



Office of the City Manager

REVISED AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: November 30, 2021

Item Number: 24

Item Description: BayerHealthcare LLC – Amended and Restated Development Agreement

Submitted by: Jordan Klein, Director, Planning & Development Department

The attached materials provide typographical and other corrections/clarifications of the business entity that is entering into the development agreement, the parties that will be eligible to participate in community benefit programs, and related findings and conclusions.

EXHIBIT



Office of the City Manager

PUBLIC HEARING
November 30, 2021

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Director, Planning & Development Department
Subject: Bayer Healthcare LLC – Amended and Restated Development Agreement

RECOMMENDATION

Conduct a public hearing and, upon conclusion, certify the Final Subsequent Environmental Impact Report, adopt Findings and a Mitigation Monitoring and Reporting Program, and adopt the first reading of an Ordinance to approve the Amended and Restated Development Agreement between the City of Berkeley and Bayer Healthcare LLC.

SUMMARY

The City has undertaken a year-long effort to analyze and negotiate an amendment to the existing development agreement that reflects current conditions in the bioscience industry and local land use planning, as well as the desires of the community for the distribution of community benefits.

The result is a proposed Amended and Restated Development Agreement (“DA Amendment”) that would:

- Extend the duration an additional 30 years until February 2052.
- Add Bayer’s South Properties to the property covered by the DA.
- Modify the land use regulations applicable to the project, including use restrictions, development standards, and permit thresholds and processes, consistent with the General Plan and West Berkeley Plan.
- Update the community benefits package provided by Bayer during the term of the agreement, increasing the total 30-year payments from approximately \$10 million during the past 30 years to a total of over \$33 million over the next 30 years.

The resulting agreement would allow buildout of a conceptual development plan that would rearrange the campus layout through phased demolition of nine existing buildings, construction of approximately twelve new buildings for production, laboratory, and administrative uses, and replacement of surface parking with two new parking structures and new underground parking facilities.

FISCAL IMPACTS OF RECOMMENDATION

The DA Amendment includes a community benefits package in consideration of the value it provides for Bayer. The proposed community benefits package (Exhibit D to the DA Amendment) includes a total annual contribution of \$800,000 in year 1, with annual increases, for a total of \$33.1 million over the 30-year extended term. The benefits will support Science, Technology, Engineering, Arts and Mathematics (STEAM) and career technical education, the West Berkeley Fund for community infrastructure and resilience, the City of Berkeley's affordable housing trust fund, the City of Berkeley's affordable childcare trust fund, and the City of Berkeley's ~~P~~private ~~P~~ercent ~~A~~art ~~F~~und. Furthermore, Bayer's presence in the City provides other fiscal benefits as a result of employment, direct spending, property tax revenues, and other economic impacts and direct revenues for the City of Berkeley.

CURRENT SITUATION AND ITS EFFECTS

The Planning Commission, on October 20, 2021, unanimously adopted a recommendation to approve the DA Amendment and the CEQA documents listed above [Motion: Vincent; Second: Mikiten; Ayes: Ghosh, Hauser, Kapla, Mikiten, Moore, Oatfield, Twu, Vincent, and Wiblin; Noes: None; Abstain: None; Absent: None]. In making this recommendation, the Commission considered the findings established in BMC section 22.16.050.F:

1. Is consistent with the goals, objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan.
2. Is compatible with the uses authorized in, and the zoning district in which the real property is located.
3. Has duly considered City mitigation programs in effect at the time of execution of the agreement.
4. Will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood.
5. Complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto.

The Bayer Healthcare LLC DA Amendment is a Strategic Plan Priority Project, advancing the City's goals to:

- Foster a dynamic, sustainable, and locally-based economy.
- Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.
- Provide an efficient and financially-healthy City government.
- Create affordable housing and housing support services for our most vulnerable community members.

- Champion and demonstrate social and racial equity.

In accordance with Berkeley Municipal Code section 22.16.050.G-H, staff recommends that City Council conduct a public hearing to receive public testimony on the proposed DA Amendment and CEQA documents. Council may then accept, reject, or conditionally accept the recommendation of the Planning Commission.

BACKGROUND

In 1991, the City of Berkeley prepared the Miles Inc./Cutter Biological Long Range Plan EIR, which discusses the environmental impacts of the existing Development Agreement, which was approved by the City of Berkeley in 1992 and covers development within Bayer's North Properties (described in more detail below). The City approved an amendment to the existing DA along with adoption of an Initial Study and Mitigated Negative Declaration on April 27, 1999. The City also approved a Use Permit (UP#00-10000008) for the South Properties and adopted a Mitigated Negative Declaration for the Use Permit on July 21, 2000.

In March 2020, Bayer HealthCare LLC (successor to Miles/Cutter) submitted application materials for an amendment of the existing DA. The City undertook a rigorous analysis of the proposal, including a zoning analysis, a peer review of the basis of the community benefits, and environmental review.

Project Description

The project site, now generally known as the Bayer Campus, is located approximately 2.5 miles west of downtown Berkeley. The Bayer Campus consists of approximately 46 acres generally bounded by the Union Pacific Railroad to the west, Dwight Way to the north, Seventh Street to the east, and Grayson Street to the south. The project site comprises two primary areas, divided by Carleton Street:

- The North Properties at 800 Dwight Way, which includes 31.9 acres north of Carleton Street; and
- The South Properties at 801 Grayson Street, which includes 14.4 acres south of Carleton Street.

In addition, the project site includes a surface parking lot on a property bounded by Dwight Way, Seventh Street, and Eighth Street.

Bayer currently uses the site to develop and produce commercial biopharmaceuticals that are distributed globally. The campus has approximately 30 buildings, ranging in height from approximately 14 feet to the 100-foot former Colgate-Palmolive tower. The buildings total approximately 1,087,000 square feet of floor area, including 567,000 square feet on the North Properties and 520,000 square feet on the South Properties. The buildings provide space for the following permitted uses: production, laboratories,

warehouse, administration, utilities, and maintenance. The Bayer campus also has eight surface parking lots with a total of 1,100 parking spaces.

In addition to extending the term of the DA by 30 years, the proposed amended DA would include a conceptual development plan that would allow for rearranging the campus layout through proposed phased demolition of nine existing buildings; construction of approximately twelve new buildings for production, laboratory, and administrative uses; and replacement of surface parking with two new parking structures and new underground parking facilities. Several other buildings providing space for manufacturing, warehouses, and maintenance would be renovated and/or expanded.

Overall, as shown in Table 1 below, the project would involve a reduction of the maximum allowable square footage entitled under the current DA and South Properties Use Permit by 128,000 square feet. Within the 30-year time frame, Bayer envisions retaining approximately 820,000 square feet of existing square footage, demolishing nine buildings totaling approximately 267,000 square feet, and constructing approximately 918,000 square feet of new facilities.

Table 1: Existing, Entitled, and Proposed Buildout by Square Footage

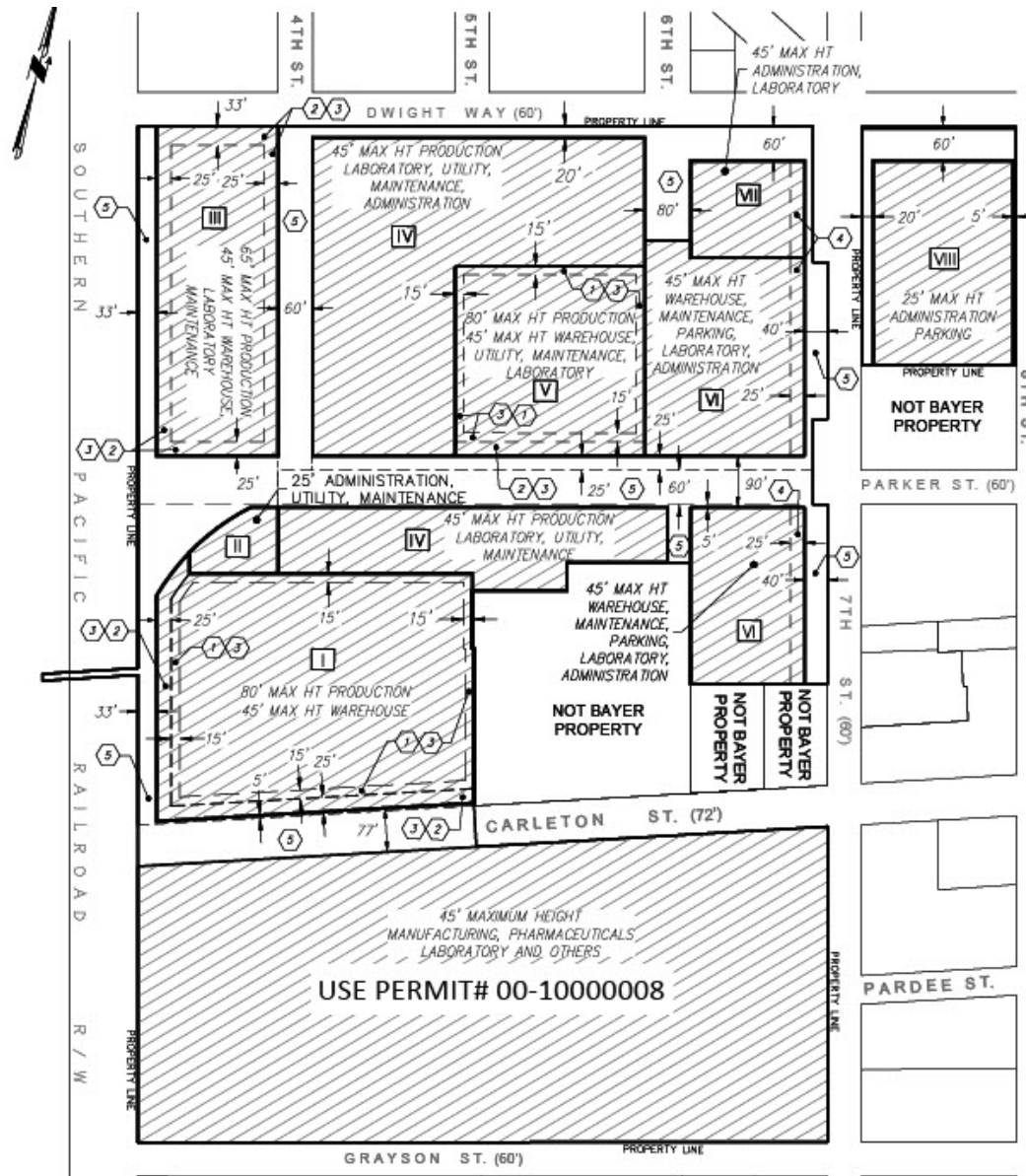
| Existing Built Sq. Ft. | Existing Maximum Permitted Sq. Ft. | Proposed Maximum Permitted Sq. Ft. | Existing Sq. Ft. to be Retained | Proposed Sq. Ft. to be Demolished | Proposed Sq. Ft. to be Constructed | Proposed Change from Permissible Sq. Ft. |
|------------------------|------------------------------------|------------------------------------|---------------------------------|-----------------------------------|------------------------------------|--|
| 1,087,000 | 1,866,000 | 1,738,000 | 820,000 | -276,000 | 918,000 | -128,000 |

Under the existing DA, the North Properties were divided into eight different blocks with defined usage requirements and height maximums for each block. The South Properties are subject to Mixed Manufacturing zoning. The DA amendment would reduce the number and configuration of the blocks, as well as revise the development standards by block, as summarized in Table 2 and illustrated in Figures 1 and 2 below. A conceptual development is illustrated in Figure 3.

Table 2: Development Standards

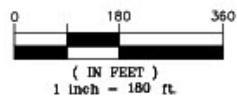
| Development Standard | South Campus / MM Zoning BMC 23E.76.070 | Existing DA | Proposed DA Amendment |
|--|--|---|---|
| Max. Height | 45' | 80' for Production 45' for Other Uses | 80' for Production 65' for Other Uses |
| Max. FAR | 2.00 | 0.27 (Block VIII) to 2.00 (Block V) | 0.27 (Block D) to 1.37 (Block B) |
| Setbacks: Zero-Foot Height Zones | None | There are four main “zero ft. height zones” which generally follow street alignments on the project site: West end of Parker St. 90’ wide corridor on Parker St. from Seventh St. to Fourth St 60’ wide corridor on Fourth St from Parker St. to Dwight Way 80’ wide corridor on Sixth St. from Dwight Way to 200 ft. south | Approximately 500,000 sq. ft. of “zero ft. height zones” for combined north and south properties, providing enhanced buffers along Seventh Street and other site boundaries. The main zones include: 33’ setback on the western boundary, from Dwight Way to Grayson St. 60’ wide corridor on Fourth St. from Dwight Way to Carleton St. 80’ setback on Seventh St., from Dwight Way to Grayson St. 60’ setback on Dwight Way, from the western boundary to Seventh St. 90’ wide corridor on Parker St, from western boundary to Seventh St. 90’ wide corridor on Carleton St. from western to eastern boundary. 10’ setback on Grayson St. from western boundary to Seventh St. |
| Automobile Parking: Production / Warehousing | 1:1,000 sq. ft. (< 10k sq. ft.) 1:1,500 sq. ft. (> 10k sq. ft.) | Production: 1:1,000 sq. ft. Warehouse: 1:5,000 sq. ft. | No Change |
| Automobile Parking: Other Uses | 1:500 sq. ft. | Laboratory: 1.5:1,000 sq. ft. Admin: 1:500 sq. ft. | Laboratory: 1:1,000 sq. ft. Admin: No Change |
| Bicycle Parking | 1:2,000 sq. ft. | none | 1:2,000 sq. ft. |

Figure 1: Existing Development Standards



LEGEND

- BAYER HEALTHCARE PROPERTY
- ADJACENT PROPERTY LINE
- 1992/1999 D.A. BLOCKS
- MAX HT** **MAXIMUM HEIGHT**



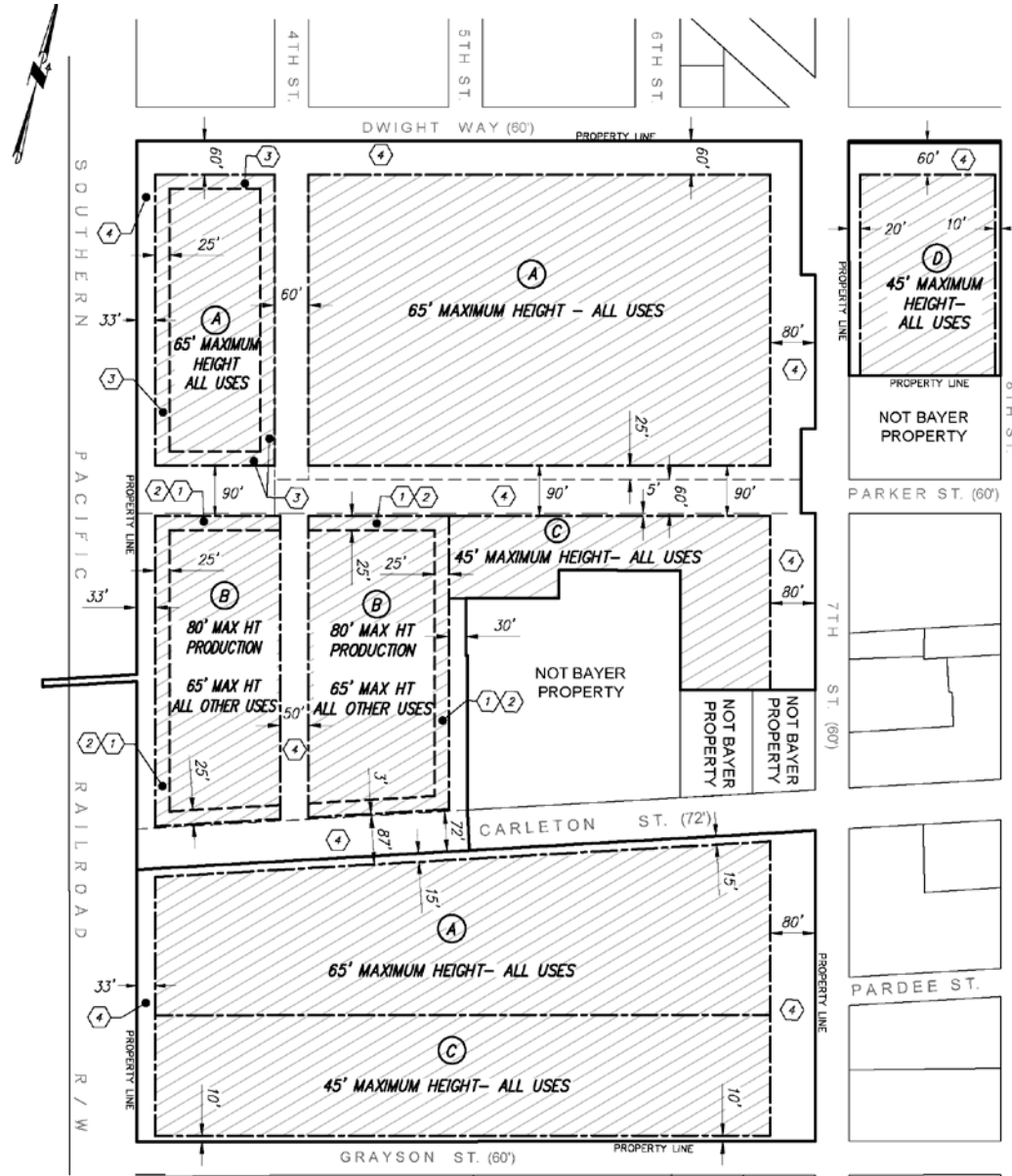
NOTE LEGEND

- 65' MAXIMUM HEIGHT FOR PRODUCTION
- 45' MAXIMUM HEIGHT FOR PRODUCTION
- 45' MAXIMUM HEIGHT FOR WAREHOUSE
- 35' MAXIMUM HEIGHT PERMITTED (OR EXISTING BUILDING)
- 0' HEIGHT

