties and obligations under this Agreement to any Transferee made in connection with the transfer of all or a portion of that phase; provided, Developer still must provide City notice and an executed and recordable Assignment and Assumption Agreement pursuant to Section 10.1.3.

10.5 Successive Transfers. In the event there is more than one Transfer under the provisions of this Article 10, the provisions of this Article 10 shall apply to each successive Transfer and Transferee.

ARTICLE 11
MORTGAGEE PROTECTION

11.1 Mortgagee Protection. This Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property, subject to Section 10.3.2 regarding subsequent Transfer. This Agreement shall be superior and senior to any lien placed upon the Property or any portion of the Property after the date of recording of this Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value. Nothing in this

Agreement shall prevent or limit Developer, at its sole discretion, from granting one or more Mortgages encumbering all or a portion of Developer's interest in the Property or portion thereof or improvement thereon as security for one or more loans or other financing, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of Mortgagee who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Developer shall provide the City with a copy of the deed of trust or mortgage within ten (10) days after its recording in the official records of San Mateo County so as to demonstrate its subordination to this Agreement; provided, however, that Developer's failure to provide such document shall not affect any Mortgage, including without limitation, the validity, priority or enforceability of such Mortgage.

11.2 Mortgagee Not Obligated. No Mortgagee (including one who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall have any obligation or duty under this Agreement to perform Developer's obligations or other affirmative covenants of Developer hereunder, or to construct or complete construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with this Agreement and the Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by this Agreement, or otherwise under the Project Approvals.

11.3 Notice of Default to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given Developer hereunder and specifying the address for service thereof, then City will deliver to such Mortgagee, concurrently with service thereon to Developer, any Notice of Default or determination of noncompliance with this Agreement given to Developer. Each Mortgagee shall have the right (but not the obligation) during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of Default claimed or the areas of noncompliance set forth by City. If a Mortgagee is required to obtain possession of the Property (or a portion thereof) in order to cure or remedy any Default, the time to cure shall be tolled so long as the Mortgagee is attempting in good faith and diligently to obtain possession, including by appointment of a receiver or foreclosure, and the Mortgagee shall be deemed to have timely cured or remedied the Default, provided the Mortgagee commences the proceedings necessary to obtain possession within thirty (30) days after receipt of the Notice of Default, diligently pursues such proceedings to completion, and after obtaining possession diligently completes such cure or remedy.

11.4 No Supersedure. Nothing in this Article 11 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 11 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 11.3.

11.5 Mortgagee Requested Amendments. The Parties agree that they will make reasonable amendments to this Agreement, at the expense of Developer, to meet the requirements of any lender or Mortgagee for the Project. For the purposes of this Section 11.5, a reasonable amendment is one that does not relieve the Parties of any of their material obligations

under this Agreement or impair the ability of the Parties to enforce the terms of this Agreement. City further agrees that if requested to make a reasonable amendment to the Mortgagee protection provisions of this Agreement required to conform to current industry practice, as determined by City, City will consider if such qualifies for an Operating Memorandum.

11.6 Priority of Development Agreement. Developer represents and warrants to City in Section 2.2.5 that there are no existing liens or encumbrances that could eliminate Developer's obligations under this Agreement, and Developer has provided City title reports for the Property showing no prior lien or encumbrance (other than mechanic's or materialmen's liens, or liens for taxes or assessments that are not yet due) against the Property or any portion thereof that, upon foreclosure, would be free and clear of the obligations set forth in this Agreement. If the Parties determine that there are any such liens and encumbrances, Developer covenants to obtain and record written instruments from the beneficiaries thereunder, in a form approved by the City Attorney in his/her reasonable discretion, subordinating their interest in the Property or portion thereof to this Agreement, and failure of Developer to do so shall be deemed a Default under this Agreement. After recordation of this Agreement, Developer shall provide updated title reports to show this Agreement as recorded against the Property and to confirm there are no such prior recorded liens or encumbrances.

ARTICLE 12 DEFAULT; REMEDIES; TERMINATION

12.1 Breach and Default. Subject to a Permitted Delay in Section 2.2.3, except as otherwise provided by this Agreement, breach of, failure, or delay by either Party to perform any term or condition of this Agreement shall constitute a "**Default.**" In the event of any alleged Default of any term, condition, or obligation of this Agreement, the Party alleging such Default shall give the defaulting Party notice in writing specifying the nature of the alleged Default and the manner in which the Default may be satisfactorily cured ("**Notice of Breach**"). The defaulting Party may request that the Parties meet and confer to discuss the alleged Default within thirty (30) days following receipt of the Notice of Breach. Unless the Parties agree to extend the cure period, the defaulting Party shall cure the Default within thirty (30) days following receipt of the Notice of Breach, provided, however, if the nature of the alleged Default is non-monetary and such that it cannot reasonably be cured within such thirty (30) day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter at the earliest practicable date, shall be deemed to be a cure, provided that if the cure is not so diligently prosecuted to completion, then no additional cure period shall be required to be provided. If the alleged failure is cured within the time provided above, then no Default shall exist and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a Default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under this Agreement.

12.2 Actions During Cure Period. City will continue to process in good faith development applications during any cure period following a Notice of Breach so long as Developer has adequately funded such processing through the Processing Agreement; provided, City need not approve any such application or issue any permit for the Project if (a) the Default involves failure to timely make any payment owed by Developer under this Agreement, (b) the

Default involves failure to satisfy an obligation imposed on Developer directly relating to a non-monetary Community Benefit described in Article 5; or (c) the City Manager determines that the application or permit directly relates to an alleged Default by Developer. If there is a dispute regarding the existence of a Default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter and pending its resolution or termination of this Agreement as provided herein. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

12.3 Termination. In the event of an uncured Default by a Party, the non-defaulting Party shall have the right to terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code section 65868 and City regulations implementing such section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code section 65867 and City regulations implementing said section. Following consideration of the evidence presented in said review before the City Council, a Party alleging uncured Default by the other Party may give written notice of termination of this Agreement to the other Party. Termination of this Agreement shall be subject to the provisions of Section 12.9.

12.4 Limitation on Cross-Defaults. Subject to Section 10.2 regarding Developer's continued obligations following a Transfer, if Developer as assignor ("**Assignor**") Transfers its rights, duties, and obligations under this Agreement in part, but not in whole, to a Transferee in connection with the transfer of a portion of the Property to the Transferee, then (a) if a Default under this Agreement shall occur with respect to Assignor, such Default shall not constitute a Default with respect to the Transferee or any other Transferee, and shall not entitle City to terminate or modify this Agreement as to the Transferee or any other Transferee, and (b) if a Default under this Agreement shall occur with respect to the Transferee, such Default shall not constitute a Default with respect to Developer or any other Transferee, and shall not entitle City to terminate or modify this Agreement as to Developer or any other Transferee.

