Downtown West Mixed-Use Plan

TDM PLAN

Prepared for **City of San José**
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Downtown West Mixed-Use Plan: TDM Plan

San Jose, CA

Prepared for:
City of San Jose

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FEHR PEERS

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Introduction

This transportation demand management (TDM) plan was prepared for the proposed Downtown West Mixed-Use Rezoning and Development Plan (the "Project") in the western half of downtown San José. In November 2020 the Project's Draft Environmental Impact Report (EIR) was prepared consistent with California Environmental Quality Act (CEQA) guidelines. As part of the EIR's air quality impacts and to reduce project-generated vehicle traffic, the project is required to implement mitigation measure AQ-2h. Mitigation measure AQ-2h requires that the Project develop and submit a transportation demand management (TDM) plan for review and approval by City staff prior to issuance of Project entitlement. This TDM plan outlined below was prepared to achieve the performance targets described in mitigation measure AQ-2h. Elements of the plan may change as needed to meet agreed-to performance targets for the Project.

The TDM program includes an array of transportation strategies intended to reduce vehicle trips and vehicle miles traveled (VMT). A separate analysis of TDM program effectiveness (see Appendix C4 to the Project EIR) determined that the proposed strategies would reduce the Project's VMT and vehicle trips from the City's model estimates by an additional 27 percent from all uses. Social, economic, and technological trends may affect the future effectiveness of these strategies, including current trends such as increased telecommuting in response to the COVID-19 crisis, transportation network companies (TNCs), and internet shopping, and anticipated trends such as autonomous vehicles (AVs) and micro-transit.

Project Description

The Downtown West Mixed-Use Plan area encompasses approximately 80 acres in downtown San José, west of State Route (SR) 87, north of Interstate (I) 280 in the vicinity of the Diridon Station and future Bay Area Rapid Transit District (BART) station, and future High-Speed Rail (HSR) facility. The Project includes construction of the following uses in multiple new structures distributed throughout the Plan area:

- 7.3 million gross square feet of commercial office uses
- 5,900 dwelling units
- 500,000 gross square feet of commercial retail space
- 300 hotel rooms
- 800 limited-term corporate accommodations
- 100,000-gross square foot event space

The Project also includes the provision of up to 4,800 publicly accessible and/or commercial parking spaces to meet the demand for parking of site-specific users and the public, and up to 2,360 parking spaces for the Project's residential uses.

Project TDM Mode Share Requirements

Envision San José 2040 General Plan sets the target that no more than 40 percent of commute trips are completed by driving alone (or at least a 60 percent non-SOV mode split). The 60 percent non-SOV target represents a citywide average. The City recognizes that not all areas of the City can equally attain this target because of varying land use densities and availability of multimodal connections. Areas with good multimodal access would need to achieve higher non-SOV goals, and lower density areas with fewer multimodal access options would have lower non-SOV goals. Based on City provided data, the Project would need to achieve a 75 percent non-SOV mode split, across all trip types (not just commute trips) to reach citywide mode split targets.

While the City and the Project applicant share a goal of achieving a non-SOV rate of 75 percent for the Project area consistent with the citywide targets set forth in *Envision 2040*, an analysis of available transit and the likely effectiveness of TDM programs was used to develop project-specific performance measures. Thus, to mitigate Project impacts, the TDM Program has phased non-SOV requirements as outlined in Mitigation Measure AQ-2h. This TDM program is designed such that all project-related daily vehicle trips are reduced with the primary focus on the office and residential components of the proposed project.

At its full implementation, Mitigation Measure AQ-2h would achieve a non-SOV mode share of 65 percent, which is estimated to be equivalent to an average daily vehicle trips reduction of 27 percent following completion of service enhancement related to Caltrain Electrification and BART service to Diridon Station by 2040. An analysis of available transit and the likely effectiveness of TDM programs was used to develop project-specific performance measures that would apply by Project phase and reflect the surrounding transportation system.

Consistent with Mitigation Measure AQ-2h, the TDM Program has the following tiered non-SOV requirements:

- Achieve a combined non-SOV rate of 50% for office uses, thereby reducing daily vehicle trips from the City model by 24%, assuming currently available public transit service levels (pre-COVID 19); and
- Achieve a combined non-SOV rate of 60% for office uses, thereby reducing daily vehicle trips from the City model by 26% following completion of services enhancements related to Caltrain Electrification, and
- Achieve a combined non-SOV rate of 65% for office uses, thereby reducing daily vehicle trips from the City model by 27% following commencement of BART service to Diridon Station.