BLOCK LEGEND

- PERMITTED BUILDING HEIGHT 80 FEET (TOP FLOOR MAY NOT EXCEED 50% OF BUILDING FOOTPRINT AND HAS TO SET BACK +-15 FT.)
- PERMITTED BUILDING HEIGHT 65 FEET (TOP FLOOR MAY NOT EXCEED 50% OF BUILDING FOOTPRINT AND HAS TO SET BACK +-15 FT.)
- PERMITTED BUILDING HEIGHT 45 FEET (OR EXISTING BUILDING)
- PERMITTED BUILDING HEIGHT 25 FEET (OR EXISTING BUILDING)

Figure 2: Proposed Development Standards



LEGEND

- BAYER HEALTHCARE PROPERTY
- - - ADJACENT PROPERTY LINE
- - - SITE DEVELOPMENT BOUNDARY
- - - BUILDING HEIGHT STEPDOWN

NOTE LEGEND

- ① 65' MAXIMUM HEIGHT FOR PRODUCTION
- ② 50' MAXIMUM HEIGHT FOR OTHER USES
- ③ 50' MAXIMUM HEIGHT FOR ALL USES
- ④ 0' HEIGHT

BLOCK LEGEND

- Ⓐ 65' ALL USES
- Ⓑ 80' PRODUCTION, 65' OTHER USES
- Ⓒ 45' ALL USES
- Ⓓ 45' ALL USES



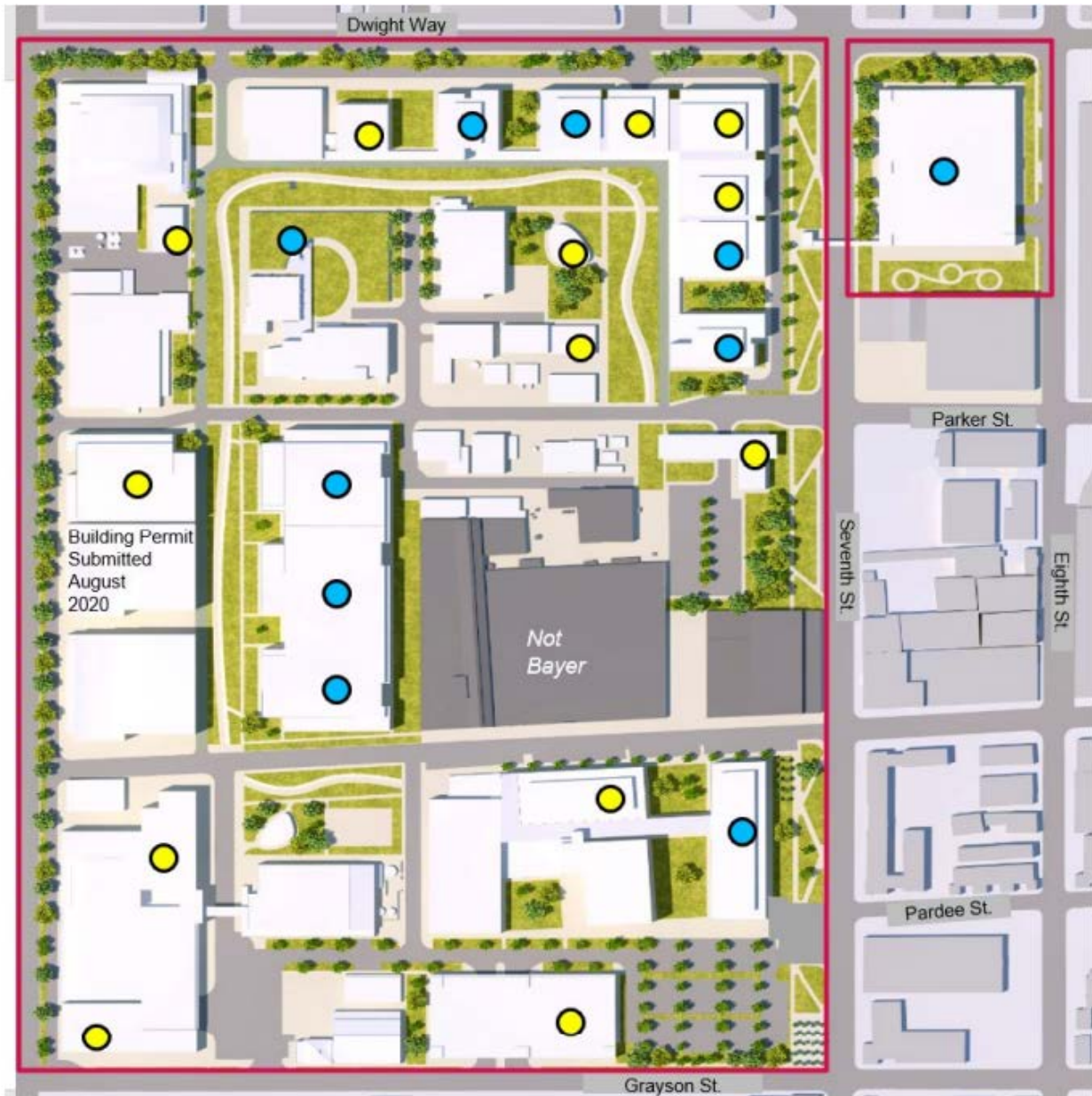
(IN FEET)
1 inch = 180 ft.

CITY OF BERKELEY

ALAMEDA COUNTY

CALIFORNIA

Figure 3: Conceptual Development



Existing buildings do not have circles.

- New at Year 30
- New at Year 10

Environmental Review

The City prepared a Draft Subsequent Environmental Impact Report (SEIR; see Link 1 below) and circulated it for a 45-day public comment period that ended on July 6, 2021. The Draft SEIR analyzed new or increased impacts associated with the proposed amended DA, taking into account changes to the conditions of the site and surroundings and changes to the regulatory environment since certification of the 1991 EIR.

Pursuant to Section 15126.4(a)(1) of the CEQA Guidelines, an EIR must describe feasible measures which could minimize significant adverse impacts. The Draft SEIR identifies several mitigation measures that would reduce impacts associated with the project related to aesthetics, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, noise, transportation, public services, recreation, and tribal cultural resources. Some of the measures are carried over directly from the 1991 EIR (with modifications and updates) and some are new mitigation measures.

Table ES-1 in the Executive Summary Section of the Draft SEIR provides the full impact statements and mitigation measures. The Draft SEIR did not identify significant environmental impacts that could not be mitigated to less than significant levels~~unavoidable significant environmental impacts that would result from the proposed amended DA.~~

As required by Section 15126.6 of the CEQA Guidelines, the Alternatives section of the Draft Subsequent EIR examines a range of reasonable alternatives to the proposed project that would feasibly obtain most of the project objectives and avoid or substantially lessen many of the project's significant environmental impacts. The following alternatives are evaluated in the Subsequent EIR:

- Alternative 1: No Project/No Construction Alternative.
- Alternative 2: No Project/Zoning Conformance Alternative.
- Alternative 3: Reduced Parking Alternative.

Other than the No Project/No Construction Alternative, Alternative 3 would be environmentally superior because it would result in fewer vehicle trips, which would incrementally reduce impacts related to air quality, GHG emissions, noise, and transportation. These impacts would remain less than significant with mitigation incorporated under this alternative. Nonetheless, because the proposed project would not have any significant and unavoidable impacts, the alternative is not necessary to avoid such impacts. Chapter 6, Alternatives, of the Draft SEIR includes a complete discussion of these alternatives and of alternatives that were rejected for various reasons.

Final SEIR and Response to Comments

The Final SEIR consists of the Draft SEIR and the Response to Comments document (RTC; see Link 3 below). The City received 13 written comments. In addition to the written letters, members of the public and Planning Commissioners provided verbal comments on the Draft SEIR at the June 2, 2021 Commission meeting.

The RTC includes a list of the agencies, organizations, and individuals that submitted written comments, and notes the verbal comments received at the public meeting on the Draft SEIR; reproductions of written comments and summaries of verbal comments, and responses to CEQA-related comments received; and revisions to the Draft SEIR in light of public comments received and responses provided.

The following issues were of particular concern to interested members of the public and board/commission members during the environmental review process (see the RTC for full responses to comments received):

- Impacts related to biohazards and bioethics
- Impacts related to bird strikes
- Impacts to Aquatic Park
- Impacts related to transportation and bicycle and pedestrian safety.

Revisions to the Draft SEIR

As described in the RTC, several revisions were made to the Draft SEIR in response to comments received and to make corrections or clarifications. None of the revisions constitute significant new information as defined in CEQA Guidelines Section 15088.5 or change the conclusions of the analysis; therefore, the SEIR does not need to be recirculated.

CEQA Findings

Section 15091 of the CEQA Guidelines provides that the City may not approve the project unless it makes written findings related to significant effects identified in the SEIR. The Council is being provided with draft findings, including the following (please see Exhibit B to the Ordinance):

Less than Significant Effects: Impacts that were determined to not require mitigation.

Effects Determined to be Mitigated to Less than Significant Levels: Effects that could be potentially significant, but can be mitigated to less than significant levels.

Feasibility of Project Alternatives: Alternatives and whether they would be more or less impactful than the project and why they may be infeasible for the specific economic, social, or other considerations.

MMRP

CEQA requires that, when mitigation measures are adopted, they be monitored. A Mitigation Monitoring and Reporting Program (MMRP) is included in the Final SEIR to illustrate how and when mitigation measures would be implemented and monitored, and by whom. The MMRP is Exhibit E to the draft amended Development Agreement.

Community Benefits

The amended DA, by establishing a shortened land use entitlement timeline and providing greater certainty by granting vested rights over an extended term, would confer monetary value to Bayer. In early 2021, Bayer submitted to city staff an analysis of the economic value of the amended DA to Bayer, and an estimate of the value of community benefits that Bayer could provide as part of the DA amendment. To assist in its negotiations with Bayer, the City engaged the consulting firm Economic & Planning Systems (EPS) to conduct a review of Bayer's economic analysis. In addition, in spring 2021 Mayor Jesse Arreguín and Councilmember Terry Taplin convened a panel of community members and stakeholders to provide input and feedback on community benefits associated with the DA amendment.

In response to the EPS peer review and feedback from City staff and community members, in June 2021 Bayer submitted a revised analysis of the economic value of the DA amendment to Bayer and a proposal for community benefits associated with the DA amendment. The June proposal included a total annual contribution of \$720,000 per year through the extended 30-year term, inclusive of all development impact fees and required public art contributions, to be increased annually by 2%. That contribution would be allocated towards Science, Technology, Engineering & Math (STEM) and career technical education, affordable housing, and community infrastructure investments and resilience programs. The June proposal was presented at a series of workshops at the Zoning Adjustments Board (July 8, 2021), Planning Commission (July 14, 2021), and City Council (July 20, 2021). Elected officials, commissioners, and community members provided a broad range of feedback regarding the total value of the community benefits package, the types of investments, potential in-kind and non-monetary contributions and that could be incorporated into the agreement, and Bayer's overall role as part of the West Berkeley community.

In September 2021, Bayer submitted a revised proposal, outlined in Exhibit D of the amended Development Agreement. It includes a total annual contribution of \$800,000 per year through the extended 30-year term to be increased annually by 4.04% in year 2, 2% in years 3 through 29, and 2.88% in year 30. The contributions would be allocated towards Science, Technology, Engineering, Arts & Math (STEAM) and career technical education,¹ the West Berkeley Fund for community infrastructure and

¹ [Exhibit D has been amended to clarify that Berkeley residents are to be the beneficiaries of the STEAM benefit.](#)

resiliency, the City of Berkeley's affordable housing trust fund, the City of Berkeley's affordable childcare trust fund, and the City of Berkeley's Private Percent Art Fund. The proposed allocation of community benefits by category and payment schedule over the 30-year extended term is illustrated in Table 3 below. The annual contribution in year 30 of the extended term would be \$1,461,537, and the monetary payments for the entirety of the extended 30-year term would total \$33.1 million.

Table 3: Proposed Community Benefits Allocations and Payment Schedule

| Year | Payment No. | Total Annual Investment Amount | STEAM & Career Technical Education | West Berkeley Fund | Affordable Housing | Affordable Childcare | Private Percent for Art |
|------|-------------|--------------------------------|------------------------------------|--------------------|--------------------|----------------------|-------------------------|
| 2022 | 1 | \$800,000 | \$388,000 | \$160,000 | \$160,000 | \$32,000 | \$60,000 |
| 2023 | 2 | \$832,320 | \$403,675 | \$166,464 | \$166,464 | \$33,293 | \$62,424 |
| 2024 | 3 | \$848,966 | \$411,749 | \$169,793 | \$169,793 | \$33,959 | \$63,672 |
| 2025 | 4 | \$865,946 | \$419,984 | \$173,189 | \$173,189 | \$34,638 | \$64,946 |
| 2026 | 5 | \$883,265 | \$428,384 | \$176,653 | \$176,653 | \$35,331 | \$66,245 |
| 2027 | 6 | \$900,930 | \$436,951 | \$180,186 | \$180,186 | \$36,037 | \$67,570 |
| 2028 | 7 | \$918,949 | \$445,690 | \$183,790 | \$183,790 | \$36,758 | \$68,921 |
| 2029 | 8 | \$937,328 | \$454,604 | \$187,466 | \$187,466 | \$37,493 | \$70,300 |
| 2030 | 9 | \$956,074 | \$463,696 | \$191,215 | \$191,215 | \$38,243 | \$71,706 |
| 2031 | 10 | \$975,196 | \$472,970 | \$195,039 | \$195,039 | \$39,008 | \$73,140 |
| 2032 | 11 | \$994,699 | \$482,429 | \$198,940 | \$198,940 | \$39,788 | \$74,602 |
| 2033 | 12 | \$1,014,593 | \$492,078 | \$202,919 | \$202,919 | \$40,584 | \$76,094 |
| 2034 | 13 | \$1,034,885 | \$501,919 | \$206,977 | \$206,977 | \$41,395 | \$77,616 |
| 2035 | 14 | \$1,055,583 | \$511,958 | \$211,117 | \$211,117 | \$42,223 | \$79,169 |
| 2036 | 15 | \$1,076,695 | \$522,197 | \$215,339 | \$215,339 | \$43,068 | \$80,752 |
| 2037 | 16 | \$1,098,229 | \$532,641 | \$219,646 | \$219,646 | \$43,929 | \$82,367 |
| 2038 | 17 | \$1,120,193 | \$543,294 | \$224,039 | \$224,039 | \$44,808 | \$84,014 |
| 2039 | 18 | \$1,142,597 | \$554,160 | \$228,519 | \$228,519 | \$45,704 | \$85,695 |
| 2040 | 19 | \$1,165,449 | \$565,243 | \$233,090 | \$233,090 | \$46,618 | \$87,409 |
| 2041 | 20 | \$1,188,758 | \$576,548 | \$237,752 | \$237,752 | \$47,550 | \$89,157 |
| 2042 | 21 | \$1,212,533 | \$588,079 | \$242,507 | \$242,507 | \$48,501 | \$90,940 |
| 2043 | 22 | \$1,236,784 | \$599,840 | \$247,357 | \$247,357 | \$49,471 | \$92,759 |
| 2044 | 23 | \$1,261,519 | \$611,837 | \$252,304 | \$252,304 | \$50,461 | \$94,614 |
| 2045 | 24 | \$1,286,750 | \$624,074 | \$257,350 | \$257,350 | \$51,470 | \$96,506 |
| 2046 | 25 | \$1,312,485 | \$636,555 | \$262,497 | \$262,497 | \$52,499 | \$98,436 |
| 2047 | 26 | \$1,338,734 | \$649,286 | \$267,747 | \$267,747 | \$53,549 | \$100,405 |
| 2048 | 27 | \$1,365,509 | \$662,272 | \$273,102 | \$273,102 | \$54,620 | \$102,413 |
| 2049 | 28 | \$1,392,819 | \$675,517 | \$278,564 | \$278,564 | \$55,713 | \$104,461 |

| | | | | | | | |
|------|--------------|---------------------|---------------------|--------------------|--------------------|--------------------|--------------------|
| 2050 | 29 | \$1,420,676 | \$689,028 | \$284,135 | \$284,135 | \$56,827 | \$106,551 |
| 2051 | 30 | \$1,461,537 | \$708,845 | \$292,307 | \$292,307 | \$58,461 | \$109,615 |
| | Total | \$33,100,001 | \$16,053,500 | \$6,620,000 | \$6,620,000 | \$1,324,000 | \$2,482,500 |

The parameters governing the investments in STEAM and career technical education, and the investments in the West Berkeley Fund, are established in Exhibit D to the DA amendment. The investments to support affordable housing, affordable childcare, and public art would be contributed to the corresponding City of Berkeley municipal funds, administered and disbursed in accordance with the City's regulations and policies for those funds, and would be applied to satisfy the project's obligations for the associated fees. The resolutions establishing the Affordable Housing and Childcare fees provide that the City Manager may modify the payment schedule for these fees, and will do so to facilitate the implementation of the community benefits package outlined in Exhibit D. It is projected that the annual payments will meet or exceed the required fee amounts. In the event there is a shortfall, Bayer will make up the difference upon issuance of each building permit, with those additional payments credited toward future contributions required by the community benefits agreement. Exceedances accumulated during any years will be banked for future permits.