12.5 Legal Actions.

12.5.1 Institution of Legal or Equitable Actions. In addition to any other rights or remedies, a Party may institute legal or equitable action for mandamus, specific performance or other injunctive or declaratory relief to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the purpose and terms of this Agreement. Any such legal action shall be brought in the Superior Court for San Mateo County, California, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

12.5.2 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on

Developer shall be made by personal service upon Developer's General Counsel, Developer's registered agent for service of process, or in such other manner as may be provided by law.

12.6 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party, except as otherwise expressly provided herein.

12.7 No Damages. In no event shall a Party, or its boards, commissions, officers, agents employees, shareholders, members or partners be liable in damages for any Default under this Agreement, it being expressly understood and agreed that the sole legal remedy available to a Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or fees or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to, obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely solely on the remedies provided for herein with respect to any breach of this Agreement by the other Party.

12.8 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, a Party shall, at the request of another Party, meet with designated representatives of the requesting Party promptly following its request. The Parties to any such meetings shall attempt in good faith to resolve any such disputes. In the event the Parties are unable to resolve the issue and reach an agreement within fourteen (14) days, either Party may initiate judicial proceedings. Nothing in this Section 12.8 shall in any way be interpreted as requiring that Developer or City reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the Parties to such meetings. Nothing in this Section 12.8 shall require a Party to postpone instituting any injunctive proceeding or to pursue resolution under this Section 12.8 if it believes in good faith that such postponement will cause irreparable harm to such Party.

12.9 Surviving Provisions. In the event this Agreement is terminated, neither Party shall have any further rights or obligations hereunder, except for (a) those obligations of Developer which by their terms survive expiration or termination hereof, including but not limited to those obligations set forth in Sections 9.2 and 9.3, (b) any obligations of the Parties relating to already-approved Project Approvals applicable to a Building that has commenced construction in reliance thereon, and (c) any monetary obligations of Developer connected to Project Approvals on which Developer continues to rely for construction on the Property.

ARTICLE 13
GENERAL PROVISIONS

13.1 Condemnation. As used herein, “**Material Condemnation**” means a condemnation of all or a portion of the Property that will have the effect of materially impeding or preventing development of the Project in accordance with this Agreement and the Project Approvals. In the event of a Material Condemnation, Developer may (a) request City to amend this Agreement in accordance with the Development Agreement Statute and/or to amend the Project Approvals, which amendment shall not be unreasonably withheld; (b) decide, in its sole discretion, to challenge the condemnation; and/or (c) deliver a written notice of termination to City declaring a Material Condemnation, which City may elect to dispute. If the condemnation is not a Material Condemnation, Developer shall have no right to terminate this Agreement pursuant to this Section 13.1. Nothing in this Agreement shall be, or deemed to be, any waiver or release by Developer of any compensation or damages awarded pursuant to a Material Condemnation.

13.2 Covenants Binding on Successors and Assigns and Run with Land. Except as otherwise more specifically provided in this Agreement, this Agreement and all of its provisions, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, lessee, and all other persons or entities acquiring the Property, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5, and shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws.

13.3 Notice. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows.

To City: City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Attn: City Manager

with a copy to: City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Attn: City Attorney

To Developer: Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attn: San Bruno Real Estate and Workplace Services

and

Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attn: Legal Department/RE Matters

with a copy to: Allen Matkins Leck Gamble Mallory & Natsis LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111
Attn: Land Use Team/David H. Blackwell, Esq.

Either Party may update or change the person and addresses for the receipt of notices under this Section 13.3 from time-to-time by delivering written notice to the other Party designating the new person or address, at least ten (10) days prior to the name and/or address change.

13.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.5 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act or failure to act by the other Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts or failures to act in the future.

13.6 Construction of Agreement. All Parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. Unless the context clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; (e) "includes" and "including" are not limiting; and (f) "days" means calendar days unless specifically provided otherwise.

13.7 Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, or conditions of this Agreement.

13.8 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect; provided, if the invalidation, voiding or unenforceability would deprive either City or Developer of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, then City and Developer shall meet and confer and shall make good faith efforts to amend or modify this Agreement in a manner that is mutually acceptable to City and Developer. Notwithstanding the foregoing, if an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case any Party deprived of an essential benefit thereunder shall have the option to terminate this Agreement from and after such determination by providing written notice thereof to the other Party.

13.9 Time is of the Essence. Time is of the essence of this Agreement. All references to time in this Agreement shall refer to the time in effect in the State of California. The time limits set forth in this Agreement (other than the Term) may be extended by Permitted Delays or mutual consent in writing of the Parties in accordance with the provisions of this Agreement.

13.10 Other Necessary Acts. Each Party shall in good faith do all things as may reasonably be necessary or appropriate to carry out this Agreement, and the Project Approvals, and to execute with acknowledgment or affidavit if required and deliver to the other, file or submit all such further information, instruments and documents as may be reasonably necessary to carry out the purposes and objectives of the Project Approvals and this Agreement and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement. By way of illustration but not limitation, by adopting the Enacting Ordinance and approving this Agreement, the City Council authorizes the City Manager to execute and record such quitclaim deeds or other documents required by a title insurance company to evidence the Street Abandonments.

13.11 Authority. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

13.12 Entire Agreement. This Agreement (including all Recitals and all exhibits attached hereto, each of which is fully incorporated herein by reference), integrates all of the terms and conditions mentioned herein or incidental hereto, and constitutes the entire understanding of the Parties with respect to the subject matter hereof, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations, and statements are terminated and superseded by this Agreement.

13.13 Estoppel Certificate. Developer or its lender may, at any time, and from time to time, deliver written notice to City requesting City to certify in writing to Developer or any Mortgagee (a) that this Agreement is in full force and effect; (b) that this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, or terminated or, if so terminated, identifying the subject of termination; (c) that to City's knowledge neither Developer nor City is in Default of the performance of their obligations, and that to City's knowledge no events exist that would with the passing of time or giving of notice or both constitute a Default, or if in Default, to describe therein the nature and extent of any such Defaults; (d) those obligations under this Agreement that have been satisfied since the date of the last annual review and those obligations under this Agreement that remain unsatisfied; and (e) such other information or matters relating to this Agreement and/or the Project as may be reasonably requested by Developer. Developer shall pay, within thirty (30) days following receipt of City's invoice, the actual costs borne by City in connection with its review of the proposed estoppel certificate, including the costs of attorney review. The City Manager is authorized to execute any certificate requested by Developer hereunder. The form of estoppel certificate shall be in a form reasonably acceptable to the City Attorney. The City Manager will execute and return such certificate within twenty (20) days following Developer's request therefor. Developer and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, lenders, investors, partners, bond counsel, underwriters, bond holders and Mortgagees. The request shall clearly indicate that failure of the City to respond within the twenty-day period will lead to a second and final request. Failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate.

13.14 Recordation of Termination. Upon completion of the Project and Developer's payment of all Impact Fees and Community Benefits Payments under Article 4 and Developer's completion of the requirements, obligations and payments under Article 5, or upon any earlier termination of this Agreement upon the mutual written consent of the Parties or as otherwise expressly provided herein, a written statement acknowledging Developer's satisfaction of all obligations under this Agreement or such termination, in form and content reasonably satisfactory to the Parties, shall be provided by City to be executed by the Parties and recorded by City or Developer in the Official Records of San Mateo County; provided, such recorded document shall identify and preserve those obligations and requirements in this Agreement that survive termination.