TDM Program Requirements

The TDM program is designed such that all project-related daily vehicle trips are reduced with the primary focus on the office and residential components of the proposed Project. The TDM program shall:

A. Be designed to meet performance standards that include exceeding the 15 percent transportation efficiency requirement of AB 900 *and* achieving additional vehicle trip reductions to mitigate transportation-related environmental impacts and reduce criteria pollutant emissions from mobile sources, as described below;
B. Describe project features and TDM measures that shall and may be used to achieve the performance standard commitments;
C. Describe a monitoring and reporting program, including a penalty structure for non-compliance; and
D. Recognizing that commute patterns, behavior and technology continue to evolve, describe a process for amending and updating the TDM program as needed over time while continuing to achieve the performance standards described below.

These elements of the TDM Program are described further below.

Required TDM Measures

Google provides a variety of incentives to its employees to choose travel modes that do not require them to drive alone. These incentives are design to motivate employees to use transit, ride a bicycle, share a car, or some combination of modes. A summary of the Primary TDM measures can be found in **Table 1**.

Table 1: Required TDM Measures

Measure	Description
Enhancement of surrounding bicycle and pedestrian facilities	Improvements to pedestrian and bicycle facilities on-site and connecting the site to surrounding areas, including the construction/contribution to Los Gatos Creek Trail improvements and on-street connectors between West San Carlos Street and West Santa Clara Street.
Limited On-Site Parking	Limited parking supplies on-site, including no more than 4,800 parking spaces for commercial uses and no more than 2,360 spaces for residential development (a portion of the residential spaces could be made available for shared use with the office employees) and enforcement of the project's parking maximums for new uses as a disincentive for employees and visitors to drive to the site, encouraging them to carpool, take transit, bike, and walk instead of drive.
Market-Rate Parking Pricing	Market-rate parking pricing for non-residential uses and unbundled parking for market rate residential uses.

Pre-tax commuter benefits for employees	Pre-tax commuter benefits for employees allowing employees to exclude their transit or vanpooling expenses from taxable income or an alternate commuter benefit option consistent with the MTC/BAAQMD Commuter Benefits Program required for employers with 50 or more full-time employees.
Marketing of non-SOV travel options	Marketing (encouragement and incentives) to encourage transit use, carpooling, vanpooling, and all non-SOV travel by employees and residents, including welcome packets for new employees and residents, and dissemination of information about Spare the Air Days within the San Francisco Bay Area Air Basin as recommended by the 2017 Clean Air Plan.
Carpool matching	Rideshare coordination, such as implementation of the 511 Regional Rideshare Program or equivalent, as recommended by the 2017 Clean Air Plan.

Source: Draft Environmental Impact Report, 2020.

Detailed descriptions of the Required TDM Measures follow.

Enhancement of surrounding bicycle and pedestrian facilities

Applicant will incorporate design elements connecting local bicycle and pedestrian facilities to the Project site. This includes, at a minimum, construction/contribution to Los Gatos Creek Trail improvements and on-street connectors between West San Carlos Street and West Santa Clara Street. See **Figure 1** and **Figure 2** for a map of bicycle and pedestrian connections to the site.