The community benefits agreement outlined in Exhibit D also includes a list of non-monetary, in-kind contributions including specific commitments related to volunteerism, local hiring outreach and promotion, community building events, and sustainability commitments beyond the required mitigation measures identified through the CEQA process.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The amended DA would further the City's sustainability goals by providing for on-site open space, infrastructure improvements, contributions toward environmental programs, and transportation demand management program elements.

RATIONALE FOR RECOMMENDATION

Amending the existing DA is in accordance with the provisions of Berkeley Municipal Code 22.16.080 Development Agreement Procedures – Amendment or Cancellation.

ALTERNATIVE ACTIONS CONSIDERED

The City could allow the existing DA to lapse in February 2022, in which case the property would be governed by the underlying Mixed-Manufacturing (MM) zoning district and the approved Use Permit for the South Properties.

CONTACT PERSON

Jordan Klein, Director, Planning & Development Department, (510) 981-7534

Steven Buckley, Land Use Planning Manager, Planning & Development Department,
(510) 981-7411

Attachments:

1: Ordinance

Exhibit A: Development Agreement Amendment and Exhibits A-I

Exhibit B: CEQA Findings

2: Public Hearing Notice

LINKS:

1. Draft Subsequent EIR:

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/Draft%20Subsequent%20EIR%20_%20Bayer%20HeathCare%20DA%20Amendment.pdf

2. Bayer Development Agreement page including DSEIR Appendices A-J:

https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/Bayer_Development_Agreement.aspx

3. Responses to Comments / Final SEIR:

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2021-10-20_Bayer%20DA%20Amendment_Responses%20to%20Comments.pdf

ORDINANCE NO. -N.S.

APPROVING DEVELOPMENT AGREEMENT AMENDMENT WITH BAYER
HEALTHCARE LLC

BE IT ORDAINED by the Council of the City of Berkeley as follows:

1. Section 1. Approval and Implementation of Amended and Restated Development Agreement Between the City of Berkeley and Bayer ~~Corporation~~Healthcare LLC.

a. This Ordinance incorporates by reference that certain Amended and Restated Development Agreement (approved concurrently with this Ordinance) by and between the City of Berkeley and Bayer ~~Corporation~~Healthcare LLC.

b. This Ordinance is adopted under the authority of the Development Agreement Statute (Government Code section 65864 et seq.) and City of Berkeley Ordinance No. 6033-N.S. (Berkeley Municipal Code Chapter 22.16), establishing development agreement procedures.

c. The City Council hereby finds and determines that the Amended and Restated Development Agreement ("Development Agreement") is consistent with the policies, goals, standards, objectives, and general land uses contained in the General Plan for the City of Berkeley and the West Berkeley Plan.

d. The City Council hereby approves the Development Agreement, substantially in the form on file with the City Clerk, subject to such minor and clarifying changes as may be approved by the City Manager prior to execution thereof and subject to further revisions as may be necessary to conform that document to the City Council's actions.

e. The City Manager is hereby authorized and directed to execute the Development Agreement on behalf of the City of Berkeley after the effective date of this Ordinance.

f. The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the implementation and administration of the Development Agreement pursuant to the terms of Berkeley Municipal Code Chapter 22.16 and the Development Agreement.

g. This Ordinance shall take effect thirty (30) days after its introduction and adoption.

h. Within ten (10) days after the date upon which the City Manager executes the Development Agreement on behalf of the City, the City Clerk shall record the Development Agreement and this Ordinance with the County Recorder of the County of Alameda.

Section 2. Building Height Standards

a. The City Council finds that the Development Agreement and documents incorporated by reference therein contain ample information demonstrating the need for the life sciences building heights on the Bayer Campus. The need for heights that exceed the standard height limits for the Mixed Manufacturing zoning district has been substantiated by engineering, land use, and environmental analyses that the City has evaluated, which are included as Exhibit F to the Development Agreement.

b. Accordingly, the City Council determines and ordains that development of the Project Site in accordance with the Development Agreement shall not necessitate the issuance of variances pursuant to the City of Berkeley Zoning Ordinance with respect to building heights.

~~c. In the event of any apparent conflict between the Site Development Plan or Site Development Standards contained in the Development Agreement, on the one hand, and any provision of the City of Berkeley Zoning Ordinance, on the other hand, such apparently conflicting provisions shall be harmonized if possible. In the event that such provisions are in irreconcilable conflict, the Site Development Plan and Site Development Standards, being more specifically tailored to the Project Site, shall control over the Zoning Ordinance.~~

Section 3. Alternative Percentage for Public Art on Private Projects In-Lieu Fee Approved

a. The City Council finds that Bayer' development would ordinarily be subject to the public art requirements of Berkeley Municipal Code Chapter 23C.23.

b. The City Council finds that due to the particularly high construction costs required by the Bayer Project, an in-lieu public art fee meeting the requirements of Chapter 23C.23 would be disproportionately high and would require reallocation of community benefits provided by Bayer.

b. The City Council finds that the needs and priorities of the City are best served by establishing an alternative public art in-lieu fee for this Development Agreement, in order to allocate larger portions of the community benefits payments to affordable housing, STEAM education, and the West Berkeley Fund.

c. The City Council finds that the Development Agreement, in requiring a total of \$2,482,500.00 to be paid to the Private Percent Art Fund over its term, will

provide a significant and meaningful contribution toward providing public art and cultural services to the community at large.

d. Accordingly, City Council approves the public art fee amount and payment schedule as set forth in Exhibit D of the Development Agreement, which shall apply in lieu of the requirements of Chapter 23C.23.

Section 4. Adoption of SEIR.

The Council hereby certifies and adopts the Subsequent Environmental Impact Report as the environmental review for the project, and adopts the Findings set forth in Exhibit B to this Ordinance.

Section 5. Definitions.

Terms used in this Ordinance which are defined in the Development Agreement shall have the meanings identified therein.

Section 6. Expiration.

This Ordinance shall expire and be of no further force or effect upon the occurrence of either of the following events: (a) expiration of the Term of the Development Agreement; or (b) termination or cancellation of the Development Agreement in accordance with the terms of the Development Agreement or pursuant to Berkeley Municipal Code Chapter 22.16.

Section 7. Posting.

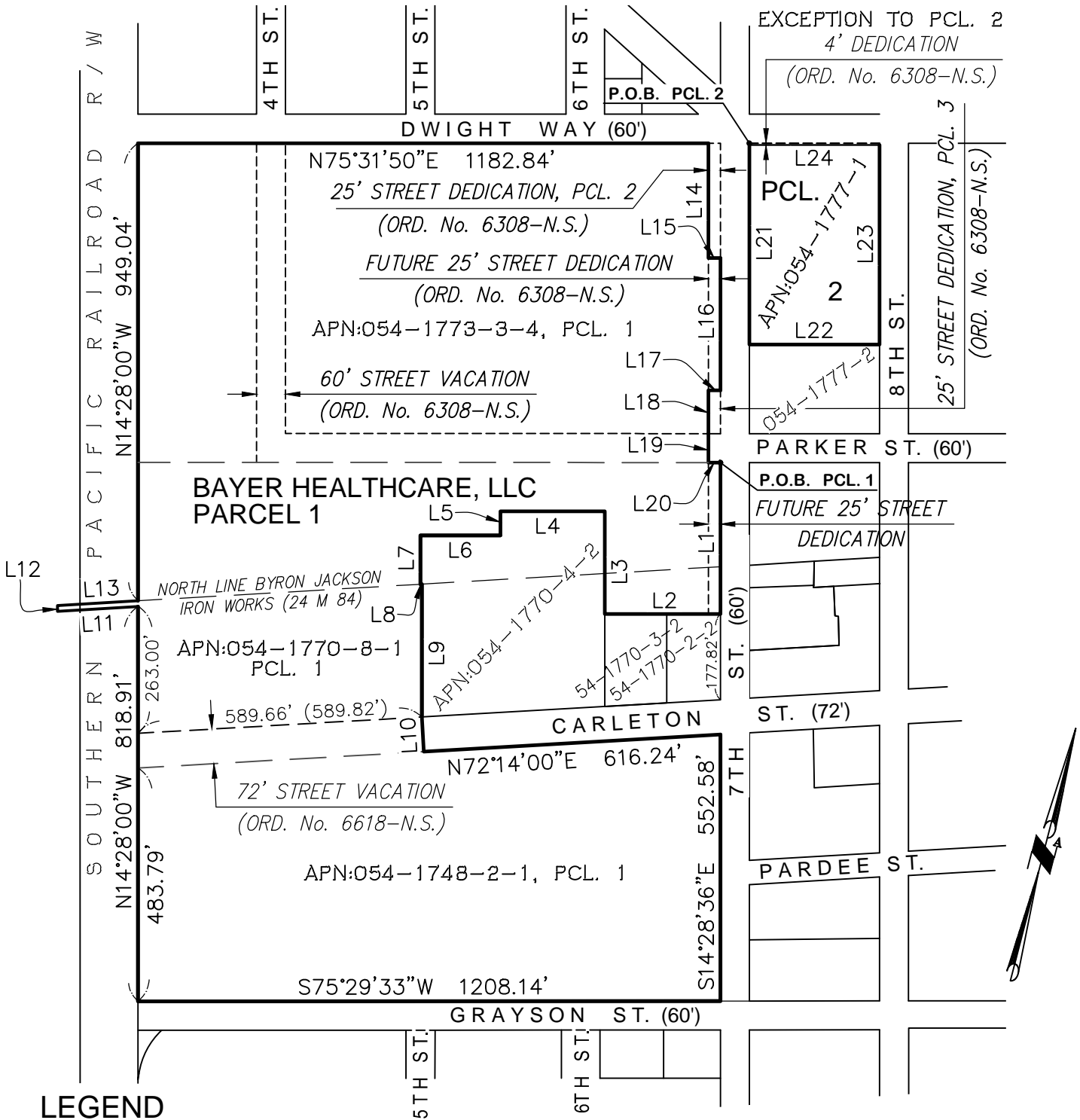
Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Exhibits

A: Amended and Restated Development Agreement with Exhibits A-I

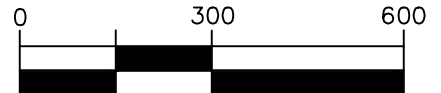
B: CEQA Findings

EXHIBIT A



LEGEND

- P.O.B. POINT OF BEGINNING
- BAYER HEALTHCARE PROPERTY LINE
- ADJACENT PROPERTY LINE
- () RECORD DATA SEE SHEET 2 FOR LINE TABLE



(IN FEET)
1 inch = 300 ft.

CITY OF BERKELEY

ALAMEDA COUNTY

CALIFORNIA



Civil Engineers
Traffic Engineers
Surveyors

Aliquot Associates, Inc.
1390 S. Main St. - Ste. 310
Walnut Creek, CA 94596
Telephone: (925) 476-2300
Fax: (925) 476-2350

Subject DEVELOPMENT AGREEMENT PLAT

Job No. 220040 Scale 1" = 300'

By MM Date 7/21/2021 Chkd. VJD

SHEET 1 OF 2

EXHIBIT A

PARCEL 1
 APN'S: 054-1773-3-4, 054-1770-8-1, &
 054-1748-2-1

| LINE TABLE | | |
|------------|-------------|----------|
| LINE # | BEARING | DISTANCE |
| L1 | S14°28'36"E | 314.26' |
| L2 | S75°32'00"W | 240.11' |
| L3 | N14°28'00"W | 213.04' |
| L4 | S75°32'22"W | 216.04' |
| L5 | S14°28'00"E | 50.00' |
| L6 | S75°32'22"W | 166.04' |
| L7 | S14°28'00"E | 101.25' |
| L8 | N72°11'00"E | 2.87' |
| L9 | S14°28'00"E | 275.52' |
| L10 | S17°46'00"E | 72.00' |
| L11 | N72°11'00"E | 167.38' |
| L12 | S14°28'00"E | 12.00' |
| L13 | S72°11'00"W | 167.38' |
| L14 | S14°28'36"E | 238.00' |
| L15 | N75°31'24"E | 25.00' |
| L16 | S14°28'36"E | 274.49' |
| L17 | N75°31'24"E | 25.00' |
| L18 | S14°28'36"E | 89.88' |
| L19 | N14°28'36"W | 60.00' |
| L20 | N75°32'22"E | 25.00' |

PARCEL 2
 APN: 054-1777-001

| LINE TABLE | | |
|------------|-------------|----------|
| LINE # | BEARING | DISTANCE |
| L21 | S14°28'36"E | 417.67' |
| L22 | N75°31'50"E | 270.10' |
| L23 | N14°28'17"W | 417.67' |
| L24 | S75°31'50"W | 270.13' |

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Subject DEVELOPMENT AGREEMENT PLAT

Job No. 220040 Scale N/A

By MM Date 7/21/2021 Chkd. VJD

SHEET 2 OF 2

EXHIBIT B
Legal Description
(consisting of sub-exhibits A & B herein)

EXHIBIT 'A'
LEGAL DESCRIPTION OF
THE BAYER HEALTHCARE, LLC BOUNDARY
FOR A DEVELOPMENT AGREEMENT

All that real property situated in the City of Berkeley, County of Alameda, State of California, being more particularly described as follows:

Parcel 1:

Beginning at the point of intersection of the south line of Parker Street (60.00 feet wide) with the west line of 7th Street (60.00 feet wide), as said streets are shown on the "Map showing subdivisions of the Lands of T. and E. Hardwick in Plot No. 59 of the V. and D. Peralta Ranchos, Berkeley, Oakland Township, Alameda County, Cal.", filed November 16, 1877, in Book 6 of Maps, at Page 15 (6 M 15) in the Office of the County Recorder of Alameda County;

thence along said west line of 7th Street, South 14°28'36" East, 314.26 feet (L1) to a point being 177.82 feet from the intersection with the north line of Carleton Street (72.00 feet wide) as shown on the "Map of Byron Jackson Iron Works Property, Berkeley, Cal.", filed July 14, 1909, in Book 24 of Maps, Page 84 (24 M 84) Alameda County Records;

thence leaving said west line of 7th Street, South 75°32'00" West, 240.11 feet (L2) to the west line of Block Q as shown on said map (24 M 84);

Thence along the west line of said Block Q and its northerly extension, North 14°28'00" West, 213.04 feet (L3) to the easterly direct extension of the north line of Lot 3, Block 155 (6 M 15);

Thence along said easterly direct extension and north line of said Lot 3, South 75°32'22" West, 216.04 feet (L4) to the west line of said Lot 3;

Thence along said west line of Lot 3, South 14°28'00" East, 50.00 feet (L5) to the north line of Lot 21 in said Block 155 (6 M 15);

Thence along said north line of said Lot 21 and the westerly extension thereof, South 75°32'22" West, 166.04 feet (L6) to the centerline of Fifth Street as shown on said (6 M 15);

Thence along said centerline of Fifth Street, South 14°28'00" East, 101.25 feet (L7) to the southerly line of said (6 M 15), said line also being the northerly line of said (24 M 84);

Thence along said southerly and northerly line of said maps, North 72°11'00" " East, 2.87 feet (L8) to a point on the west line of the lands of Macaulay Foundry, Inc. as described in the deed recorded March 18, 2004 as Instrument No. 2004-113321, Alameda County Records;