13.15 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

13.16 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that no Party to this Agreement is acting as the agent of any other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Developer, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.

13.17 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the signatory Parties and their successors and assigns, including Mortgagees. No other person or entity shall have any right of action based upon any provision in this Agreement, and no other person or entity shall have any third party beneficiary status.

13.18 Governing State Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of San Mateo, State of California, or the Federal District Court for the Northern District of California.

13.19 Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

- Exhibit A: Property Legal Description
- Exhibit B: Depiction of the Property
- Exhibit C: Project Lot Development Plan
- Exhibit D: Lot Allotments, Existing Impact Fees & Community Benefits Payments
- Exhibit E: Form of Assignment and Assumption Agreement
- Exhibit F: Architectural Review Permit Procedures
- Exhibit G: VMT Monitoring and Mitigation Plan

If the County Recorder refuses to record any exhibit, the City Clerk may replace it with a single sheet bearing the exhibit identification letter, stating the title of the exhibit, the reason it is not being recorded, and that the original, certified by the City Clerk, is in the possession of the City Clerk and will be reattached to the original when it is returned by the recorder to the City Clerk.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the Effective Date.

DEVELOPER:

GOOGLE LLC

DocuSigned by:
By: David Radcliffe
F37A44F1A00C4A3...

Print Name: David Radcliffe

Title: VP, REWS /GSRS



CITY:

CITY OF SAN BRUNO

a general law city and municipal corporation

By: _____
Jovan D. Grogan, City Manager

ATTEST:

Melissa Thurman, City Clerk

APPROVED AS TO FORM:

Marc Zafferano, City Attorney

[Signatures must be notarized.]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

notary public, personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On , before me, _____,
 (insert name and title of officer)