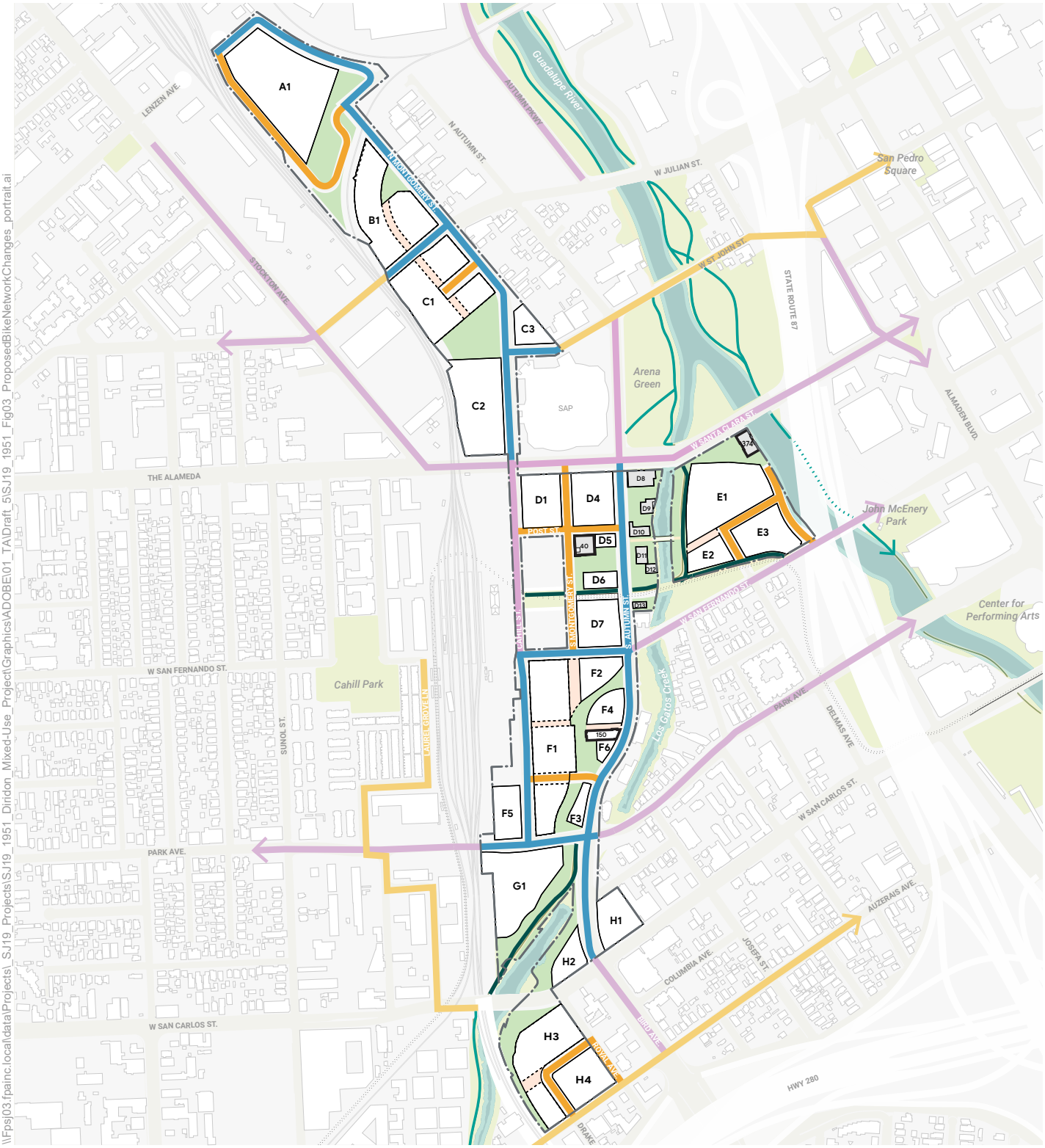
Limited On-Site Parking

The Project will include no more than 4,800 parking spaces for commercial uses and no more than 2,360 spaces for residential development as a disincentive for employees and visitors to the site, encouraging them to carpool, take transit, bike, and walk instead of drive. Limiting the amount of parking available creates scarcity and adds additional time and inconvenience to trips made by private auto, thus disincentivizing driving as a mode of travel. This measure works by simply restricting the total number of vehicles that the site can accommodate, which encourages lower rates of auto ownership among residents, and lower rates of commuting by auto by employees. The applicant is also required to submit a Neighborhood Traffic and Parking Intrusion Monitoring Plan to monitor and limit adverse effects of parking spillover onto nearby streets that could result from the project's lower parking supply.

Market-Rate Parking Pricing

The Project will price all off-street and on-street parking, for all users. Increasing the cost of parking increases the total cost of driving to a location, incentivizing shifts to other modes and thus decreasing the Project's anticipated drive-alone mode share. The Project will adjust the price of parking accordingly, to ensure that occupancy and vacancy rates align with standard parking management practices.

Similarly, market-rate residential units will be subject to "unbundled" parking, meaning that tenants must pay separately for a parking space, in addition to any rent. This increases the total cost for Project residents to own a vehicle, thus encouraging a no-car or one-car lifestyle for residents.