Thence along said west line, South 14°28'00" East, 275.52 feet (L9) to a point on the north line of Carleton Street, said point being 589.66 feet (589.82 feet as described in Instrument No. 2004-113321) easterly from the east right of way line of the Southern Pacific Railroad Company as shown on said (24 M 84);

Thence leaving said north line of Carleton Street, at right angles, South 17°46'00" East, 72.00 feet (L10) to a point on the south line of Carleton Street;

Thence along said south line of Carleton Street, North 72°14'00" East, 616.24 feet to a point on said west line of 7th Street;

EXHIBIT 'A'
LEGAL DESCRIPTION OF
THE BAYER HEALTHCARE, LLC BOUNDARY
FOR A DEVELOPMENT AGREEMENT

Thence along said west line of 7th Street, South 14°28'36" East, 552.58 feet to a point on the north line of Grayson Street (60.00 feet wide) as shown on the "Map of Grayson Tract, Berkeley, Cal.," filed June 1, 1892, in Book 13 of Maps, at Page 43 (13 M 43) Alameda County Records;

Thence along said north line of Grayson Street, South 75°29'33" West, 1208.14 feet to said east right of way line of the Southern Pacific Railroad Company shown on said (24 M 84);

Thence along said east line of the Southern Pacific Railroad Company right of way, North 14°28'00" West, 818.91 feet to a point distant 263.00 feet north of the north line of the Carleton Street;

Thence leaving said east line of the Southern Pacific Railroad Company right of way, South 72°11'00" West, 167.38 feet (L11) to a point on the west line of the 23.41 acre tract described as Parcel 1 in the deed from Byron Jackson Machine Works to Byron Jackson Iron Works, dated and recorded on April 11, 1907 in Book 1322, at Page 343 of Deeds, Alameda County Records;

Thence northerly along said west line of the 23.41 acre tract, North 14°28'00" West, 12.00 feet (L12) to a point on the westerly direct extension of the north line of the Byron Jackson Iron Works Property shown on said map (24 M 84);

Thence along said westerly extension, North 72°11'00" East, 167.38 feet (L13) to a point on said east line of the Southern Pacific Railroad Company right of way;

Thence along said east line of the Southern Pacific Railroad Company right of way, North 14°28'00" West, 949.04 feet to a point on the south line of Dwight Way (60.00 feet wide) as shown on said (6 M 15);

Thence along said south line of Dwight Way, North 75°31'50" East, 1182.84 feet to a point distant 25.00 feet west from said west line of 7th Street, said point also being the northwest corner of Parcel 2 as described and shown in the Dedication of 7th Street and Dwight Way in the City of Berkeley City Ordinance No. 6308-N.S. finally adopted on January 9, 1996, and in effect on February 08, 1996;

Thence along the west line of Parcel 2 of said Dedication, South 14°28'36" East, 238.00 feet (L14) to the southwest corner of said Parcel 2;

Thence, at right angles, North 75°31'24" East, 25.00 feet (L15) to a point on said west line of 7th Street;

Thence along said west line of 7th Street, South 14°28'36" East, 274.49 feet (L16);

Thence, at right angles, South 75°31'24" West, 25.00 feet (L17) to the northwest corner of Parcel 3 of said Dedication;

Thence along the west line of Parcel 3 of said Dedication, South 14°28'36" East, 89.88 feet (L18) (called 90.00 feet in the City Ordinance No. 6308-N.S.) to a point on said north line of Parker Street, said point also being 25.00 feet west from the west line of 7th Street;

Thence parallel with and distant 25.00 feet west from said west line of 7th Street, South 14°28'36" East, 60.00 feet (L19) to a point on the south line of Parker Street, said point also being 25.00 feet west from the west line of 7th Street;

EXHIBIT 'A'
LEGAL DESCRIPTION OF
THE BAYER HEALTHCARE, LLC BOUNDARY
FOR A DEVELOPMENT AGREEMENT

Thence along said south line of Parker Street, North 75°32'22" East, 25.00 feet (L20) to the **Point of Beginning**.

Containing an area of 1,903,365 square feet, more or less, or 43.69 acres measured in ground distances and shown on the plat entitled Exhibit "B" attached and made a part hereof for reference only.

APN's: 054-1773-003-4; 054-1770-008-1; 054-1748-002-1

Parcel 2:

Beginning at the point of intersection of the south line of Dwight Way (60.00 feet wide) with the east line of 7th Street (60.00 feet wide), as said streets are shown on the "Map showing subdivisions of the Lands of T. and E. Hardwick in Plot No. 59 of the V. and D. Peralta Ranchos, Berkeley, Oakland Township, Alameda County, Cal.", filed November 16, 1877, in Book 6 of Maps, at Page 15 (6 M 15) in the Office of the County Recorder of Alameda County;

Thence along said east line of 7th Street, South 14°28'36" East, 417.67 feet (L21) (called 455.14 feet in deed description);

Thence leaving said east line of 7th Street, North 75°31'50" East, 270.10 feet (L22) to a point on the west line of 8th Street;

Thence along the west line of 8th Street, North 14°28'17" West, 417.67 feet (L23) (called 419.14 feet in deed description) to a point on said south line of Dwight Way;

Thence along said south line of Dwight Way, South 75°31'50" West, 270.13 feet (L24) to the **Point of Beginning**.

EXCEPTING THEREFROM a strip of land of uniform width of 4 feet lying southerly of the south line of Dwight Way between 7th Street and 8th Street as described and shown in the Dedication of 7th Street and Dwight Way in the City of Berkeley City Ordinance No. 6308-N.S. finally adopted on January 9, 1996, and in effect on February 08, 1996.

Containing an area of 111,740 net square feet, more or less, or 2.56 acres measured in ground distances and shown on the plat entitled Exhibit "B" attached and made a part hereof for reference only.

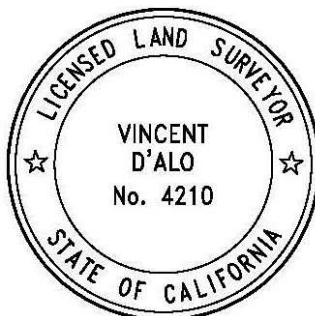
APN: 054-1777-001

END OF DESCRIPTION

Prepared by:

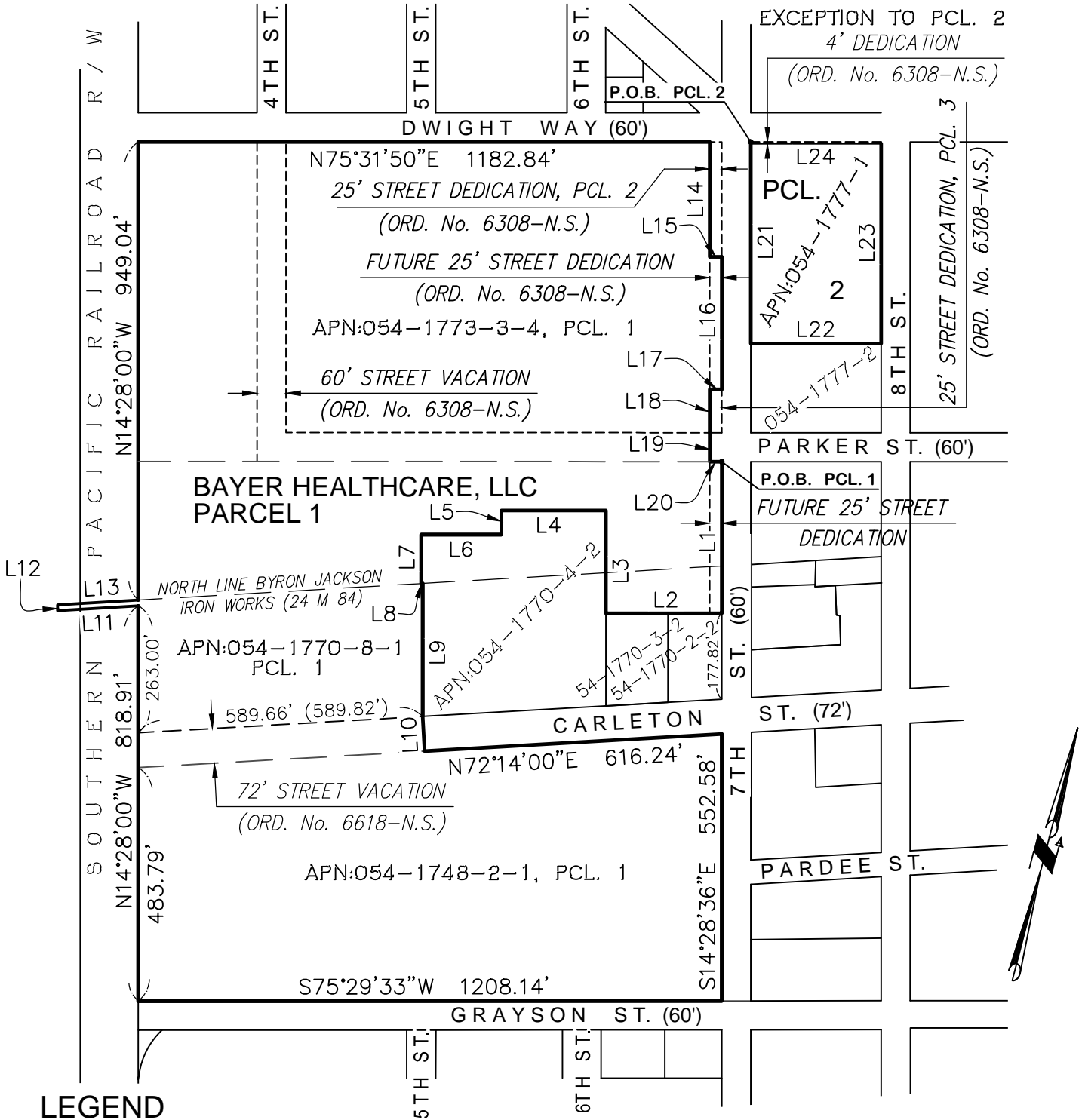


Vincent J. D'Alo
LS 4210



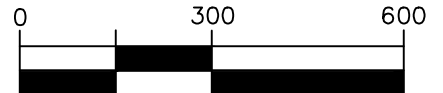
July 21, 2021
Date

EXHIBIT B



LEGEND

- P.O.B. POINT OF BEGINNING
- BAYER HEALTHCARE PROPERTY LINE
- ADJACENT PROPERTY LINE
- () RECORD DATA SEE SHEET 2 FOR LINE TABLE



(IN FEET)
1 inch = 300 ft.

CITY OF BERKELEY

ALAMEDA COUNTY

CALIFORNIA



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Subject DEVELOPMENT AGREEMENT PLAT

Job No. 220040 Scale 1" = 300'

By MM Date 7/21/2021 Chkd. VJD

SHEET 1 OF 2

EXHIBIT B

PARCEL 1
 APN'S: 054-1773-3-4, 054-1770-8-1, &
 054-1748-2-1

| LINE TABLE | | |
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| L18 | S14°28'36"E | 89.88' |
| L19 | N14°28'36"W | 60.00' |
| L20 | N75°32'22"E | 25.00' |

PARCEL 2
 APN: 054-1777-001

| LINE TABLE | | |
|------------|-------------|----------|
| LINE # | BEARING | DISTANCE |
| L21 | S14°28'36"E | 417.67' |
| L22 | N75°31'50"E | 270.10' |
| L23 | N14°28'17"W | 417.67' |
| L24 | S75°31'50"W | 270.13' |

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Subject DEVELOPMENT AGREEMENT PLAT

Job No. 220040 Scale N/A

By MM Date 7/21/2021 Chkd. VJD

SHEET 2 OF 2

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF
BERKELEY AND BAYER CORPORATION**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the "Agreement") is entered into this []th day of [month], 2021, between BAYER HEALTHCARE LLC ("Bayer"), and the CITY OF BERKELEY, ("City") pursuant to the authority of Sections 65864 et seq. of the California Government Code, sections 22.16.010 et seq., of the Berkeley Municipal Code¹ establishing Development Agreement Procedures, and the "Large Site Development Process" authorized by the West Berkeley Plan, as incorporated into the Berkeley General Plan.

RECITALS AND FINDINGS

This Agreement is based on the following facts, understandings and intentions of the parties:

- A. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature enacted the Development Agreement Statute (Government Code, Section 65864 et seq.), which authorizes any city to enter into binding, long-term agreements with persons or entities having legal or equitable interests in real property, for which agreements provide for the development of the property.
- B. The City, by Ordinance No. 6033 - N.S., dated March 5, 1991, adopted procedures for the processing, consideration and implementation of development agreements, now set forth in Berkeley Municipal Code sections 22.16.010 et seq. Berkeley Municipal Code section 22.16.040 provides that a development agreement shall set forth the permitted uses of the subject property; the general location and density or intensity of uses; the general location, maximum height and size of proposed buildings; and provisions for reservation or dedication

¹ All citations to the Berkeley Municipal Code herein shall refer to the version of the Code existing upon the date of execution of this Agreement.

of land for public purposes. A development agreement may also include conditions, terms, restrictions, and requirements for Subsequent discretionary actions.

- C. The current West Berkeley Bayer Campus, and the surrounding Berkeley neighborhood, are subject to the West Berkeley Plan, which was adopted as an amendment to the General Plan in 1993. The principles of the West Berkeley Plan were enshrined in the City's legislatively sanctioned 1991 "Preferred Land Use Concept" for the West Berkeley Area Plan, which preceded formal adoption of the West Berkeley Plan. The purpose of the West Berkeley Plan is to set forth guidelines for a range of land uses in West Berkeley, and to provide important points of reference in making land use decisions on specific projects. (See West Berkeley Plan, Land Use Section, at "Goals and Policies.")
- D. Both the 1991 "Preferred Land Use Concept" for the West Berkeley Area Plan and the West Berkeley Plan set forth a "Large Site Development Process" for sites of at least 5 acres in West Berkeley that propose to use a development agreement as an alternative land use entitlement.
- C. Pursuant to Berkeley Municipal Code sections 22.16.030(E), the City Council, on April 16, 1991, determined that a development agreement was the appropriate form of entitlement for the buildout of a West Berkeley Campus for Miles, Inc., now owned and operated by Bayer, under Berkeley Municipal Code sections 22.16.010 et seq. and the 1991 "Preferred Land Use Concept," which would subsequently become the West Berkeley Plan. Accordingly, on February 25, 1992 City entered into a development agreement with Miles Inc. ("1992 Development Agreement"). Miles Inc. subsequently changed its corporate name to Bayer Corporation. Bayer HealthCare LLC is an affiliate of Bayer Corporation and is a successor in interest to the Project Site as defined herein and to the rights and obligations of the 1992 Development Agreement.
- D. The 1992 Development Agreement recitals stated that the Miles Inc. (now Bayer) campus was a large-site development project, and further concluded that the use of a development agreement for the site was appropriate under the April 9, 1991 version of the Preferred Land Use Concept for the West Berkeley Area Plan, and was consistent with the City's General Plan. The 1992 Development Agreement recitals further stated that the agreement was being entered pursuant to Ordinance No. 6033 (subsequently codified as Berkeley Municipal Code Chapter 22.16).

- E. In 1993, the City of Berkeley formally amended the Berkeley General Plan to adopt the West Berkeley Plan.
- F. On June 10, 1999, City entered into the First Amendment to Development Agreement between the City of Berkeley and Bayer (A Corporation Formerly Named Miles Inc.) ("1999 Amendment"), which amended the 1992 Development Agreement to reallocate squarefootage assigned for production and utilities uses to administration and laboratory uses, change permitted uses within particular blocks of the Bayer Campus, and change planning and architectural design guidelines along public right of ways, in all affecting 230,000 square feet of building space. On July 21, 2000, independent of the 1992 Development Agreement as amended, the City approved Use Permit #00-10000008 for 14.4 acres of property owned by Bayer located west of Seventh Street and south of Carleton Street ("South Properties Use Permit").
- G. Bayer HealthCare LLC is a corporation duly organized under the laws of the State of Delaware, is in good standing thereunder, and is duly qualified to conduct business in the State of California. Bayer represents that on the Effective Date it possesses a legal or equitable interest in Parcels 54-1770-8-1, 54-1773-3-4, 54-1777-1, 54-1777-2, and 54-17482-1, within the City of Berkeley, collectively consisting of approximately 46 acres generally bounded by the Union Pacific Railroad to the west, Dwight Way to the north, Seventh Street to the east, and Grayson Street to the south, as well as a parcel located at the southeast corner of the intersection of Dwight Way and Seventh Street (collectively, "Project Site"). The Project Site consists of The North Properties at 800 Dwight Way, which comprises 31.9 acres north of Carleton Street; and The South Properties at 801 Grayson Street, which comprises 14.4 acres south of Carleton Street.
- H. The Project Site is currently home to the Bayer Campus, consisting of 36 buildings developed under the 1992 Development Agreement, the 1999 Amendment, and the South Properties Use Permit.
- I. City and Bayer have reached accord on, and desire to express herein, an Amended and Restated Development Agreement, extending the initial term of the 1992 Development Agreement by 30 years. This accord builds upon the 1992 Development Agreement and associated relationship between the City and Bayer and is designed to permit the continued development and operation of the Bayer Campus at the Project Site pursuant to conditions that are in the best interests of the public and the City, and at the same time facilitate an economically feasible development. It is the intent of the City to grant certain development and

use rights in the Project Site to Bayer and obligate Bayer to limit its scope of development in accordance with this Agreement, which governs permitted uses, density and intensity, height, and requirements for Subsequent discretionary actions, and to provide additional public benefits in the form of environmental mitigations, community benefits, fees, property dedications, and public improvements.