notary public, personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

EXHIBIT B

DEPICTION OF PROPERTY

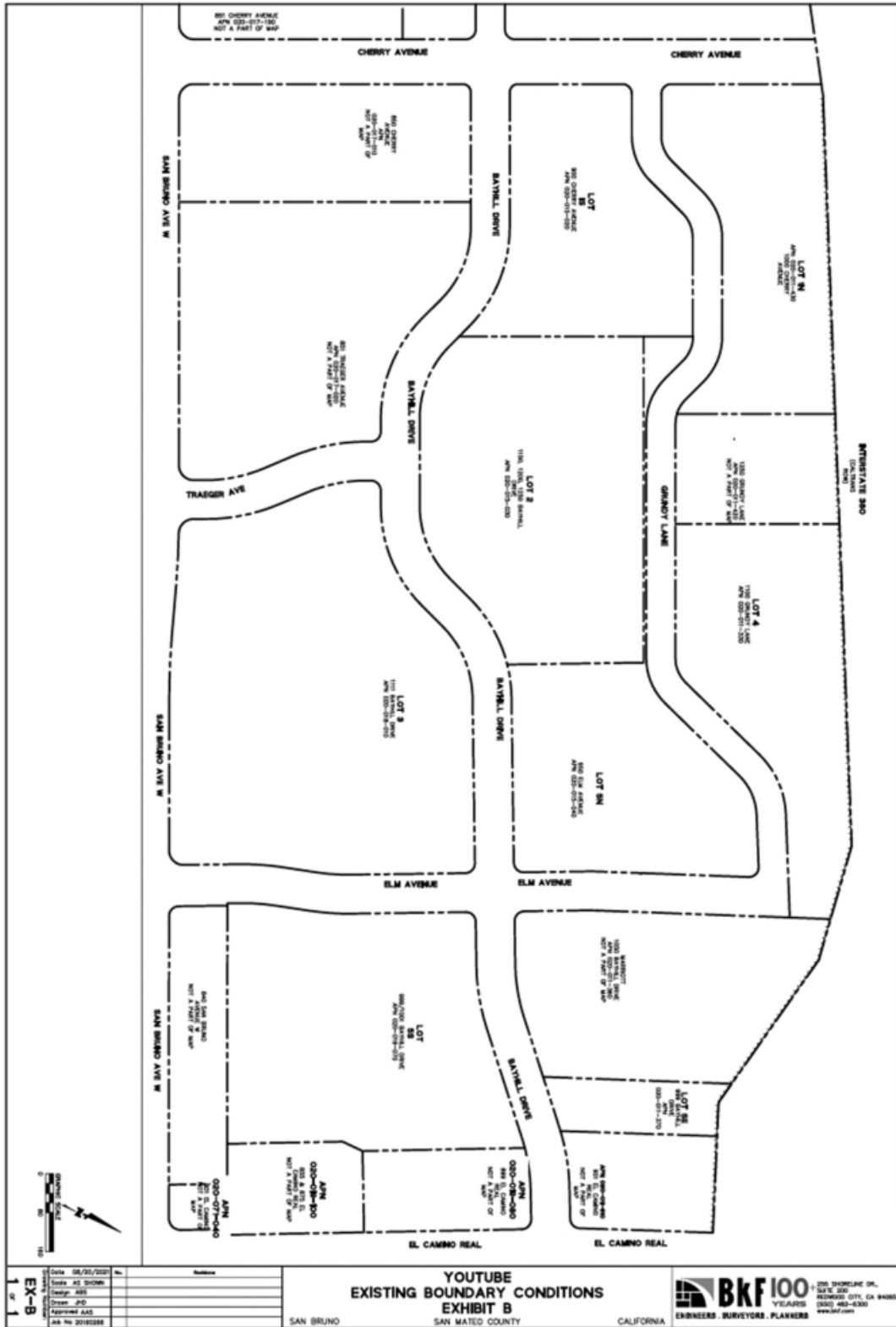


EXHIBIT C PROJECT LOT DEVELOPMENT PLAN

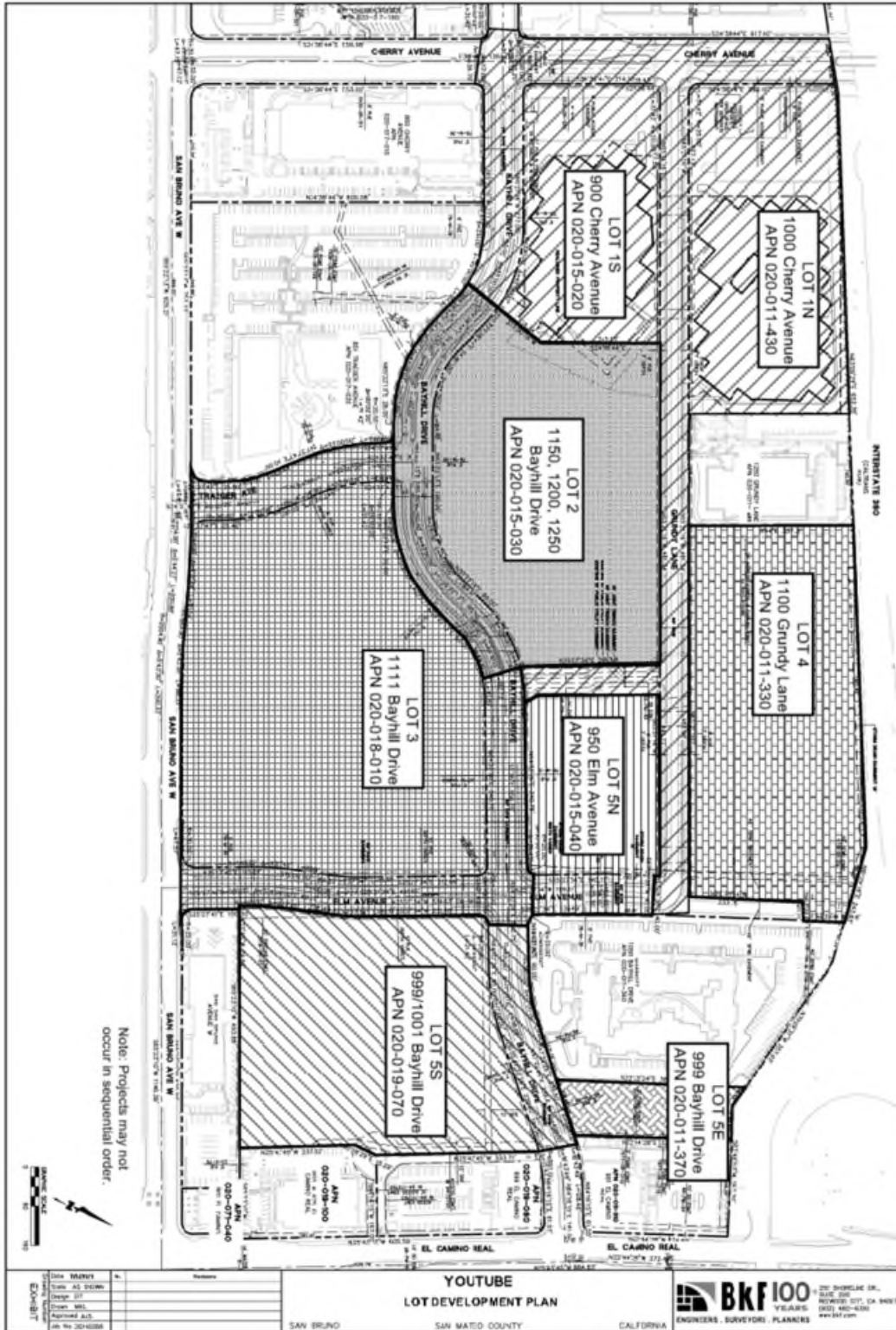


EXHIBIT D

LOT ALLOTMENTS, EXISTING IMPACT FEES & COMMUNITY BENEFITS PAYMENTS

Address	Lot	New Construction	Existing to be Demolished	Net New	Citywide DIF & Housing Fee	Bayhill ADIF	Community Benefits*	Total Fee**
1000 Cherry	1N	248,000	0	248,000	\$8,389,840	\$1,736,000	\$8,680,000	\$18,805,840
900 Cherry	1S	192,000	0	192,000	\$6,495,360	\$1,344,000	\$6,720,000	\$14,559,360
1150-1250 Bayhill	2	440,000	138,524	301,476	\$10,198,933	\$2,110,332	\$10,551,660	\$22,860,925
1111 Bayhill	3	570,000	206,137	363,863	\$12,309,485	\$2,547,041	\$12,735,205	\$27,591,731
1100 Grundy	4	430,000	101,123	328,877	\$11,125,909	\$2,302,139	\$11,510,695	\$24,938,743
950 Elm	5N	158,667	106,099	52,568	\$1,778,375	\$367,976	\$1,839,880	\$3,986,231
999-1001 Bayhill*	5S	431,704	140,969	290,735	\$9,835,565	\$2,035,145	\$4,028,570	\$15,899,280
020-011-370*	5E	40,510	0	40,510	\$1,370,453	\$283,570	\$0	\$1,654,023
Total		2,510,881	692,852	1,818,029	\$61,503,921	\$12,726,203	\$56,066,010	\$130,296,134
<u>Applicable Fee per SF as of 2021</u>								
Citywide Development Impact Fee for office use (City Code 12.260)								\$19.94
Affordable Housing (Commercial Linkage Fee) for office use (City Code 12.230.040)								\$13.89
Bayhill Area Development Impact Fee (estimate per DA Section 4.6)								\$7.00
Community Benefits								\$35.00
<u>Additional Fees</u>								
City Art Fee (per City Code 3.40.050) – 7% of building, mechanical, electrical or plumbing permit fees (for non-residential).								
Shoring Fee (per DA Section 4.10) – \$1,000 per qualifying Shoring Mechanism.								
Parking In-lieu Fee (per DA Section 7.3.3.4 and City Code 12.100.040.I.2) – \$61,356 per otherwise required permanent parking space not provided.								
<u>Notes</u>								
New Construction is defined as floor area per definition in 2021 adopted City Code 12.80.220.								
Net New is New Construction minus existing to be demolished (and is used in calculating fees except Community Benefits for Lots 5S & 5E).								
*Per Specific Plan Section 7.3, the Community Benefits Payment for Lot 5S and Lot 5E is based on the amount of New Construction authorized by the Specific Plan less development allowed under current zoning (instead of deducting space to be demolished):								
- Lot 5S: (New Construction Less 316,602SF) x \$35/SF								
- Lot 5E: (New Construction Less 45,448SF) x \$35/SF = 0								
**Fees will be adjusted based on final New Construction amount; are subject to adjustment based on the inflation index (per DA Section 4.1) unless otherwise indicated; and will be reduced for BHSP preparation costs (per Section 4.8).								

EXHIBIT E

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

<p>RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:</p> <p>_____</p> <p>_____</p> <p>Attention: _____</p> <p><i>Exempt from Recording Fee per Government Code Section 27383</i></p>	
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Space Above This Line for Recorder's Use Only

**ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDER
DEVELOPMENT AGREEMENT**

This Assignment of Rights and Obligations under Development Agreement (this “**Assignment**”) is entered into this ____ day of _____, 20__ (“**Effective Date**”), by and between _____, a _____ (“**Assignor**”) and _____, a _____ (“**Assignee**”). Assignor and Assignee are collectively referred to herein as the “**Parties.**”

RECITALS

A. Assignor and the City of San Bruno, a California municipal corporation (“**City**”) have entered into that certain Development Agreement dated as of _____ (“**DA**”) which was recorded in the Official Records of San Mateo County on _____ as Instrument No. _____.