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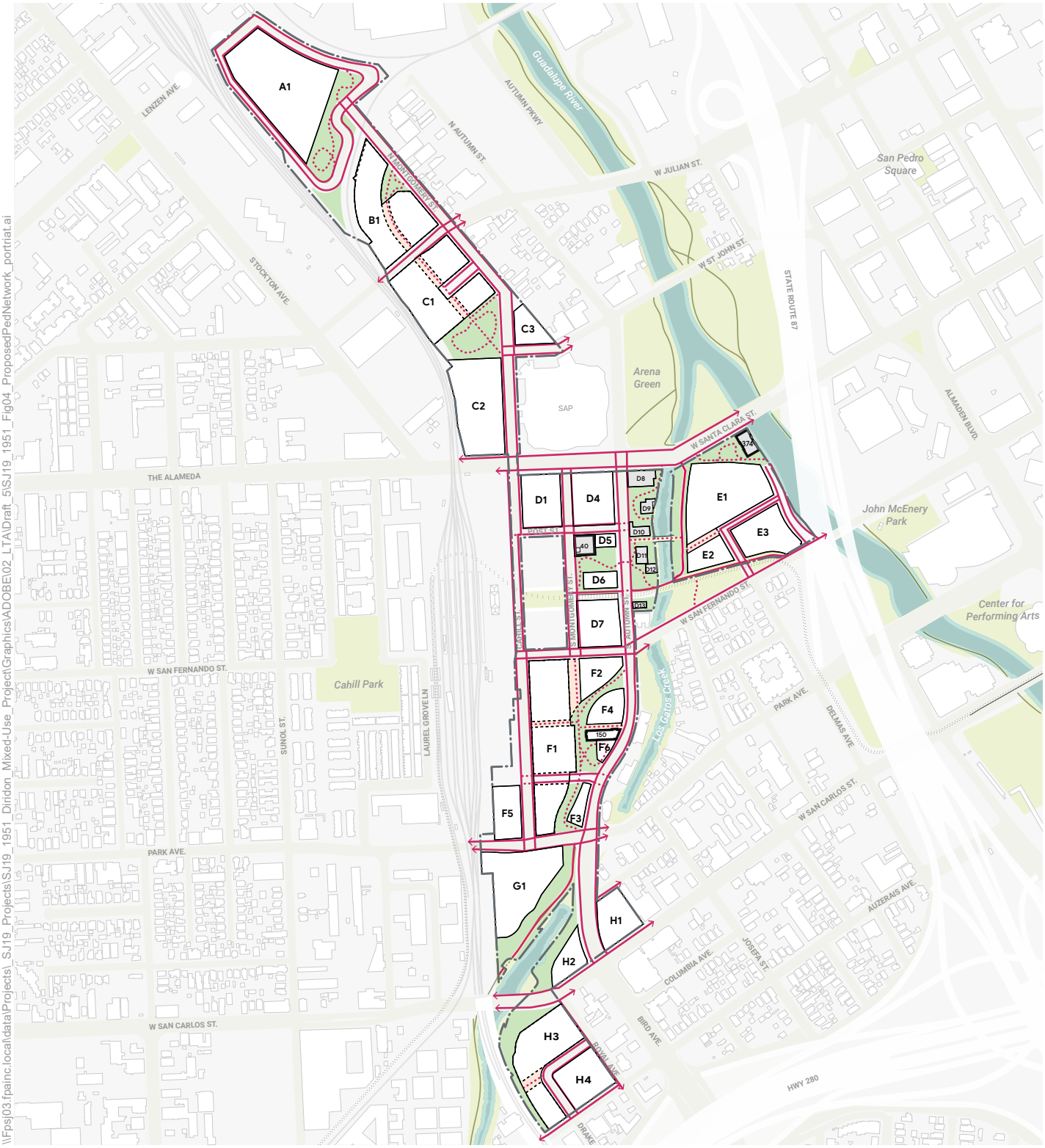
Legend

- Multi-use Trails and Shared Use Paths (Class I)
- On-street bike facilities (Class IV and II)
- Shared Lanes (Class III)
- Existing Trails
- Existing Bicycle Lanes (Class IV and II)
- Existing Shared Lanes

Figure 1

Proposed Bike Network

Downtown West



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Legend

- Sidewalks and trails
- Illustrative pedestrian routes, including open spaces, mid-block passages and mid-block crossings.