- J. The Project as defined herein is compatible with the uses authorized in the zoning district governing the Project Site, and with the existing uses of the Bayer Campus. This Agreement provides that development on the Bayer Campus shall be governed by current City land use regulations now in effect, subject to certain alternative height limits, development standards, design guidelines, and development approval procedures set forth in this Agreement, and shall comply with certain future City ordinances as set forth in Article 3 of this Agreement. As provided in the 1992 Development Agreement, to the extent the Project contains buildings which exceed the standard height limits identified in the City's standard Mixed Manufacturing zoning district, the need for these heights has been substantiated by engineering, land use, and environmental analyses that the City has evaluated, which are included as **Exhibit F** to this Agreement. The aesthetic impacts of this development plan have been evaluated in the Bayer HealthCare LLC Development Agreement Amendment Project's Subsequent Environmental Impact Report (SCH# 2020100559) and determined to be less than significant.
- K. Bayer is engaged in the business of developing, manufacturing and distributing therapies for human health and has been conducting this business for the last thirty years at the Project Site. Bayer's Berkeley operations currently employ approximately 1,000 employees, making Bayer Berkeley's largest private-sector employer. Bayer aims to continue the development of patient therapies based on biotechnology, maintain the capacity to pursue multiple research tracks simultaneously, and focus on the development and production of specific therapies to address significant medical needs throughout the term of this Agreement. Product development encompasses many stages from the discovery or initial research on a potential new pharmaceutical product, through regulatory approval, to initial commercialization. As a consequence, long range planning and the expedition of various stages of manufacturing is essential to Bayer's ability to deliver therapies to patients as quickly as possible.
- L. Bayer wishes to continue to use its current site in Berkeley as a world-wide center for the development and implementation of the methods and facilities discussed above. Bayer further wishes to maximize its ability to attract and retain top talent and partners by ensuring

that the campus' physical configuration and design support this goal and facilitate and enhance the Project Site's existing and future ability to support the biotech development and manufacture of medicines that improve patient outcomes. In order to accomplish this, Bayer seeks to maximize the productive utilization of the land areas and current buildings to take new treatments through biotech development and manufacturing, with a priority on commercializing new therapies using new and innovative technologies.

- M. Bayer intends to apply for various land use and building approvals in connection with the implementation of the Project during the term of this Agreement, including one or more zoning certificates, administrative use permits, design review approvals, building permits and certificates of occupancy as described more fully in this Agreement.
- N. Continued development of the Project Site in a comprehensive fashion as contemplated in this Agreement will result in substantial public benefits to West Berkeley and the City at large, its residents, and surrounding communities. Among other public benefits, the Project will further cement Berkeley's standing as a destination for research and development of therapies providing a large biotech anchor to:
- (1) enable the continued productive use of industrial property in the City;
 - (2) expand the City's property tax base;
 - (3) provide publicly accessible open space in West Berkeley;
 - (4) continue to conduct and evolve operations in a sustainable manner that will assist in reducing greenhouse gas emissions, including the continuation and enhancement of Bayer's Transportation Demand Management Program, as outlined in **Exhibit H**, and sourcing of 100 percent renewable energy by 2030; and
 - (5) support a variety of community programs as set forth in the Exhibits to this Agreement, including funding for STEAM/career technical education, affordable housing, childcare, public art, initiatives to advance carbon neutrality, initiatives to address inequities in health status among Berkeley residents, and programs designed to support locally-owned businesses, entrepreneurship, and/or general wealth building for disadvantaged members of the community.

O. In consideration of the approval of vested and other development rights under this Agreement, the City has negotiated for and shall receive from Bayer the community investments and benefits set forth in Exhibit D and Exhibit H of this Agreement, in the full amounts and on the schedule specified therein. The City finds these investments will benefit the public welfare and reflect the priorities of the City Council and the community.

P. [PLACEHOLDER FOR CITY PLANNING COMMISSION ACTION ON AMENDED AND RESTATED DA AND CITY COUNCIL ACTION ON SEIR] On October 20, 2021, the City Planning Commission, the initial hearing body for purposes of Development Agreement review pursuant to Government Code section 65867 and Berkeley Municipal Code section 22.16.050, at a noticed public hearing following environmental review, unanimously adopted a recommendation to approve this Agreement and its Subsequent Environmental Impact Report.

Q. On November 30, 2021 the City Council certified the adequacy of the Subsequent Environmental Impact Report, introduced Ordinance No. [INSERT NUMBER] and held a public hearing for the approval of this Agreement. On December 14, 2021, following a duly noticed public hearing, the City Council adopted Ordinance [INSERT NUMBER], approving this Amended and Restated Development Agreement and authorizing its execution; that Ordinance took effect on January 14, 2022 [PLACEHOLDER FOR CITY ACTION ON AMENDED AND RESTATED DA ORDINANCE];

R. [PLACEHOLDER FOR CITY FINDING OF CONSISTENCY, IF SO FOUND]: The City Council finds that this Development Agreement furthers, and is not detrimental to, the public health, safety, and general welfare, including the health safety and welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; that the Agreement is consistent with the City's current General Plan and the West Berkeley Plan; that the mitigations adopted in the Project's Mitigation Monitoring and Reporting Program, as identified in Exhibit E, have been duly considered by the City; that the Project's Subsequent Environmental Impact Report completely and accurately identifies and properly mitigates the impacts of the Project; and that this environmental review complies with the provisions of the California Environmental Quality Act. This Agreement has been approved in accordance with the City's ordinances, rules and regulations for the approval of development agreements.

AGREEMENT

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ARTICLE 1: DEFINITIONS

Section 1.1. "Bayer" refers collectively to Bayer HealthCare LLC, a limited liability company organized and existing under the laws of the State of Delaware. As used in this Agreement, the term "Bayer" includes any successor in interest to Bayer HealthCare LLC, as authorized and permitted under this Agreement.

Section 1.2. "Bayer Campus" refers to Bayer's property, operations, and buildings within the Project Site.

Section 1.3. "City" is the City of Berkeley, a municipal corporation organized and existing under the Berkeley City Charter and the laws of the State of California.

Section 1.4. "City Council" is the City Council of the City.

Section 1.5. "City Manager" is the City Manager of the City or the City staff person they designate to carry out all or part of the City's responsibilities for implementing this Agreement.

Section 1.6. "Design Review Committee" is the Design Review Committee of the City.

Section 1.7. "Days" shall refer to calendar days.

Section 1.8. "Effective Date" is the date this Agreement is executed by the City Manager pursuant to Section 6.18 hereof.

Section 1.9. "Enacting Ordinance" means City Ordinance No. [New Ord #], enacted by the City Council on [date], 202[1], approving this Agreement. This Agreement shall constitute a part of the Enacting Ordinance as if incorporated therein in full, and a copy of this ordinance is attached hereto as Exhibit 1.

Section 1.10. "Existing Ordinances" means Ordinances in effect as of the Effective Date, including the Enacting Ordinance. Bayer shall have the right to waive its vested rights as to any particular vested law, regulation, development standard, or other requirement, at its sole discretion, consistent with the terms of Section 3.2 of this Agreement.

Section 1.11. "Future Ordinances" means Ordinances enacted after the Effective Date, and includes amendments which may be made to Existing Ordinances.

Section 1.12. "Ordinances" means the ordinances, resolutions, codes, rules, regulations and official policies of the City governing the permitted uses of land, density, design, improvement, and construction standards and specifications applicable to the use and development of the Project Site. Said Ordinances include without limitation the City's General Plan, the West Berkeley Plan, Zoning Ordinances, and building standards.

Section 1.13. "Original Agreement" means the 1992 Development Agreement, as amended by the 1999 Amendment.

Section 1.14. "Planning Commission" is the Planning Commission of the City.

Section 1.15. "Project" means the planned further development of the Project Site or a portion thereof from the years 2022 to 2052 in accordance with this Agreement, including Exhibits C and H hereto.

Section 1.16. "Project Site" means that certain real property graphically depicted on Exhibit A and legally described in Exhibit B.

Section 1.17. "Reserved Discretionary Approvals" means any Subsequent land use or development permits or entitlements applied for by Bayer or its successors in interest with respect to development of the Project, the approval of which requires the exercise of discretion on the part of any City office, board, or body having jurisdiction with respect thereto. The Reserved Discretionary Approvals, as identified in Exhibit C, shall include the following as applicable to the Project, unless otherwise exempt from a discretionary approval by this Agreement:

- (a) Administrative Use Permits.
- (b) Design Review.
- (c) Variance.
- (d) Environmental Review. Any required additional environmental review or procedures that may be applicable to the above-mentioned approvals.

Section 1.18. "Subsequent" means occurring after the Effective Date.

ARTICLE 2: LIST OF EXHIBITS

- EXHIBIT A. SITE MAP
- EXHIBIT B. LEGAL DESCRIPTION OF PROJECT SITE
- EXHIBIT C. SITE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES
- EXHIBIT D. COMMUNITY BENEFITS
- EXHIBIT E. MITIGATION MONITORING AND REPORTING PROGRAM
- EXHIBIT F: REPORT ON JUSTIFICATION FOR HEIGHTS IN EXCESS OF FORTYFIVE FEET
- EXHIBIT G: MANUFACTURING AND DEVELOPMENT ACTIVITIES, ENVIRONMENTAL SAFETY
- EXHIBIT H: TRANSPORTATION DEMAND MANAGEMENT PROGRAM
- EXHIBIT I: COPY OF EXISTING ORDINANCES

ARTICLE 3: DEVELOPMENT OF PROJECT SITE

Section 3.1. General. Bayer shall have the vested right to develop the Project on the Project Site and City shall have the right to regulate development and use of the Project Site in accordance with the provisions of this Agreement.

Section 3.2. Applicable Ordinances. The Ordinances that apply to the Project, and are vested, under this Agreement are as follows:

- (a) *Existing Ordinances.* Subject to the terms of this Agreement, including without limitation **Exhibit C** of this Agreement, the Existing Ordinances shall control development of the Project. Except as otherwise provided in this Agreement, to the extent that any Existing Ordinances are in conflict with this Agreement, this Agreement shall prevail, unless the parties mutually agree to amend or modify this Agreement pursuant to Article 5 hereof.
- (b) *Future Ordinances.* To the extent that any Future Ordinances, whether adopted by the City Council or by initiative, are not in conflict with this Agreement and Existing Ordinances, such Future Ordinances shall be applicable to the Project. Future Ordinances, whether adopted by the City Council or by initiative, that are in conflict with this Agreement and Existing Ordinance shall not be applicable to the Project.
- (c) *Other future regulations.* Notwithstanding any other provision of this Agreement, state, federal, building, health and safety, and other rules shall apply to the Project as set forth in Sections 3.7, 3.8, and 3.9 of this Agreement.
- (d) *Conditions of approval.* This Agreement shall not prevent the City from denying or reasonably conditioning approval of any application for a Subsequent discretionary or ministerial approval for the Project on the basis of Existing Ordinances, Future Ordinances, and/or this Agreement to the extent they are applicable to the Project Site under this Article 3 and do not conflict with vested rights under this Agreement. This provision shall not be construed in any way as a waiver of Bayer's rights against unlawful takings and exactions under state and federal law.
- (d) *Conflicting Ordinances.* For purposes of this Agreement, an Ordinance or condition shall be deemed to conflict with this Agreement or Existing Ordinances if (1) there is an express inconsistency between the language of the Ordinance or condition and the terms of this Agreement or Existing Ordinances that makes it impossible for Bayer to comply with its obligations thereunder, or (2) implementation of the Ordinance or

condition would materially limit the ability of Bayer to construct and operate the Project according to the terms of the Agreement and/or the Existing Ordinances. Examples of Future Ordinances or conditions that would conflict with the terms of this Agreement and/or Existing Ordinance include, without limitation, Future Ordinances or conditions that modify permitted uses of the Project Site, the density and intensity of such uses, the maximum height and size of proposed buildings, the requirements for reservation and dedication of land for public purposes, requirements associated with Subsequent discretionary approval processes (including without limitation the imposition of new discretionary permitting or approval processes), fee calculation methodologies, development standards, design guidelines, amendments to the City's Natural Gas Prohibition Ordinance under Berkeley Municipal Code Chapter 12.80 or the imposition of other energy requirements that render construction or operation of the Project technologically or otherwise infeasible, and any regulations materially interfering with Bayer's ability to undertake the scope of activities set forth in the Exhibits to this Agreement. However, Future Ordinances addressing solar infrastructure requirements, energy conservation, water conservation, or recycling requirements would not be in conflict with the Agreement.

- (e) *Waiver of vested rights.* Notwithstanding the above, Bayer shall have the right, at its sole election, to waive any of the foregoing vested rights, in whole or in part, in conducting construction or operations on the Project Site or in pursuing any particular Reserved Discretionary Approval or other entitlement.

Section 3.3. Reserved Discretionary Approvals. Development of the Project Site shall be subject to the Reserved Discretionary Approvals of **Exhibit C**. In reviewing applications for administrative use permits and other Subsequent discretionary approvals, City may exercise design review authority consistent with the provisions of **Exhibit C** and any Applicable Ordinances as set out in Section 3.2, and may attach such conditions and requirements as may be necessary or appropriate so long as they are consistent with such provisions of **Exhibit C** and any of the Ordinances that apply as set forth in this Article 3.

Section 3.4. Processing of Subsequent Approvals. The parties recognize that in order to implement the further development of the Project Site as contemplated in this Agreement, Bayer must obtain Subsequent land use and building approvals from City including, without limitation, administrative use permits, zoning certificates, design review approvals, building permits, demolition permits, and/or certificates of occupancy. Provided that Bayer exercises reasonable diligence, acts in good faith, pays all required processing fees, and files full and complete

applications in conformity with this Agreement and Applicable Ordinances, as set forth in this Article 3, City shall expeditiously review and process all applications for Subsequent approvals required to develop the Project. City shall use its best efforts to process and act upon all such applications within the following time periods following submission of a complete application to City and completion of any required CEQA review, or as soon thereafter as is reasonably practicable:

- (a) Administrative Use Permits – One hundred and twenty (120) Days
- (b) Staff-level Design Review – One hundred and twenty (120) Days
- (c) Design Review Committee Approval – One hundred and eighty (180) Days
- (d) Final Design Review – Within forty-five (45) Days of submitting a complete application.
- (e) Other ministerial approvals, including without limitation zoning certificates, building permit submittals, , electric, mechanical and plumbing permit submittals, and other construction-related work submitted and reviewed as part of the City's ministerial review processes. City shall complete initial plan checks and/or other necessary reviews and notify Bayer of any deficiencies within thirty (30) business days following the date the plans and supporting documentation are submitted for review and shall provide Subsequent plan checks and or other reviews, if necessary, within fifteen (15) business days from the date corrected or revised plans are submitted for review. Inspections (including final inspections) shall be conducted within three business days of Bayer's notification to the City that construction has been completed, and certificates of occupancy shall issue within five business days of a final inspection confirming improvements substantially comply with approved plans.
- (f) Applicable engineering and/or utility permits. Such permits shall be subject to the schedule for ministerial permits identified in section 3.4(e).

The above time periods shall be extended if necessary to achieve compliance with the California Environmental Quality Act or other applicable State or Federal laws or regulations. Notwithstanding the above, the City agrees to make best efforts to process any necessary negative declarations or mitigated negative declarations within six months of determining a project application is complete (or such application being deemed complete), and any environmental impact reports within one year of determining a project application is complete (or

such application being deemed complete). Provided that the City makes best efforts to meet the timelines set forth in this Section, the failure to meet any such timeline shall not be a breach of this Agreement.

Section 3.5. Development Impact and Processing Fees. All City approvals, permits, and entitlements relating to the Project shall be subject to generally-applicable application, processing, and inspection fees in effect at the time the approvals, permits, and entitlements are issued.