B. Assignor *[has requested approval from the City of the assignment to Assignee described herein pursuant to Section 10.1 of the DA] OR [has the right to make the assignment to Assignee under Section 10.1 of the DA.]*

C. *[City has consented to the assignment described herein pursuant to Section 10.1 of the DA.] OR [Assignor has provided the City with documentation establishing that the assignment is appropriate pursuant to Article 10 of the DA because _____.]*

A G R E E M E N T

NOW, THEREFORE, in exchange for the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Assignment and Assumption of Interest. Assignor hereby transfers, assigns and conveys to Assignee, all of Assignor's right, title and interest in and to, and all obligations, duties, responsibilities, conditions and restrictions under, the DA (the "**Rights and Obligations**") as to *[all of the Property subject to the DA] OR [that portion of the Property subject to the DA described in Exhibit A]* and the development and use thereof. Assignee, for itself and its successors and assigns, hereby accepts the foregoing assignment, assumes all such Rights and Obligations, and expressly agrees for the benefit of City, to pay, perform and discharge all obligations of Assignor under the DA and to comply with all covenants and conditions of Assignor arising from or under the DA *[attributable to that portion of the Property subject to the DA described in Exhibit A and the development and use thereof]*.

2. Governing Law; Venue. This Assignment shall be interpreted and enforced in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Assignment shall be filed and litigated exclusively in the Superior Court of San Mateo County, California or in the Federal District Court for the Northern District of California.

3. Entire Agreement/Amendment. This Assignment constitutes the entire agreement among the Parties with respect to the subject matter hereof, and supersedes all prior written and oral agreements with respect to the matters covered by this Assignment. This Assignment may not be amended except by an instrument in writing signed by each of the Parties and consented to in writing by City.

4. Further Assurances. Each Party shall execute and deliver such other certificates, agreements and documents and take such other actions as may be reasonably required to consummate or implement the transactions contemplated by this Assignment and the DA.

5. Benefit and Liability. Subject to the restrictions on transfer set forth in the DA, this Assignment and all of the terms, covenants, and conditions hereof shall extend to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

6. Rights of City. All rights of City under the DA and all obligations to City under the DA which were enforceable by City against Assignor prior to the Effective Date of this Assignment shall be fully enforceable by City against Assignee from and after the Effective Date of this Assignment.

7. Rights of Assignee. All rights of Assignor and obligations to Assignor under the DA which were enforceable by Assignor against City prior to the Effective Date of this Assignment shall be fully enforceable by Assignee against City from and after the Effective Date of this Assignment.

8. Release. As of the Effective Date, Assignor hereby relinquishes all rights under the DA, and all obligations of Assignor under the DA shall be terminated as to, and shall have no more force or effect with respect to, Assignor, and Assignor is hereby released from any and all obligations under the DA, *to the extent attributable to that portion of the Property subject to the DA described in Exhibit A and the development and use thereof*.

9. Attorneys' Fees. In the event of any litigation pertaining to this Assignment, the losing party shall pay the prevailing party's litigation costs and expenses, including without limitation reasonable attorneys' fees.

10. City Consent; City Is A Third-Party Beneficiary. City's countersignature below is for the limited purposes of indicating consent to the assignment and assumption and release set forth in this Assignment (if necessary under the DA) pursuant to Sections 10.1 and 10.2 of the DA, and for clarifying that there is privity of contract between City and Assignee with respect to the DA. The City is an intended third-party beneficiary of this Assignment, and has the right, but not the obligation, to enforce the provisions hereof.

11. Recordation. Assignor shall cause this Assignment to be recorded in the Official Records of San Mateo County, and shall promptly provide conformed copies of the recorded Assignment to City and Assignee.

12. Address for Notices. Assignee's address for notices, demands and communications under the DA is as follows:

13. Captions; Interpretation. The section headings used herein are solely for convenience and shall not be used to interpret this Assignment. The Parties acknowledge that this Assignment is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both have participated in the negotiation and drafting of this Assignment, this Assignment shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

14. Severability. If any term, provision, condition or covenant of this Assignment or its application to any party or circumstances shall be held by a court of competent jurisdiction, to any extent, invalid or unenforceable, the remainder of this Assignment, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law unless the rights and obligations of the Parties have been materially altered or abridged thereby.

15. Counterparts. This Assignment may be executed in counterparts, each of which shall, irrespective of the date of its execution and delivery, be deemed an original, and the counterparts together shall constitute one and the same instrument.

[SIGNATURES START ON NEXT PAGE.]

IN WITNESS WHEREOF Assignor and Assignee have executed this Assignment as of the date first set forth above.

		ASSIGNOR:
		_____, a

	By:	FORM – DO NOT SIGN
	Name:	
	Its:	
		ASSIGNEE:
		_____, a

	By:	FORM – DO NOT SIGN
	Name:	
	Its:	

[NOTE: The presence of the signature blocks below in this form shall not be deemed to require the consent of the City to any assignment that does not otherwise require the consent of City under the DA.]

City of San Bruno, a California municipal corporation, hereby consents to the assignment and assumption described in the foregoing Assignment and Assumption Agreement.

CITY:		
CITY OF SAN BRUNO, a California municipal corporation		
By:	FORM – DO NOT SIGN	
	_____, City Manager	
ATTEST:		
_____, City Clerk		
APPROVED AS TO FORM:		
_____, City Attorney		

ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

notary public, personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On , before me, _____,
 (Name of Notary)

notary public, personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

EXHIBIT F

ARCHITECTURAL REVIEW PERMIT PROCEDURES

12.108.020 Application and plans.

An application for an architectural review permit shall include:

- A. A written statement by the owner(s) of the property approving submittal of the complete application; in instances where the applicant is not the same person as the owner, a statement signed by the owner (a) describing the nature of the applicant's interest, and (b) authorizing the applicant to act on behalf of and to bind the owners, shall also be required.
 - B. An accurate legal description of the property and/or title report;
 - C. A site plan to scale indicating the location and configuration of all buildings including setbacks from property lines, parking spaces and circulation, fencing, street improvements, fire hydrants, refuse, waste and recycling areas, proposed grading and drainage, and other significant site features.
 - D. Civil plans and stormwater plans;
 - E. A statement describing the existing improvements on and use of the subject property and any proposed changes;
 - F. A landscape plan;
-
- G. Dimensioned architectural elevations and perspectives;
 - H. Fees or deposits as set by City Council resolution in the master fee schedule;
 - I. Other documents or information that may be required including, but not limited to: Title reports; surveys; existing and proposed landscaping and other ground treatment; required parking facilities; building and development data; sign information; photographs; photometric analysis; materials sample boards; scale models; photo simulations; or environmental information.

Notwithstanding the foregoing, subdivision I above shall be replaced with the following:

I. Each of the following documents or information shall be required unless waived in writing by the Director in his/her sole discretion: Title reports; surveys; existing and proposed landscaping and other ground treatment; required parking facilities; building and development data; sign information; photographs; photometric analysis; materials sample boards; scale models; photo simulations; or environmental information. City may request additional documents or information if necessary to comply with regional, state, or federal requirements.