Figure 2

Proposed Pedestrian Network

Downtown West

Pre-tax commuter benefits for employees

To incentivize commuting by transit, employees working at the Project site will be able to deduct up to the IRS maximum limit for transit benefits from their pay on a pre-tax basis. This benefit should be allowed to apply to all applicable transit operators with stops within two miles of the site. With introduction of these pre-tax benefits, employees experience savings of 10 percent to 30 percent over the typical cost for transit.

Marketing of non-SOV travel options

To incentivize commuting by any means other than driving alone by Project employees, Google will operate a robust series of educational and promotional events to encourage employees to use options that are not driving alone to travel to and from the workplace. New employees will receive information on various commute options during orientation to ensure widespread understanding of commute options, regardless of tenure. In addition, Google may choose to participate in promotional events to publicize and promote transportation options, such as Bike to Work Day, friendly competitions around bike month/walk month, or other similar events.

To incentive non-auto use among residents, the residential property manager shall provide a welcome package for all new residents that includes a description of the available transportation options, resources for trip planning, maps of VTA light rail and bus lines, and information on who to contact for one-on-one trip planning.

For both residential and employee marketing programs, information should be included regarding all options encouraged by this TDM plan, and not be limited to promotion of the required TDM measures.

Carpool matching

To incentivize commuting by shared vehicles for Google employees, Google will promote and provide a platform for interested employees to find other employees to carpool with. In addition, the residential property manager will provide a similar platform for residents of the project. This could take the form of an internal carpooling service or public/regional carpooling matching system. This improves the convenience of finding other employees with which to share a car, thereby promoting carpooling.

Additional TDM Measures

In addition to the required measures mentioned above, the Applicant has identified numerous additional TDM measures. These measures are intended to supplement and support the required measures and provide a "menu" of options for use as the Project strives to meet its mode share goals. These are provided as options, rather than requirements, to allow for flexibility in future adjustments to the plan, based on changes in overall travel patterns, demographics, or technology. These measures are listed in **Table 2.**

Table 2: Additional TDM Measures

Measure	Description
Transit Fare Subsidy	Provide transit passes or subsidies to employees and residents to make transit an attractive, affordable mode of travel.
Parking Pricing Structure	Ensure that the parking pricing structure encourages "park once" behavior for all uses.
Preferential Carpool and Vanpool Parking	Provide dedicated parking for carpool and vanpool vehicles near building and garage entrances.
On-Site Bicycle Parking and Storage	Provide additional security and convenience for bike parking, such as lockers or secured bicycle rooms.
Designated Ride-Hailing Waiting Areas	Dedicate curbside areas for passenger pickup by ride-hailing services, to minimize traffic intrusion and double-parking by rideshare vehicles.
Bikeshare Program	Contribute to or implement a bikeshare program to increase use of biking and access to transit and surrounding land uses.
Express Bus or Commuter Shuttle Services	Provide express bus or other commuter shuttle services to complement existing, high-quality, high-frequency public transit; service may also be provided through public/private partnerships with transit providers.
Alternative Work Schedules and Telecommuting	Allow and encourage employees to adopt alternative work schedules and telecommute when possible, reducing the need to travel to the office component of the project.
First-/Last-Mile Subsidy	Provide subsidies for first-/last-mile travel modes to employees to reduce barriers to the use of transit as a primary commute mode by making short connecting trips to and from longer transit trips less costly and more convenient. First-/last-mile subsidies could be used to access bicycle share, scooter share, ride hailing, and local bus and shuttle services, and could subsidize bicycling and walking.
On-Site Transportation Coordinators	Provide TDM program outreach and marketing via on-site transportation coordinators who can also give individualized directions, establish ridesharing connections, and provide other alternative travel information to project employees and residents.
Technology-Based Services	Use technology-based information, encouragement, and trip coordination services to encourage carpooling, transit, walking, and biking by project employees and visitors. These can include third-party apps to distribute incentives to people who choose to use these modes.
Employer- Sponsored Vanpools	Coordinate and provide subsidized vanpools for employees who cannot easily commute via transit.

Biking Incentives and On-Site Bike Repair Facilities	Provide additional incentives that encourage bicycle usage and ability to repair bikes on site.
Carshare Program	Provide car share subsidies to residents to encourage the use of carshare programs (such as ZipCar and Gig) and limit parking demand.
Building-Specific TDM Plans	Develop customized TDM plans for specific buildings and tenants to better address the needs of their users.
Transportation Management Agency Membership	Join a non-profit transportation management association if formed for Downtown San José and leverage the larger pool of commuters and residents to improve TDM program marketing and coordinate TDM programs.