As to all other fees imposed by ordinance ("City Fees"), including without limitation all development impact fees, all city approvals, permits, and entitlements relating to the Project shall be subject only to those City Fees in effect at the time the Enacting Ordinance becomes effective except to the extent modified under **Exhibit D**. As used in this paragraph, the term "development impact fees" shall mean monetary exactions which are charged by City to Bayer in connection with any approval, permit, or entitlement relating to the Project, for the purpose of defraying all or a portion of the cost of public facilities, programs, or services related to the Project pursuant to BMC Section 22.20.

Section 3.6. Other Governmental Permits. At its sole expense, Bayer shall apply for and obtain such other permits and approvals as may be required from other governmental or quasigovernmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project consistent with this Agreement. To the extent City has approved an application for a Subsequent Project approval, it shall cooperate in good faith by providing any information, documents, or consents within the City's control that are consistent with the City's approvals that are reasonably necessary for Bayer to process applications for such other government approvals. The requirements of this Section shall not be construed as limiting the City's discretion to approve or deny any Subsequent Project approval or as obligating the City to undertake any new studies or analyses.

Section 3.7. Building Standards. Ordinances establishing building standards, including without limitation the California Building Code, California Energy Code, California Green Building Standards, California Electrical Code, California Plumbing Code, California Fire Code, and California Mechanical Code (including any local amendments thereto adopted by the City), which are adopted or revised during the term of this Agreement, shall apply as of the time of granting construction and building permits for development of the Project.

Section 3.8. Health or Safety Ordinances. This Agreement shall not be construed to limit the authority of City to adopt and apply to the Project Future Ordinances or other Subsequent requirements or conditions which the City determines to be necessary to protect persons from a condition that is dangerous to their health, safety, or both. Examples include, without limitation, measures applicable to access for persons with disabilities; life safety systems; hazardous materials storage, transportation or disposal; fire protection; health officer orders and directives; and seismic safety. Notwithstanding the above, the adoption of any Ordinances under this Section shall not interfere with Bayer's otherwise lawful activities and development rights as set forth in **Exhibits C and G** of this Agreement or Bayer's ability to handle materials subject to Biosafety Level 1 and Biosafety Level 2 standard practices, as defined by the United States Department of Health and Human Services Centers for Disease Control and Prevention and National Institutes of Health and according to the terms set forth in **Exhibits C and G**.

Section 3.9. State and Federal Requirements. This Agreement shall not preclude the application to the development and use of the Project Site of changes in Ordinances, the terms of which are specifically mandated by, or are necessary for the City to come into compliance with, State or Federal laws or regulations, as provided in Government Code section 65869.5. In the event that State or Federal laws or regulations, or actions by any governmental jurisdiction other than City, prevent or preclude compliance with one or more provisions of this Agreement, or require changes in approvals issued by City, this Agreement shall be modified, extended or suspended to the extent reasonably necessary to comply with such State or Federal laws or regulations or the regulations of such other governmental jurisdiction.

Section 3.10. Bayer's Obligations. The City Fees, any dedications of land, construction and financing of public improvements, and other community benefits and environmental mitigations and monitoring programs to be undertaken by Bayer in connection with the development of the Project Site shall be as set forth in **Exhibits D, E, G, and H** to this Agreement. The community benefits and mitigation measures in the foregoing Exhibits constitute the community benefits that Bayer is obligated to perform, and any and all exhibits to the 1992 Development Agreement and the 1999 Amendment are superseded and void. All monetary payments to be made by Bayer for dedications of land, construction and financing, benefits, and environmental mitigations and monitoring programs under this Agreement shall be adjusted for inflation. Such adjustments shall be applied as of the first business day of each new year following the Effective Date except that no adjustment shall be made at the beginning of **[2022]**. Adjustments for inflation and deflation shall be based upon the U.S. Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) for the Bay Area (San Francisco-

Oakland/Hayward), not seasonally adjusted, using the Effective Date as a baseline for calculations, except to the extent specifically provided for in this Agreement.

The maximum buildout of the site will be in accordance with the maximum allowable levels identified in the Site Development Plan in [Exhibit C](#), a level less than the aggregate amount entitled under the Original Agreement and the South Properties Use Permit. The parties acknowledge that Bayer cannot at this time predict whether Project buildout will occur to the maximum allowable levels identified in the Site Development Plan in [Exhibit C](#). Future decisions with respect to actual Project buildout will depend upon a number of circumstances not entirely within the control of Bayer, including without limitation the success of its research efforts, demand for patient therapies, the development of new products, regulatory approvals, and marketing considerations. Decisions with respect to the extent of future Project buildout shall be within the exercise of Bayer's good judgment, so long as the Project is developed in accordance with the provisions of this Agreement. Bayer's decisions regarding the timing or extent of Project buildout shall not affect its obligation to provide the community benefits in accordance with this Agreement. This section does not limit or modify the procedures and remedies described in Article 4.

In the event of a third-party challenge to the City's approval of this Agreement in which the court has ordered a stay of the City's approval of this Agreement, Bayer shall not be obligated to make any community benefits payments under [Exhibit D](#) for so long as the stay remains in effect, unless the parties have agreed to toll the Term of this agreement. Upon termination of the stay, Bayer shall pay a pro-rated amount of the community benefits payment that would have been due for the year in which the stay is terminated. Notwithstanding the foregoing, Bayer shall not be relieved of its obligation to pay development impact fees as and when due. In the event of a successful third-party challenge to the City's approval of this Agreement, if Bayer has constructed or is operating any portion of the Project and the court order, judgment, or other decision does not require the removal of facilities or cessation of activities, the City shall not independently seek removal or cessation of such facilities or activities.

Section 3.11. Right of Way Dedication. The parties have discussed their various interests and determined that Bayer shall have no further obligations to dedicate public rights of way or other interests.

Section 3.12. General Provisions With Respect to Financing Public Infrastructure. Insofar as applicable state and federal laws and City Ordinances require the construction of public infrastructure necessary to address demands and/or impacts of Bayer and third parties, and to

the extent Bayer wishes to construct such public infrastructure in advance of governmental plans under an applicable capital improvement program or other plan, City and Bayer agree to cooperate in good faith to explore the use of reimbursement agreements and/or public financing mechanisms for the provision of public infrastructure relating to the Project Site. To the extent public infrastructure is not a negotiated benefit of this Agreement, Bayer reserves its rights to seek reimbursement for amounts exceeding its fair share contribution to the subject public infrastructure from the appropriate governmental entity.

ARTICLE 4: PERIODIC REVIEW OF AGREEMENT

This Agreement shall be subject to annual review on April 1, 2023 and each April 1 thereafter during the term of this Agreement pursuant to Berkeley Municipal Code sections 22.16.070. To meet its responsibilities under Berkeley Municipal Code section 22.16.070.A.2, Bayer must submit a report which includes, in addition to other information submitted by Bayer or reasonably determined necessary by the City Manager, the following:

- (a) The total square footage developed for private use on the Project Site, and its level of compliance with Exhibit C;
- (b) The public space constructed, by category and location;
- (c) The status of implementation of the provisions of Exhibits D and E to this Agreement; and
- (d) Bayer's proposed schedule for further development of the Project over the remaining Term of this Agreement to the extent such is reasonably foreseeable.

In conjunction with each annual review, upon the request of either party, the parties shall meet in good faith to discuss and reasonably attempt to resolve any issues raised by that party as to the other party's compliance with this Agreement. If, following such annual review, the City Manager finds that Bayer is not in compliance with the terms of the Agreement, the City Manager shall give Bayer written notice specifying the respects in which Bayer has failed to comply, and shall set forth terms of compliance and specify a reasonable time consistent with Section 6.3 of this Agreement for Bayer to meet the terms of compliance. If Bayer does not comply with any terms of compliance within the prescribed time limits, the Agreement shall be subject to termination or modification pursuant to Berkeley Municipal Code section 22.16.080B.

The parties understand that the Site Development Standards and Design Guidelines (Exhibit C) reflect the maximum allowable buildout envisioned for the Project and that failure to achieve the maximum allowable buildout as reflected in the Site Development Plan shall not constitute failure to make reasonable progress toward buildout of the Project. Failure of the City to conduct a periodic review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement, nor shall Bayer have or assert any defense to such enforcement by reason of such failure to conduct a periodic review.

ARTICLE 5: AMENDMENT

Section 5.1. In General. Except as provided in Article 4, this Agreement may be canceled, modified, or amended only by mutual written consent of the parties, in accordance with the provisions of Government Code Sections 65867, 65867.5 and 65868, as incorporated by reference into the Berkeley Municipal Code, and Berkeley Municipal Code sections 22.16.050.E, 22.16.050.G, and 22.16.080.A. Bayer intends to retain ownership of, and develop, the whole of the Project Site as contemplated in this Agreement. The parties agree that the sale of a significant portion of the Project Site would materially affect the planning assumptions underlying this Agreement, requiring an amendment hereof.

Section 5.2. Major Amendments. Any amendment to this Agreement which relates to the term, permitted uses, density or intensity of use, maximum height or maximum dimensions of buildings, requirements for reservation or dedication of land for public improvements, changes in production methods set forth in **Exhibit C**, or requirements relating to Reserved Discretionary Approvals, shall require giving of notice and shall require a public hearing before the Planning Commission and City Council pursuant to the provisions of the Berkeley Municipal Code set forth in Paragraph 5.1 above.

Section 5.3. Minor Amendments. The parties acknowledge that refinement and further implementation of the Project might demonstrate that certain minor changes might be appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Agreement. If and when the parties find that clarifications, minor changes, or minor adjustments are necessary and do not constitute a major amendment under Section 5.2, they shall effectuate such clarifications, minor changes, or minor adjustments through a written Minor Amendment approved in writing by Bayer and the City Manager. Unless otherwise required by law, no such Minor Amendment shall require prior notice or hearings, nor shall it constitute an amendment to this Agreement as defined by the Government Code.

Section 5.4. Approved Changes under Conceptual Plan. The Site Development Plan, including all its components as listed in **Exhibit C**, contemplates specific flexibilities in the implementation of the Project, including without limitation the transfer of certain developable areas among blocks within the Site Development Plan, the movement of internal roads, and the issuance of variances of development standards and design guidelines. Exercise of these authorized changes to the Site Development Plan in accordance with the procedures and criteria set forth in **Exhibit C** shall not be deemed a Major or Minor Amendment.

ARTICLE 6: GENERAL PROVISIONS

Section 6.1. Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project Site, and the burdens and benefits hereof shall bind and inure to the benefit of all estates and interests in the Project Site and all successors in interest to the parties hereto.

Section 6.2. Term. The Term of this Agreement shall commence upon the Effective Date and extend until the later of February 25, 2052 or the expiration of thirty (30) years after the Effective Date, unless sooner terminated as provided in Articles 4 of this Agreement. The provisions of this Agreement, including without limitation its vesting provisions, shall apply to any development proposal subject to an application for a Reserved Discretionary Approval that is submitted to City prior to expiration of the Term.

The Term has been established by City and Bayer as a reasonable estimate of the time required to carry out the Project and obtain the public benefits of the Project. In agreeing to the Term, City has determined that this Agreement incorporates sufficient provisions to permit the City to monitor adequately and respond to changing circumstances and conditions in granting Subsequent permits and development approvals and undertaking actions necessary to carry out the Project. Furthermore, the City has determined that this Agreement incorporates sufficient provisions to permit the City to enforce this Agreement and to terminate or modify this Agreement if necessary. If Bayer has not completed development of the Project as identified in **Exhibit C** prior to the expiration of the Term, including nine hundred and eighteen thousand (918,000) square feet of new construction and one million, seven hundred and thirty-eight thousand (1,738,000) square feet in total development, the City and Bayer may jointly elect and mutually agree, in each Party's sole and absolute discretion, to extend the Term of this Agreement for a period of up to five (5) years (the "Option"). Such an Option will not require an Amendment to the Agreement, provided the Option is approved in writing by Bayer and the City Manager prior to the expiration of the Term.

Section 6.3. Default: Remedies. Failure by either party to perform any obligation under this Agreement within thirty (30) business days after written notice thereof from the other party shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within the thirty (30) business day period, the breaching party shall not be in default if it commences of the cure within such time period and diligently prosecutes the cure to completion. Upon a party's default, the other party, at its option, may institute legal

proceedings to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the parties hereto. In no event shall either party or its officers, agents or employees be liable in damages for any breach or violation of this Agreement (except to the extent the action seeks specific performance of a party's obligation to pay monetary amounts under the Agreement), it being expressly understood and agreed that the sole legal remedy available to either party for a breach or violation of this Agreement by the other party shall be a legal action in mandamus, specific performance, or injunctive or declaratory relief to enforce the provisions of this Agreement. Notwithstanding the above, in the event of default by the City, Bayer shall alternatively have the right to terminate this Agreement by giving City thirty (30) Days prior written notice of its intent to terminate. Upon giving notice of intent to terminate, City may suspend the processing of any pending permit or other application for development of the Project, and any such application shall be deemed withdrawn upon termination of this Agreement.

The waiver by either party of any default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

Section 6.4. Enforced Delay: Extension of Time of Performance. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are proximately caused by war, insurrection, strikes, walk-outs, riots, floods, earthquakes, fires, pandemics, casualties, acts of God, or similar cause which is not within the reasonable control of the party to be excused, or where performance would be inconsistent with state or federal laws or regulations, or with a court order that is not the result of the party's actions or inactions. If written notice of such delay is given to either party within thirty (30) business days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay. This section shall not be construed to extend the term of this Agreement.

Section 6.5. Cooperation in the Event of Third-Party Legal Challenge. In the event of any legal or equitable action or proceeding instituted by a third party challenging the validity of any provision of this Agreement or the procedures leading to its adoption or the issuance of Subsequent approvals for the Project, the parties hereby agree to cooperate in defending said action or proceeding. Bayer agrees to diligently defend any such action or proceeding and to bear the litigation expenses of defense, including attorney's fees. City retains the option to employ independent defense counsel at its expense. Bayer further agrees to hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments, or other losses (including without

limitation, attorneys' fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval of this Agreement or approval of any Reserved Discretionary Approval. Bayer shall have a right to terminate this Agreement by written notice of termination to the City in the event a third party files a legal challenge to the City's adoption of this Agreement or any concurrent approval so long as the notice of termination is given no later than one hundred and eighty (180) Days after the Effective Date so long as the City files a Notice of Determination with respect to its certification of the Project's Subsequent Environmental Impact Report and, otherwise, no later than two hundred and seventy (270) Days after the Effective Date, and Bayer has not constructed any Project facilities. Upon giving notice termination, any pending permit or other application for development of the Project shall be deemed withdrawn.

Section 6.6. Effect of Termination. Termination of this Agreement shall not affect Bayer's obligation to comply with the standards, terms, and conditions of any land use approvals issued with respect to the Project Site or any portion thereof, nor shall it affect any covenants of Bayer which are specified in this Agreement to continue after termination.

The following provisions of this Agreement shall survive and remain in effect following termination or cancellation of this Agreement for so long as necessary to give them full force and effect: (1) Section 6.5 (Cooperation in the Event of Third-Party Legal Challenge); (2) Section 6.3 (Default; Remedies); (3) Section 6.7 (Legal Actions; Attorneys' Fees); and (4) Section 6.9 (Hold Harmless).

Section 6.7. Legal Actions; Attorneys' Fees; Voluntary Arbitration. In any legal action for breach or enforcement of this Agreement, the prevailing party shall be entitled to recover all litigation expenses, including reasonable attorney's fees and court costs. If both parties mutually agree, each in their sole and absolute discretion, the parties may submit an action for breach of this Agreement to non-binding arbitration before a mutually acceptable retired Superior Court or Appellate Court judge. If the parties cannot agree on the selection of a retired Superior Court or Appellate Court judge, then they shall each select a retired Superior Court or Appellate Court judge, and the two selected judges will jointly select a third retired Superior Court or Appellate Court judge to serve as the arbitrator. The arbitrator shall issue such procedural and remedial orders as he/she may deem appropriate. The arbitrator's fees shall be shared equally between the City and Bayer.

Section 6.8. Construction of Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California and City, as they may be amended, provided

that such amendments do not substantially alter the rights granted to the parties by this Agreement. Both parties and their legal counsel have reviewed this Agreement and agree that any rule that ambiguities are to be construed against the drafting party shall not apply. This Agreement, including the text and all exhibits hereto, is intended to be interpreted as an integrated whole. Where provisions appear to be in conflict, they will be harmonized if possible. In the event that an irreconcilable conflict exists between the Agreement text and one or more of the exhibits, the text shall control.