Prior to submitting its application Developer may submit a written request to the Director following the noticing procedures in Section 13.3, asking which documents or information may be waived, together with a conceptual plan for the proposed development sufficient to allow City to evaluate which documents or information are not required. City will make good faith efforts to respond in writing within forty-five (45) days of receiving Developer's request and conceptual plan, and thereafter Developer's application must provide the items City does not waive in order to be considered complete; provided, City's waiver of items will become out-of-date if Developer does not submit its application within six (6) months of receiving City's response, or within six (6) months of Developer's request if City does not respond, and Developer thereafter shall submit a new request and City will provide a new list of items it agrees to waive which may be different than the first. If Developer fails to make such request then Developer's application shall include all of the items listed. If City fails to respond within forty-five (45) days of

receiving Developer's request, then Developer may send written notice following the noticing procedures in Section 13.3 to (a) the Director, and (b) the City Attorney, prominently stating in bold lettering that the permit application shall not be required to include any of the items listed for purposes of City review if City fails to respond within ten (10) business days of receipt of the notice. If City does not respond in writing within such ten (10) business day period identifying which items in the list are waived, Developer shall not be required to submit the items set forth in this subdivision I for purposes of City's review and decision whether to approve or deny the permit.

EXHIBIT G

VMT MONITORING AND MITIGATION PLAN

Bayhill Specific Plan: VMT Monitoring & Mitigation Plan San Bruno, CA

Prepared for:
City of San Bruno

September 2021

SF17-0931

FEHR  PEERS

EXHIBIT G

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Introduction

This VMT Monitoring and Mitigation plan is designed to support implementation of the Bayhill Specific Plan (the "Project") in San Bruno consistent with the California Environmental Quality Act (CEQA). In January 2021 the Project's Draft Environmental Impact Report (EIR) was prepared consistent with CEQA guidelines. The DEIR found that the Project would have a potentially significant environmental impact from the number of Project-generated vehicle miles traveled (VMT). Proposed development projects within the Project area are therefore required to implement mitigation measures TRA-1/TRA-2. Mitigation measures TRA-1 and TRA-2 require that property owners develop and submit a transportation demand management (TDM) plan for review and approval by City staff prior to issuance of development entitlement. The property owner will then be subject to protocol laid out in this VMT Monitoring and Mitigation Plan. The TDM plan will be unique to the property owner while the monitoring and mitigation protocol will be consistent for all properties within the specific plan area. The TDM Plan and this Monitoring and Mitigation Plan are prepared to achieve the performance targets described in mitigation measure TRA-1/TRA-2. Elements of the Monitoring and Mitigation Plan may change as needed to meet agreed-to performance targets for the specific property owner.

Specific Plan Requirements

By combining multi-modal design principles with aggressive TDM programs, the Bayhill Specific Plan strives to reduce vehicle miles traveled (VMT). Project VMT measures the total number of net new vehicle trips and the distance of each of those trips. A specific VMT per capita threshold of 21.7 VMT is established for new office buildings constructed within the Bayhill Specific Plan. This threshold is 14.3 percent below the region's average VMT per capita for consistency with the City's selected transportation impact analysis criteria for the Specific Plan.

The primary strategy to reduce VMT is to shift drive-alone vehicle trips to other modes of travel, including carpool, shuttle, transit, bicycling, and walking. Strategies to stimulate this shift are collectively referred to as transportation demand management (TDM). A list of possible TDM strategies tailored to the local land use characteristics is available in the Specific Plan. Each new employer or property owner will be required to select a subset of strategies that are best suited to their employees and business model.

Working individually or collectively, the new Bayhill land uses will need to reduce VMT per capita to no more than 21.7. The VMT threshold equates to no more than 43 percent of trips occurring by single-occupancy vehicles. New properties must monitor trips for their site and report the results in relation to the 43 percent drive-alone threshold.

Monitoring and Reporting

Starting in the calendar year after the City issues the first certificate of occupancy for the first building in a given development phase, the property owners shall retain the services of an independent City-approved transportation planning/engineering firm to conduct an annual mode-share survey for their employees each fall (mid-September through mid-November) to determine whether the development (a single parcel or multiple parcels under one ownership) is achieving the non-auto mode split threshold. The property owner shall submit an annual report to the staff of the San Bruno Community and Economic Development Department each January.

Annual Travel Survey

The mode-share survey to be conducted at the site is intended to monitor achievement of the non-drive alone goals discussed in the introduction to this Plan. Because the mode share goal is presented as a daily percentage, care should be taken in conducting the travel surveys to capture **all work-based trips** that an individual takes on a given day. Due to the complexity of typical travel patterns, most employees will make more trips than simply the commute trip. To determine the development's mode share and adherence to the requirements of Mitigation Measure TRA-1 and TRA-2, the annual survey should be designed to capture commute trips, plus all other trips conducted during the survey dates (a weighted average of three typical days)¹.) The annual survey should include the questions in Appendix A, which may be modified to increase survey clarity and effectiveness with City approval. In the future, response options to each question should be updated to reflect future innovations in mode choice and/or technology options. The property owner may choose to incorporate additional questions for their own purposes.

At the completion of the survey, each entry should have a total number of daily trips by each mode. The development's mode share will be based on the total number of drive-alone trips (parking both on-site and off-site) divided by the total number of reported trips.

Annual Report

The annual report shall describe implementation of the TDM program and results of the annual mode split survey, including a summary of the methodology for collecting the mode split data, statistics on response rates, and a summary conclusion on whether the development is in compliance with Mitigation Measure TRA-1/TRA-2. Each report that indicates non-compliance shall identify additional feasible TDM measures (i.e., a corrective action plan) that will be implemented to reduce the drive-alone rate below the 43 percent target. If there are no additional feasible measures, the report shall indicate as such. If the City believes that additional measures are feasible or are required to achieve the target, the parties shall meet and confer to agree on an acceptable corrective action plan.

Non-Compliance

If timely reports are not submitted and/or reports indicate that the development has failed to achieve the drive alone mode share specified above in two consecutive years after issuance of the certificate of occupancy for the full phase², the development will be considered in violation of this mitigation measure. The City will issue a notice of non-compliance after the first year the development fails to meet monitoring requirements (submittal of timely reports and/or achieving specified drive alone mode share), after which the property owner has one year to comply with the monitoring requirements through the discretionary implementation of additional TDM measures.

Enforcement and Action

After two years of not meeting the development's drive alone requirement, the City may initiate enforcement action against the property owner in the form of mitigation payments. Mitigation payments will support the funding and management of transportation improvements that would improve the development's ability to achieve the target non-SOV mode share. The mitigation payments for the development are tailored to closing the first-mile/last-mile gap between the development and the two nearby regional rail stations serving BART and Caltrain. Mode shift from long-distance driving to long-distance transit trips is the most effective way to reduce VMT for this development.

The Bayhill Specific Plan area is currently served by first-mile/last-mile shuttles – one to BART and one to Caltrain. These shuttles are open to the public and are jointly funded by Walmart eCommerce and grant funding from SMCTA-C/CAG. Each shuttle route requires one vehicle to provide 15-20-minute headways from approximately 7-10AM and 4-6:30PM.