Section 6.9. Hold Harmless. Except for claims, costs and liabilities caused solely by the active negligence, gross active negligence, or willful misconduct of City, its elected and appointed representatives, officers, agents or employees ("City Officials"), Bayer hereby agrees to defend, save and hold City Officials harmless from claims, costs and liabilities for any personal injury, death or property damage which arises, directly or indirectly, from the development or operation of the Project, or from any activities performed under this Agreement by Bayer or Bayer's contractors, subcontractors, agents or employees, whether such activities were performed by Bayer or by any of Bayer's contractors, subcontractors, by any one or more persons directly or indirectly employed by, or acting as agent for, Bayer or any of Bayer's contractors or subcontractors.

Section 6.10. No Joint Venture, Partnership, or Agency. It is specifically understood and agreed by City and Bayer that the development of the Project Site according to the Development Plan is a purely private development. No partnership, joint venture, agency, or other association of any kind between City and Bayer is formed by this Agreement. The only relationship between City and Bayer is that of a governmental entity regulating the development. City and Bayer agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Bayer joint venturers, partners, or agents of one another.

Section 6.11. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

Section 6.12. Further Documents. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments

and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement.

Section 6.13. Notices. Any notice or communication required hereunder between City or Bayer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) business days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Notwithstanding the foregoing, if due to shelter-in-place restrictions or any other reason a party requests in writing to receive notices by electronic mail, then notices to that party thereafter shall be given by electronic mail until such time as the party rescinds the request, provided that if notice sent electronically to the address given is blocked, returned, or otherwise undeliverable, the party may be noticed by the other methods prescribed in this section. Each Party representative noticed by email shall provide acknowledgement of receipt as soon as reasonably possible, and notice by electronic mail shall be deemed given on the date acknowledged. If the sender does not receive an acknowledgement within five (5) business days, that notice will nevertheless be deemed to have been received when originally sent by email if no more than ten (10) business days later the sender delivers a written copy of that notice as otherwise provided in this Agreement. If a party sending an email notice under this Agreement receives a machine-generated message that delivery has failed, written notice shall be provided as otherwise set forth in this Agreement. Any party hereto may at any time, by giving ten (10) business days' written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth on the below:

If to City:

City Manager
2180 Milvia Street
Berkeley, CA 94704

With copy to:

City Attorney
2180 Milvia Street
Berkeley, CA 94704

If to Bayer:

Law & Patents
Bayer HealthCare LLC
800 Dwight Way
Berkeley, CA 94710

With copies to:

Vice President of Site Engineering
Bayer HealthCare LLC
800 Dwight Way
Berkeley, CA 94710

Section 6.14. Assignment. Bayer has represented to City that it possesses the experience, qualifications and financial resources to carry out the Project and develop the Project Site in the manner specified in the Development Plan. It is because of such qualifications and representations of Bayer that City is entering into this Agreement. Accordingly, certain restrictions on the right of Bayer to assign or transfer its interest under this Agreement are necessary in order to assure the achievement of the goals, objectives, environmental mitigations and community benefits of this Agreement. The rights and obligations of Bayer hereunder shall not be assigned or transferred, except that on thirty (30) Days written notice to City, Bayer may assign all or a portion of Bayer's rights and obligations thereunder to any person or persons, partnership, or corporation who purchases all of Bayer's right, title, and interest in the Project and the Project Site, provided such assignee or grantee assumes in writing each and every obligation of Bayer hereunder yet to be performed with respect to the assigned portion of the Project, and further provided that Bayer obtains the written consent of City to the assignment, which consent shall be given so long as the City determines that the assignee has experience, qualifications, and the financial resources sufficient to comply with the terms of this Agreement, which determination shall not be unreasonably delayed or withheld. The notice to City shall include the identity of any such assignee and a copy of the written assumption of the assignor's obligations hereunder pertaining to the portion assigned or transferred. After such notice and the receipt of such consent, the assignor shall have no further obligations or liabilities hereunder. The City Manager shall act on behalf of City regarding any actions concerning the assignment of this Agreement. Within ten (10) Days thereafter, Bayer or any interested person may appeal to the City Council the decision of the City Manager regarding the assignment of this Agreement. If the City fails to consent to an assignment under this section, Bayer shall have the right to terminate this Agreement by thirty (30) days prior written notice to the City. Upon receipt of a notice of intent to terminate, the City may suspend processing of any permit or other applications for the Project, and such applications shall be deemed withdrawn upon termination. City consent to assignment or other transfer under this Section shall not be required for an assignment or transfer resulting from a corporate

reorganization, restructuring, merger, or name change involving Bayer and affiliated entities, so long as there is no substantial change in the management or control of Bayer, and Bayer provides City with prior notice of the assignment.

Section 6.15. Right to Lease Project Facilities. The parties acknowledge and agree that Bayer, as owner of the real estate, has the right to lease, sublease or license any portion of the real estate situated at the Project (each a "Project Component") to affiliated or third parties for any purpose consistent with the terms of this Agreement, including, but not limited to constructing, operating, subleasing, and any other use related to producing therapies and medicines. Any such lease, license, or sublease ("Lease") of a Project Component shall require the tenant or occupant to comply with the obligations and requirements of this Agreement that would be applicable to such tenant or occupant, including without limitation obligations to limit activities to those set forth in **Exhibit G** of this Agreement and the handling of materials subject to Biosafety Level 1 and Biosafety Level 2 standard practices, as defined by the United States Department of Health and Human Services Centers for Disease Control and Prevention and National Institutes of Health and set forth in more detail in **Exhibit G**. Bayer shall provide City with at least thirty (30) Days prior notice of any such Lease of a Project Component. No consent by the City is required to the extent the aggregate square footage of a Project Component or Project Components subject to a Lease or Leases would comprise, cumulatively, less than three hundred and fifty thousand (350,000) of the usable floor area on the Project Site (the "350,000square-foot Threshold"). To the extent a Lease would convey rights to use space in excess of the 350,000-square-foot Threshold, the City shall have the right to disapprove the conveyance if it determines, in its reasonable discretion, that the lessee lacks sufficient experience, qualifications, or financial resources to comply with the terms of this Agreement, and the City gives Bayer notice of the disapproval within thirty (30) Days after the City's receipt of the foregoing notice. Notwithstanding any Lease of a Project Component, Bayer shall remain fully liable for its obligations under this Agreement.

Section 6.16. Entire Agreement. This written Agreement, including the exhibits hereto, contains all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, drafts, memoranda, agreements, warranties, or representations are superseded in total by this Agreement. By way of illustration and not limitation, the terms of and any and all exhibits to the 1992 Development Agreement and the 1999 Amendment ("Outdated Exhibits") are void and no longer in effect. The provisions of the exhibits to this Agreement supersede any and all obligations and requirements set forth in the Outdated Exhibits.

Section 6.17. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

Section 18. Warranty of Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

Section 6.19. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one and the same Agreement.

Section 6.20. Recordation. Within ten (10) Days after the Enacting Ordinance takes effect, the City Manager shall execute this Agreement on behalf of City, and the City Clerk shall record this Agreement with the Alameda County Recorder. If this Agreement is terminated, modified or amended pursuant to Article 4 or 5 of this Agreement, the City Clerk shall record notice of such action with the Alameda County Recorder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

[SIGNATURE BLOCKS TO FOLLOW]

EXHIBIT D
Community Benefits

Bayer shall provide community benefits and impact fees to the City of Berkeley as set forth below:

I. ANNUAL COMMUNITY INVESTMENT

- A. Bayer¹ shall provide the community with the following annual investments by September 1 of each calendar year, as follows:

| Investment Schedule | | |
|----------------------------|-------------------|--------------|
| Year | Investment No. | Amount |
| 2022 | 1 | \$ 800,000 |
| 2023 | 2 | \$ 832,320 |
| 2024 | 3 | \$ 848,966 |
| 2025 | 4 | \$ 865,946 |
| 2026 | 5 | \$ 883,265 |
| 2027 | 6 | \$ 900,930 |
| 2028 | 7 | \$ 918,949 |
| 2029 | 8 | \$ 937,328 |
| 2030 | 9 | \$ 956,074 |
| 2031 | 10 | \$ 975,196 |
| 2032 | 11 | \$ 994,699 |
| 2033 | 12 | \$ 1,014,593 |
| 2034 | 13 | \$ 1,034,885 |
| 2035 | 14 | \$ 1,055,583 |
| 2036 | 15 | \$ 1,076,695 |
| 2037 | 16 | \$ 1,098,229 |
| 2038 | 17 | \$ 1,120,193 |
| 2039 | 18 | \$ 1,142,597 |
| 2040 | 19 | \$ 1,165,449 |
| 2041 | 20 | \$ 1,188,758 |
| 2042 | 21 | \$ 1,212,533 |
| 2043 | 22 | \$ 1,236,784 |
| 2044 | 23 | \$ 1,261,519 |
| 2045 | 24 | \$ 1,286,750 |
| 2046 | 25 | \$ 1,312,485 |
| 2047 | 26 | \$ 1,338,734 |
| 2048 | 27 | \$ 1,365,509 |
| 2049 | 28 | \$ 1,392,819 |
| 2050 | 29 | \$ 1,420,676 |
| 2051 | 30 | \$ 1,461,537 |

¹ All capitalized terms refer to those terms defined in the Amended and Restated Development Agreement.

Total 33,100,000

- B. The aggregate amount of those investments set forth in Section I.A during the thirty-year (30-year) term of the Agreement amounts to thirty-three million, one hundred thousand dollars (\$33,100,000).² Nothing in this Exhibit shall be construed to require Bayer to make investments exceeding this amount.
- C. Except as otherwise provided herein, any City actions or approvals required or authorized by this Exhibit D shall be undertaken by the City Manager on behalf of the City.

II. ALLOCATION OF FUNDS

The amounts set forth in Section I of this Exhibit will be allocated as follows:

| | |
|--|--|
| Forty-Eight and One Half Percent (48.5%) | Science, Technology, Engineering, Arts and Math (" STEAM ") Education / Career Technical Education Partners |
| Twenty Percent (20.0%) | West Berkeley Fund (community infrastructure and resiliency) |
| Twenty Percent (20.0%) | City of Berkeley Affordable Housing Trust Fund (the " Housing Investment ") ³ |
| Four Percent (4.0%) | City of Berkeley Affordable Childcare Fund (the " Childcare Investment ") |
| Seven and One Half Percent (7.5%) | City of Berkeley Private Percent for Art Fund |

Each of the foregoing programs and funds are described in more detail in Sections III and IV of this Exhibit.

The allocation schedule of funds in Section I is set forth in Figure 1 below.

Figure 1

² In general, annual investments under this Section I escalate by 2 percent each year. The exception is that in year 2, the investment amount escalates by 4.04 percent and in year 30, the investment amount escalates by 2.88 percent. These increased escalators exist so as to provide the City with the negotiated amount of \$33.1 million in community benefits and impact fees.

³ Note that the allocation to the City of Berkeley Housing Trust fund is significantly greater than the amount that would be required to mitigate the Affordable Housing Impacts of Bayer's development under the Agreement

Investment Schedule

| Year | Investment No. | Total Annual Investment Amount | STEAM Investment Portion | West Berkeley Fund Investment Portion | Affordable Housing Investment Portion | Affordable Childcare Investment Portion | City of Berkeley Private Percent for Art Fund Investment Portion |
|--------------|----------------|--------------------------------|--------------------------|---------------------------------------|---------------------------------------|---|--|
| 2022 | 1 | \$800,000 | \$388,000 | \$160,000 | \$160,000 | \$32,000 | \$60,000 |
| 2023 | 2 | \$832,320 | \$403,675 | \$166,464 | \$166,464 | \$33,293 | \$62,424 |
| 2024 | 3 | \$848,966 | \$411,749 | \$169,793 | \$169,793 | \$33,959 | \$63,672 |
| 2025 | 4 | \$865,946 | \$419,984 | \$173,189 | \$173,189 | \$34,638 | \$64,946 |
| 2026 | 5 | \$883,265 | \$428,384 | \$176,653 | \$176,653 | \$35,331 | \$66,245 |
| 2027 | 6 | \$900,930 | \$436,951 | \$180,186 | \$180,186 | \$36,037 | \$67,570 |
| 2028 | 7 | \$918,949 | \$445,690 | \$183,790 | \$183,790 | \$36,758 | \$68,921 |
| 2029 | 8 | \$937,328 | \$454,604 | \$187,466 | \$187,466 | \$37,493 | \$70,300 |
| 2030 | 9 | \$956,074 | \$463,696 | \$191,215 | \$191,215 | \$38,243 | \$71,706 |
| 2031 | 10 | \$975,196 | \$472,970 | \$195,039 | \$195,039 | \$39,008 | \$73,140 |
| 2032 | 11 | \$994,699 | \$482,429 | \$198,940 | \$198,940 | \$39,788 | \$74,602 |
| 2033 | 12 | \$1,014,593 | \$492,078 | \$202,919 | \$202,919 | \$40,584 | \$76,094 |
| 2034 | 13 | \$1,034,885 | \$501,919 | \$206,977 | \$206,977 | \$41,395 | \$77,616 |
| 2035 | 14 | \$1,055,583 | \$511,958 | \$211,117 | \$211,117 | \$42,223 | \$79,169 |
| 2036 | 15 | \$1,076,695 | \$522,197 | \$215,339 | \$215,339 | \$43,068 | \$80,752 |
| 2037 | 16 | \$1,098,229 | \$532,641 | \$219,646 | \$219,646 | \$43,929 | \$82,367 |
| 2038 | 17 | \$1,120,193 | \$543,294 | \$224,039 | \$224,039 | \$44,808 | \$84,014 |
| 2039 | 18 | \$1,142,597 | \$554,160 | \$228,519 | \$228,519 | \$45,704 | \$85,695 |
| 2040 | 19 | \$1,165,449 | \$565,243 | \$233,090 | \$233,090 | \$46,618 | \$87,409 |
| 2041 | 20 | \$1,188,758 | \$576,548 | \$237,752 | \$237,752 | \$47,550 | \$89,157 |
| 2042 | 21 | \$1,212,533 | \$588,079 | \$242,507 | \$242,507 | \$48,501 | \$90,940 |
| 2043 | 22 | \$1,236,784 | \$599,840 | \$247,357 | \$247,357 | \$49,471 | \$92,759 |
| 2044 | 23 | \$1,261,519 | \$611,837 | \$252,304 | \$252,304 | \$50,461 | \$94,614 |
| 2045 | 24 | \$1,286,750 | \$624,074 | \$257,350 | \$257,350 | \$51,470 | \$96,506 |
| 2046 | 25 | \$1,312,485 | \$636,555 | \$262,497 | \$262,497 | \$52,499 | \$98,436 |
| 2047 | 26 | \$1,338,734 | \$649,286 | \$267,747 | \$267,747 | \$53,549 | \$100,405 |
| 2048 | 27 | \$1,365,509 | \$662,272 | \$273,102 | \$273,102 | \$54,620 | \$102,413 |
| 2049 | 28 | \$1,392,819 | \$675,517 | \$278,564 | \$278,564 | \$55,713 | \$104,461 |
| 2050 | 29 | \$1,420,676 | \$689,028 | \$284,135 | \$284,135 | \$56,827 | \$106,551 |
| 2051 | 30 | \$1,461,537 | \$708,845 | \$292,307 | \$292,307 | \$58,461 | \$109,615 |
| Total | | 33,100,000 | 16,053,499 | 6,620,000 | 6,620,000 | 1,324,000 | 2,482,500 |

III. IMPACT FEES

A. In order to ensure that affordable housing and affordable childcare impacts are timely addressed throughout the term of the Agreement, Bayer and the City shall ensure that the payments to the Affordable Housing Trust Fund and the Affordable Childcare Trust Fund are sufficient to cover the development impact fees required for the Project as those fees become due. Impact fees shall be assessed on each Project application for a Reserved Discretionary Approval which is associated with a construction and/or demolition proposal under the Agreement

("Implementation Project"). The impact fees for each Implementation Project shall be paid in a single lump sum due upon issuance of the Occupancy Permit for the building shell.

B. Bayer’s impact fee payments shall be calculated in accordance with the affordable housing and affordable childcare impact fee requirements in effect as of the Effective Date (City Council Resolutions 66,617 N.S. and 66,618 N.S., or “Existing Fee Requirements”), subject to annual

adjustments based on the Consumer Price Index, All Urban Consumers, San Francisco Bay Area (“CPI”), as required by the Existing Fee Requirements. Per Existing Fee Requirements, impact fees shall be assessed on new construction⁴ associated with each Implementation Project under the Agreement.