These shuttles encourage public transportation thereby helping to reduce vehicular congestion along the U.S. 101, Interstate 280, and Interstate 380 commute corridors, and arterial streets during commute hours. This leads to a reduction in single-occupancy vehicles as well as VMT. In SamTrans' 2018 Bayhill BART shuttle survey, 42% of respondents indicated they would drive alone to get to work if the Bayhill shuttle services were unavailable. This information indicates that first-mile/last-mile shuttles are an effective strategy to offset VMT for the Bayhill Specific Plan.

Mitigation Payments

Baseline Payments

If either the BART or Caltrain shuttles have ceased operation at the time of development monitoring and the finding of non-compliance, the property owner will be required to restart both shuttles at the same service levels identified above. The property owner may cover the full cost of the shuttle(s) for one year without matching funds or may seek SMCTA-C/CAG matching grants, which are available in two-year cycles¹. If the property owner elects to fund the shuttle for a single year only, they must also operate the shuttle. If the property owner elects to pursue two-year matching grants and SamTrans operational support, they must open and advertise the shuttle(s) to the general public. If multiple Bayhill property owners exceed the drive alone threshold in a given monitoring year, they will split the cost of baseline shuttle operations based on the number of employees in exceedance of the threshold.

The property owner, in collaboration with the City and SamTrans, has the option to reconfigure the route, stops, and shuttle service(s) so long as the headways remain approximately 15-20 minutes, the service operates for 2.5-3 hours in each peak period, and the service is open to the public. The property owner is

¹ During the FY 20/21 & FY 21/22 application cycle for example, the two-year cost of the BART shuttle was \$383,000; 53 percent was covered by Walmart eCommerce and 47 percent was covered by a SMCTA-C/CAG matching grant.

required to provide the shuttle(s) from this point forward unless they can demonstrate the ability to meet the SOV threshold in subsequent years without Baseline shuttle operations.

Tier 1 Payments

Tier 1 Payments are triggered in one of two instances:

If the property owner records two initial years of non-compliance and during the second year's monitoring period the first-mile/last-mile shuttles to BART and Caltrain are in operation; or

If, after one year of operating or two years of funding one or both shuttles as the result of the Baseline Payment being applied, the development is still exceeding the drive alone threshold.

Tier 1 Payments include the following enhancements to the shuttle services:

- Operate at 10-minute headways
- Expand AM and PM service hours to 3.5-hour peak periods
- Expand route to cover a gap in public transit service (identified by SamTrans staff) that is within the vicinity of the Plan Area.
- Implement marketing and usability improvements, including:
 - Partner with Commute.org to enhance marketing and customer service
 - Publish General Transit Feed Specification (GTFS) feed to include shuttle in trip planners/real time trackers

The property owner may request permission from the City and SamTrans to reconfigure the route, stops, and shuttle service(s) within the service level parameters outlined above. The non-compliant property owner(s) would operate the shuttle(s) themselves for one year, enter a 2-year agreement with SamTrans to operate, or would make payments towards the existing operator to facilitate two years of the shuttle enhancements listed above. If multiple Bayhill property owners exceed the drive alone threshold in a given monitoring year, they will split the cost of Tier 1 shuttle operations as described above. The property owner is required to provide Tier 1 shuttle service from this point forward unless they can demonstrate the ability to meet the SOV threshold in subsequent years without Tier 1 shuttle operations.

Tier 2 Payments

Tier 2 Payments are triggered if, after one year of operating or two years of funding both shuttles under Tier 1 Payment conditions, the development is still exceeding the drive alone threshold.

Tier 2 Payments include everything in the Baseline and Tier 1 plus the following enhancements to shuttle service(s):

- Initiate half-hourly shuttle service to Millbrae Caltrain station (which will have more frequent Caltrain service than San Bruno Station and is therefore a more desirable connection for some travelers). Run a minimum of 2.5-hour peak periods in alignment with express service Caltrain arrivals and departures.

The property owner, in collaboration with the City and SamTrans, has the option to reconfigure the route, stops, and shuttle service(s) within the parameters outlined above. The non-compliant property owner(s)

would operate the shuttle(s) themselves for one year, enter a 2-year agreement with SamTrans to operate, or would make payments towards the existing operator to facilitate two years of the shuttle enhancements listed above. If multiple Bayhill property owners exceed the drive alone threshold in a given monitoring year, they will split the cost of Tier 2 shuttle operations as described above. The property owner is required to provide Tier 2 shuttle service from this point forward unless they can demonstrate the ability to meet the SOV threshold in subsequent years without Tier 2 shuttle operations.

Tier 3 Payments

Tier 3 Payments are triggered if, after one year of operating or two years of funding shuttle service described under Tier 2 Payment conditions, the development is still exceeding the drive alone threshold.

Tier 3 Payments include everything in Tiers 1 and 2 plus the following enhancements to shuttle service(s):

- Increase Millbrae Caltrain shuttle to 15-minute headways. Run a minimum of 3-hour peak periods in alignment with express service Caltrain arrivals and departures.

The property owner, in collaboration with the City and SamTrans, has the option to reconfigure the route, stops, and shuttle service(s) within the parameters outlined above. The non-compliant property owner(s) would operate the shuttle(s) themselves for one year, enter a 2-year agreement with SamTrans to operate, or would make payments towards the existing operator to facilitate two years of the shuttle enhancements listed above. If multiple Bayhill property owners exceed the drive alone threshold in a given monitoring year, they will split the cost of Tier 3 shuttle operations as described above. The property owner is required to provide Tier 3 shuttle service from this point forward unless they can demonstrate the ability to meet the SOV threshold in subsequent years without Tier 3 shuttle operations.

Frequency of Reporting

If timely reports are submitted and demonstrate that the property owner has achieved the drive alone mode share specified above for five consecutive years after issuance of certificates of occupancy for a full phase of development, monitoring shall no longer be required annually, and shall instead be required every five years, sunseting after 3 reports demonstrating compliance (15 years total). Each new phase of development resets the clock and requires five consecutive years of compliance.

Flexibility and Amendments

The property owner may suggest an alternative VMT-reduction program in place of the baseline payment or any of the tiers above by demonstrating that the alternative program will achieve a similar VMT reduction. The property owner must deliver their proposal for an alternative mitigation program at the same time they submit their annual monitoring report in January for review and approval by the City. The City must deliver a decision on the alternative program within 90 days of receipt of the alternative proposal. The City may hire a transportation consultant at the property owner's expense to review a suggested alternative VMT reduction program. If the City would like to modify the property owner's proposal, the City and property owner will have one month to negotiate an alternative program that is acceptable to both parties. Should agreement not be reached, the property owner will be subject to the Tiered approach identified above.

The property owner may also propose amendments to its TDM plan as part of its annual report each year, subject to review and approval by the City. The City may hire a transportation consultant at the property owner's expense to review proposed TDM plan amendments. The City expects that the TDM plan will evolve as travel behavior changes and as new technologies become available. The City must deliver a decision on the proposed amendments within 90 days of receipt. If the City would like to modify the property owner's proposed amendments, the City and property owner will have one month to negotiate a TDM plan that is acceptable to both parties. Should agreement not be reached, the TDM Plan will remain as it was before the amendments were proposed.

Appendix A: Employee Survey

1. On **Wednesday, November 3³**, did you travel to work at the Bayhill [*building name*]?
 - a. Yes (*survey continues*)
 - b. No, I worked from home or at a non-*[company name]* location (*two trips logged as telecommute*)
 - c. No, I worked at another *[company name]* office (*Entry not included in results*)
 - d. No, I did not work that day (*logged as non-commute and excluded from drive-alone rate calculation*).
2. How did you first arrive to work on that day? (If you used more than one commute option, select the option on which your distance was the furthest.)
 - a. I drove alone in a car, SUV, van, or truck and parked on-site (*One trip logged as drive-alone*)
 - b. I drove alone in a car, SUV, van, or truck and parked elsewhere (*One trip logged as drive-alone*)
 - c. I drove alone on a motorcycle or moped and parked on-site (*One trip logged as drive-alone with motorcycle/moped*)
 - d. I drove alone on a motorcycle or moped and parked elsewhere (*One trip logged as drive-alone with motorcycle/scooter*)
 - e. I took Lyft or Uber, without any other passengers (*One trip logged as TNC*)
 - f. I drove/rode with others in a car, SUV, van, or truck (*One trip logged as carpool*)
 - g. I got a ride from a friend, coworker, or family member who dropped me off at work in a car, SUV, van, or truck (*One trip logged as carpool*)
 - h. I took Caltrain or BART (*One trip logged as commuter rail*)
 - i. I took a public transit bus (*One trip logged as bus*)
 - j. I took a *[company name]* shuttle bus (*One trip logged as [company-name] shuttle*)
 - k. I took a non-*[company-name]* shuttle bus (*One trip logged as shuttle*)
 - l. I walked (*One trip logged as walk*)
 - m. I rode my own bike (*One trip logged as bike*)
 - n. I used an electric scooter or similar (*One trip logged as scooter*)
 - o. Other: _____ (*One trip logged as other*)
3. Did you leave your primary office building prior to departing for the day, for any reason? (i.e., to get lunch, grab a coffee, go to an off-site meeting, work out, give someone a ride, etc.)
 - a. Yes (*Continue to question 4*)
 - b. No (*Continue to question 6*)
4. How many additional trips did you make from the office during your workday?
 - a. (Numeric entry)

³ Survey should reflect three days (non-holiday Tuesday, Wednesday, or Thursday between mid-September and mid-November) when no special events or unusual weather has occurred).

5. 5A: "Think to the first trip you made that day after arriving at the office but prior to leaving office. What mode did you use?" (If you used more than one commute option, select the option on which your distance was the furthest.)
- a. I drove alone in a car, SUV, van, or truck and parked on-site (*One trip logged as drive-alone*)
 - b. I drove alone in a car, SUV, van, or truck and parked elsewhere (*One trip logged as drive-alone*)
 - c. I drove alone on a motorcycle or moped and parked on-site (*One trip logged as drive-alone with motorcycle/moped*)
 - d. I drove alone on a motorcycle or moped and parked elsewhere (*One trip logged as drive-alone with motorcycle/scooter*)
 - e. I took Lyft or Uber, without any other passengers (*One trip logged as TNC*)
 - f. I drove/rode with others in a car, SUV, van, or truck (*One trip logged as carpool*)
 - g. I got a ride from a friend, coworker, or family member who dropped me off at work in a car, SUV, van, or truck (*One trip logged as carpool*)
 - h. I took Caltrain or BART (*One trip logged as commuter rail*)
 - i. I took a public transit bus (*One trip logged as bus*)
 - j. I took a [company name] shuttle bus (*One trip logged as [company-name] shuttle*)
 - k. I took a non-[company-name] shuttle bus (*One trip logged as shuttle*)
 - l. I walked (*One trip logged as walk*)
 - m. I rode my own bike (*One trip logged as bike*)
 - n. I used an electric scooter or similar (*One trip logged as scooter*)
 - o. Other: _____ (*One trip logged as other*)

5B: "Think to the second trip you made that day prior to leaving the office. What mode did you use?" (If you used more than one commute option, select the option on which your distance was the furthest.)

- a. I drove alone in a car, SUV, van, or truck and parked on-site (*One trip logged as drive-alone*)
- b. I drove alone in a car, SUV, van, or truck and parked elsewhere (*One trip logged as drive-alone*)
- c. I drove alone on a motorcycle or moped and parked on-site (*One trip logged as drive-alone with motorcycle/moped*)
- d. I drove alone on a motorcycle or moped and parked elsewhere (*One trip logged as drive-alone with motorcycle/scooter*)
- e. I took Lyft or Uber, without any other passengers (*One trip logged as TNC*)
- f. I drove/rode with others in a car, SUV, van, or truck (*One trip logged as carpool*)
- g. I got a ride from a friend, coworker, or family member who dropped me off at work in a car, SUV, van, or truck (*One trip logged as carpool*)
- h. I took Caltrain or BART (*One trip logged as commuter rail*)

- i. I took a public transit bus (*One trip logged as bus*)
 - j. I took a [company name] shuttle bus (*One trip logged as [company-name] shuttle*)
 - k. I took a non-[company-name] shuttle bus (*One trip logged as shuttle*)
 - l. I walked (*One trip logged as walk*)
 - m. I rode my own bike (*One trip logged as bike*)
 - n. I used an electric scooter or similar (*One trip logged as scooter*)
 - o. Other: _____ (*One trip logged as other*)
- Etc. based on response to Question 4.*
6. When you left the office for the day, how did you travel? (If you used more than one commute option, select the option on which your distance was the furthest.)
- a. I drove alone in a car, SUV, van, or truck and parked on-site (*One trip logged as drive-alone*)
 - b. I drove alone in a car, SUV, van, or truck and parked elsewhere (*One trip logged as drive-alone*)
 - c. I drove alone on a motorcycle or moped and parked on-site (*One trip logged as drive-alone with motorcycle/moped*)
 - d. I drove alone on a motorcycle or moped and parked elsewhere (*One trip logged as drive-alone with motorcycle/scooter*)
 - e. I took Lyft or Uber, without any other passengers (*One trip logged as TNC*)
 - f. I drove/rode with others in a car, SUV, van, or truck (*One trip logged as carpool*)
 - g. I got a ride from a friend, coworker, or family member who dropped me off at work in a car, SUV, van, or truck (*One trip logged as carpool*)
 - h. I took Caltrain or BART (*One trip logged as commuter rail*)
 - i. I took a public transit bus (*One trip logged as bus*)
 - j. I took a [company name] shuttle bus (*One trip logged as [company-name] shuttle*)
 - k. I took a non-[company-name] shuttle bus (*One trip logged as shuttle*)
 - l. I walked (*One trip logged as walk*)
 - m. I rode my own bike (*One trip logged as bike*)
 - n. I used an electric scooter or similar (*One trip logged as scooter*)
 - o. Other: _____ (*One trip logged as other*)

At the completion of the survey, each entry should have a total number of daily trips by each mode. The development's mode share will be based on the total number of drive-alone trips (parking both on-site and off-site) divided by the total number of reported trips.