- C. Under the Community Benefits investment schedule set forth in Figure 1, Bayer will be making annual investments in the Affordable Housing Trust Fund and Affordable Childcare Trust Fund. These annual investments may be made in advance of the time when the affordable housing and childcare impact fees will be due for a given Implementation Project. Accordingly, Bayer shall receive a credit toward the applicable impact fees for all such investments made before the fees are due. That is, investments to the Affordable Housing Trust Fund shall be credited toward the affordable housing mitigation fee, and investments to the Affordable Childcare Trust Fund shall be credited toward the affordable childcare mitigation fee, as such fees become due. The amount of available credit for application to a fee due shall be the sum of all annual Housing Investments or Childcare Investments, as applicable, made prior to the due date of the fee, less the amounts previously applied to earlier fees. In calculating that sum, the amount of each Housing Investment and Childcare Investment shall be adjusted annually by CPI for the period of time between when such an Investment was made and the time of calculation. If the available credit exceeds the amount of fees due, the exceedance shall be carried over and be applied as a credit to future impact fees, if any. If the credits are insufficient to pay the amount of fees due, Bayer shall pay the difference, and the amount of the difference shall be subtracted in full from the amount Bayer is required to pay for its next Housing Investment or Childcare Investment, as applicable, and if the difference exceeds the amount of that payment, the exceedance will be carried over and subtracted in full from the following Housing or Childcare Investment, and so on, until the full amount of the difference has been applied, or all of the Housing or Childcare Investments have been completed.
- D. Because the Project will be developed in multiple phases spanning numerous Implementation Projects, it is possible that a particular Implementation Project may include more demolition than new development, resulting in a net decrease in new gross floor area. Similarly, an Implementation Project may include a net increase in new gross floor area, but the increase may be below the threshold amount that ordinarily triggers the fee requirement. The parties acknowledge that impact fees are intended to apply to the cumulative net development actually built for the Project. Accordingly, if a particular Implementation Project does not include a net increase in gross floor area in excess of the threshold 7,500 square feet that triggers the fee requirement (or if it includes a remodel of less than 7,500 square feet that would otherwise qualify for impact fees), then any net increase or net decrease in gross floor area, or any square footage of the remodel, associated with that Implementation Project (a “**Gross Floor Area Carryover**”) shall be carried over and applied to the calculation of new gross floor area for the next Implementation Project.
- E. The Parties expect that the total amount to be paid into the Affordable Housing and Affordable Childcare Trust Funds over the life of the Agreement, \$7,944,000.00 in nominal dollars, will substantially exceed the aggregate amount of impact fees likely due over the life of the Agreement, which is estimated at \$4,952,230.00 in nominal dollars. The ultimate amount of impact fees that will be due will depend on a number of factors, including the timing and extent

⁴ “**New construction**” means (1) the net additional, newly constructed floor area for a given Implementation Project, which is equal to the total square footage of proposed new construction minus the total square footage of existing square footage that will be demolished or replaced, or (2) the alteration of existing buildings that have been substantially vacant of all uses for at least three (3) years if there is a change of use that is intended to intensify employment on the site, consistent with the terms of the Existing Fee Requirements.

of each Implementation Project, and the possibility of minor amendments to the site plan or phasing plan that do not require amendment of the Agreement. To the extent the approximately \$3,000,000 of payments in excess of expected impact fees is not needed to satisfy impact fees due, it shall be retained by the City as an additional Community Benefit investment towards affordable housing. In the unlikely event that the actual aggregate amount of impact fees due exceeds \$7,944,000, Community Benefit monies shall be reallocated per the City's direction to the Affordable Housing and/or Affordable Childcare Trust Funds, as applicable, in the amount of the deficiency.⁵

- F. The City shall maintain a ledger ("Ledger") to account for the payment of monies into the Affordable Housing and Affordable Childcare Trust Funds, the annual CPI adjustment of those payments, and amounts credited or paid to satisfy Bayer's impact fee obligations. The Ledger shall also account for any Gross Floor Area Carryover as described in Section III.D. Within thirty (30) days of submittal of annual investments by Bayer, the City shall provide Bayer with an updated Ledger confirming the City's receipt of the annual investments, that such investments have been placed in the appropriate trust funds, the cumulative amount of credits, if any, to be carried forward, and any floor area Carryover for each use category set forth in the Existing Fee Requirements, including with respect to any replacement Implementation Projects.⁶

IV. PARAMETERS GOVERNING COMMUNITY BENEFIT PROGRAMS AND CITY DEVELOPMENT FEE FUNDS

A. STEAM Education / Career Technical Education Partners

Bayer shall provide the following community benefits, and according to the following terms:

1. Subcategories for investment include: Transitional Kindergarten to 8th Grade; high school career technical education and paid internships; and community college STEAM career pathways and paid internships. Monies allocated toward STEAM Education under this Section shall be sub-allocated as follows:
 - a. Transitional Kindergarten through 8th Grade programs – Ten Percent (10%)
 - b. High School career technical education and paid internships – Fifty Percent (50%)
 - c. Community college STEAM career pathways and paid internships – Forty Percent (40%)
2. Bayer shall convene a committee charged with administering the issuance of grants for the purposes and according to the allocations set forth in this Section IV.A, subject to the following terms:
 - a. A grant committee of stakeholders shall include representatives from Bayer, education experts, and community leaders. Education experts

⁵ Nothing in this Exhibit shall be construed to require Bayer to make investments exceeding \$33,100,000.

⁶ A replacement project is the scope of development identified in Section 3.2(A) and (B) of Exhibit C.

shall have experience working in STEAM education serving students from populations historically underrepresented in STEAM majors and careers. Grant committee members shall serve on a volunteer basis. Such committee is not a municipal committee and is not exercising any municipal authorities (and is not authorized to do so), but is a private committee of individuals per the terms of this Exhibit, and for the grant award purposes set forth in this Exhibit.

- b. The grant committee shall consist of nine (9) or fifteen (15) persons, as the parties may mutually agree.
- c. The City shall have the right to select one or more community leaders and one or more education experts to serve on the private committee, constituting 1/3 of the committee membership. The City and Bayer, by mutual agreement, shall have the right to select one or more community leaders and one or more education experts to serve on the private committee, constituting 1/3 of the committee membership. Representatives from Bayer selected by Bayer shall constitute 1/3 of the committee membership. Grant committee members shall each serve terms of four (4) years, and shall be reappointed or replaced upon expiration of their terms (or earlier replaced for cause) in the manner described above for their appointment.
- d. Grant committee members shall meet at least annually and shall not make any decision unless a quorum of committee members participate, where a quorum shall be fifty (50) percent of committee members. Decisions of the grant committee shall be made by majority vote.
- e. Grant award protocols shall be established by written policies and procedures established by the grant committee. Grant awards shall be directed towards Berkeley's public school students with an emphasis on serving students from populations historically underrepresented in STEAM majors and careers and contribute to diversifying the STEAM Career Pipeline. -The policies and procedures shall provide that the issuance and/or award of grants, the evaluation of awardees-using evidence based metrics and practices directed towards serving underrepresented students in STEAM~~against performance standards~~, and the termination of grants shall be made on the basis of criteria and outcome metrics ~~performance standards~~ established in writing and provided to prospective grantees and incorporated as applicable into grant agreements.
- f. To the extent feasible and consistent with the terms of the Agreement, the parties shall establish the grant committee within six (6) months of the Effective Date, and in no event later than 60 days prior to the first required Community Benefits payment.
- g. Grants funded by monies under this Section IV.A shall be awarded by the grant committee by August 1 and disbursed by Bayer to grantees by September 1 in each calendar year during the term of the Agreement for

~~purposes consistent with the terms of this Section IV.A and consistent with the terms of the Agreement as follows:~~

~~1 For the first year of the Agreement, grant monies shall be awarded by August 1, 2022 and disbursed by Bayer to grantees by September 1, 2022 for purposes consistent with the terms of this Section IV.A and consistent with the terms of the Agreement.~~

~~2 For all years after the first year, grant monies shall be awarded by March 1 and disbursed by Bayer to grantees by September 1 in each calendar year during the remaining term of the Agreement for purposes consistent with the terms of this Section IV.A and consistent with the terms of the Agreement.~~

- h. The foregoing grant committee shall not be dissolved prior to the end of the term set forth in the Agreement unless Bayer and the City mutually consent to dissolution in writing, and have agreed on alternative procedures for awarding grants under this Section IV.A.
- i. The grant committee shall award grants with ~~at least~~ a five-year (5-year) term to eligible recipients with grant review of performance annually, and with an option to extend any awarded grants according to criteria and performance standards established pursuant to this Section IV.A.

3. By mutual agreement, the City and Bayer may authorize the committee to use (A) a portion of first year funding, not to exceed thirteen percent (13%) of the first year allocation of funds under this Section IV.A, to create a framework for program outcomes, selection process, and outcomes monitoring, and (B) a portion of each subsequent year's funding, not to exceed five percent (5%) of that year's allocation, to assist with implementation of the framework and other administrative expenses, including third-party consultants. Otherwise, all monies allocated must be allocated to grantees.

B. West Berkeley Fund Committee

- 1. Bayer shall convene a committee, tentatively to be named the West Berkeley Fund Committee, charged with administering the issuance of grants for the purposes and according to the allocations set forth in this Section IV.B, subject to the following terms:
 - a. Grants awarded by the committee shall be used to finance charitable and/or educational programs that support community infrastructure and resiliency programs for the benefit of the community within the boundaries of the City's West Berkeley Plan. Grantee programs shall focus on three charitable objectives: climate action, health equity, and economic resiliency. Such grant amounts are to be distributed in equal portions to address these three charitable objectives.

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- b. The grant committee shall include representatives from Bayer and community leaders. Grant committee members shall serve on a volunteer basis. Such committee is not a municipal committee and is not exercising any municipal authorities (and is not authorized to do so), but is a private committee of individuals per the terms of this Exhibit, and for the grant award purposes set forth in this Exhibit.
- c. The grant committee shall consist of nine (9) or fifteen (15) persons, as the parties may mutually agree.
- d. The City shall have the right to select one or more community leaders to serve on the private committee, constituting 1/3 of the committee membership. The City and Bayer, by mutual agreement, shall have the right to 1/3 of the committee membership. Representatives from Bayer selected by Bayer shall constitute 1/3 of the committee membership. Community members unaffiliated with Bayer shall constitute a majority of the committee. Grant committee members shall each serve terms of four (4) years, and shall be reappointed or replaced upon expiration of their terms (or earlier replaced for cause) in the manner described above for their appointment.
- e. All grant decisions shall be made by the vote of more than two-thirds of the members of the grant committee.
- f. Grant award protocols shall be established by written policies and procedures established by the grant committee. The policies and procedures shall provide that the issuance and/or award of grants, the evaluation of awardees against performance standards, and the termination of grants shall be made on the basis of criteria and performance standards established in writing and provided to prospective grantees and incorporated as applicable into grant agreements.
- g. To the extent feasible and consistent with the terms of the Agreement, the parties shall establish the grant committee within six (6) months of the Effective Date, and in no event later than 60 days prior to the first required Community Benefits payment.
- h. To the extent it is feasible to do so, community benefits payments shall be made by Bayer to grant recipients in the same calendar year that grant recipients are identified by the committee.
- i. The foregoing grant committee shall not be dissolved prior to the end of the term set forth in the Agreement unless Bayer and the City mutually consent to dissolution in writing, and have agreed on alternative procedures for awarding grants under this Section IV.B. .
- j. The grant committee shall award grants with at least a three-year (3-year) term to eligible recipients, with grant review of performance annually.

and with an option to extend any awarded grants according to criteria and performance standards established pursuant to this Section IV.B.

2. By mutual agreement, the City and Bayer may authorize the committee to use (A) a portion of first year funding, not to exceed twenty-five percent (25%) of the first year allocation of grants under this Section IV.B, to create a framework for program outcomes, selection process, and outcomes monitoring, and (B) a

portion of each subsequent year's funding, not to exceed ten percent (10%) of that years allocation, to assist with implementation of the framework and other administrative expenses, including third-party consultants. Otherwise, all monies allocated must be allocated to grantees.

C. Affordable Housing Trust Fund

1. The Affordable Housing Trust Fund is that municipal fund identified in Chapter 22.20 of the Berkeley Municipal Code.
2. Monies allocated to the Affordable Housing Trust Fund pursuant to this Exhibit D shall be utilized by the City in the same manner prescribed in: Chapter 22.20 of the Berkeley Municipal Code, as it might be amended from time to time; any resolutions, regulations, or official policies adopted by the City in implementing and/or administering the Affordable Housing Trust Fund; and any applicable state or federal law.

D. Affordable Childcare Trust Fund

1. The City of Berkeley Affordable Childcare Fund is that municipal fund identified in Resolution 66,618.
2. Monies allocated to the Affordable Childcare Fund pursuant to this Exhibit D shall be utilized by the City in the same manner prescribed in Resolution 66,618, as it might be amended from time to time; any resolutions, regulations, or official policies adopted by the City in implementing and/or administering the Affordable Childcare Fund; and any applicable state or federal law.

E. Private Percent for Art Fund

1. The City of Berkeley Private Percent for Art Fund is that municipal fund identified in the Public Art in Private Development Program Guidelines that is associated with the City's collection of the in-lieu fee to the City as set forth in section 23C.23.070 of the Berkeley Municipal Code.
2. Monies allocated to the Private Percent for Art Fund pursuant to this Exhibit D shall be utilized by the City in the same manner prescribed in Chapter 23C.23 of the Berkeley Municipal Code, as it might be amended from time to time; any resolutions, regulations, or official policies adopted by the City in implementing

and/or administering the Private Percent for Art Fund; and any applicable state or federal law.

V. IN-KIND CONTRIBUTIONS

In addition to the monetary investments toward community benefits set forth in this Exhibit, Bayer shall provide the following non-monetary, in-kind contributions:

A. Bayer employee volunteerism hours and mentorships. To this end, each year Bayer shall:

1. Maintain its commitment to provide mentors for up to:

- a. Fifteen (15) high school summer internships of at least one hundred and twenty (120) hours each, on an annual basis.
- b. Eight (8) community college year-round internships of at least eight hundred (800) hours each, on an annual basis.

2. Provide at least six hundred and twenty (620) volunteer hours on an annual basis in Berkeley, including at least twenty (20) hours to support requested teacher development support and/or student career exploration engagement. B. Local hiring outreach and promotion. To this end, Bayer shall:

- 1. Commit to focused community outreach about Bayer's open career positions to Berkeley residents via social media, local publications, job fair participation and engagement at Berkeley educational institutions. Any hiring decision must comply with applicable law, and Bayer strictly prohibits hiring discrimination on any basis protected by local, state, or federal law.
- 2. Report annually, in conjunction with annual review processes that apply to the Amended and Restated Development Agreement, on hires from among:
 - a. Berkeley residents; and
 - b. Graduates of Bayer-funded high school and community college internships.

C. Promotion of neighborhood events (e.g., community-building events, community meetings, and mailers for Bayer sirens and alarm systems). To this end, Bayer shall:

- 1. At the request of City leaders or community partners, promote at least two West Berkeley neighborhood community-building events per year to Bayer employees and encourage volunteerism.
- 2. Mail postcards to Bayer neighbors with information on Bayer's siren and alarm systems in an annual basis, where such postcards will be delivered to postal

addresses of residents living south of University Avenue, north of Ashby Avenue, and West of San Pablo Avenue.

3. Host biennial community meetings (virtual or in person, at Bayer's discretion) to connect with neighbors on issues of shared concern and to report on Bayer's community engagement.
- D. Non-monetary support for one (1) Career Technical Education ("CTE") program receiving funding from the grant committee identified in Section IV.A (i.e., hosting qualified CTE internship programs on site as well as administrative and Information Technology support for internships). To this end, Bayer shall:
1. Provide on-site administrative space for internship coordination organization(s) identified under STEAM grant allocations identified in Section V.A up to a maximum of ten (10) people consistent with current Bayer administrative space practices.
 2. Provide information technology support for the aforesaid internship coordination organization(s).
- E. Identification and, where possible, pursuit of an increase of specific commitments to contracting with minority- owned businesses. To this end, Bayer shall, every three years, at the request of the City's Office of Economic Development, and to the extent consistent with applicable law:
1. Provide an update on its supplier inclusion and diversity program.
 2. Identify potential categories where Berkeley or Bay Area minority-owned businesses may be suppliers based on information provided by the City and refer suppliers already qualified through City of Berkeley Minority Business Enterprise ("MBE") programs to be evaluated as potential Bayer vendors.
 3. Engage major suppliers for its Berkeley operations to encourage them to source from diverse suppliers.
- F. Sustainability commitments beyond those required mitigation measures identified through CEQA process, including those bird-safe glass provisions, native planting requirements, and other sustainability practices programmed into Bayer's design review guidelines, as set forth in Exhibit C to the Amended and Restated Development Agreement.
- G. Use of facilities, if available and reasonably appropriate (e.g., does not interfere with site operations), for Berkeley Fire Department training, pursuant to the following terms:
1. At the request of Berkeley Fire Department, each year Bayer will host at least one training on community-facing emergency skills in Building 83 and Building 84.

2. When Building 84 is removed, Bayer will no longer be obligated to host community facing training events at this building, and when Building 83 is renovated, Bayer will no longer be obligated to host community facing training events at this building.