Monitoring and Reporting

Starting in the calendar year after the City issues the first certificate of occupancy for the first office building in the first development phase, the project applicant shall retain the services of an independent City-approved transportation planning/engineering firm to conduct an annual mode-share survey of the office and residential components of the project each fall (mid-September through mid-November) to determine whether the project is achieving the combined average non-SOV mode share for office and residential uses sufficient to indicate the specified trip reductions. The applicant shall submit an annual report to the staff of the San José Department of Transportation each January 31.

Annual Travel Surveys

The mode-share survey to be conducted at the site is intended to monitor achievement of the mode share goals discussed in the introduction to this Plan. Because the mode share goal is presented as a daily percentage, care should be taken in conducting the travel surveys to capture **all trips** that an individual takes on a given day. Due to the complexity of typical travel patterns, most residents and employees at the Project will make more trips than simply the commute trip. To determine the project's mode share and adherence to the requirements of Mitigation Measure AQ-2h, the annual survey should be designed to capture commute trips, plus all other trip conducted during the survey date. The annual survey should include the following set of questions, which may be modified to increase survey clarity and effectiveness with City approval. In the future, response options to each question should be updated to reflect future innovations in mode choice and/or technology options. The applicant or owners may choose to incorporate additional questions for their own purposes.

Employee Survey:

1. On **Wednesday, November 3[1],** did you travel to work at the Downtown West Google campus?
    a. Yes (*survey continues*)
    b. No, I worked from home or at a non-Google location (*two trips logged as telecommute)*
    c. No, I worked at another Google office *(Entry not included in results)*
    d. No, I did not work that day *(Entry not included in results)*
2. How did you first arrive to work on that day?
    a. I drove alone in a car, SUV, van, or truck and parked on-site (*One trip logged as drive-alone)*
    b. I drove alone in a car, SUV, van, or truck and parked elsewhere (*One trip logged as drive-alone)*

[1] Survey should reflect a Tuesday, Wednesday, or Thursday between mid-September and mid-November. Ideally, though not necessary, the date is coordinated to be consistent with monitoring conducted as part of the Downtown West's *Neighborhood Traffic and Parking Monitoring Plan*.

   c. I drove alone on a motorcycle or moped and parked on-site (*One trip logged as drive-alone with motorcycle/moped)*
   d. I drove alone on a motorcycle or moped and parked elsewhere (*One trip logged as drive-alone with motorcycle/scooter)*
   e. I took Lyft or Uber, without any other passengers (*One trip logged as TNC*)
   f. I drove/rode with others in a car, SUV, van, or truck (*One trip logged as carpool*)
   g. I got a ride from a friend, coworker, or family member who dropped me off at work in a car, SUV, van, or truck (*One trip logged as carpool*)
   h. I took Caltrain, Amtrak, or ACE (*One trip logged as commuter rail*)
   i. I took VTA light rail (*One trip logged as light rail*)
   j. I took a public transit bus (*One trip logged as bus*)
   k. I took a Google shuttle bus (*One trip logged as Google shuttle*)
   l. I took a Google connector (One trip logged as Google connector)
   m. I took a non-Google shuttle bus or connector (*One trip logged as shuttle*)
   n. I walked (*One trip logged as walk*)
   o. I rode my own biked (*One trip logged as bike*)
   p. I rode an on-demand bike (one trip logged as bike)
   q. I used an electric scooter or similar (*One trip logged as scooter*)
   r. Other: _____ (*One trip logged as other*)
3. Did you leave your primary office building prior to departing for the day, for any reason? (i.e., to get lunch, grab a coffee, go to an off-site meeting, work out, give someone a ride, etc.)
   a. Yes (*Continue to question 4*)
   b. No (*Continue to question 6)*
4. How many additional trips did you make from the office during your workday?
   a. (Numeric entry)
5. 5A: "Think to the first trip you made that day after arriving at the office but prior to leaving office. What mode did you use?"
   a. I drove alone in a car, SUV, van, or truck and parked on-site (*One trip logged as drive-alone)*
   b. I drove alone in a car, SUV, van, or truck and parked elsewhere (*One trip logged as drive-alone)*
   c. I drove alone on a motorcycle or moped and parked on-site (*One trip logged as drive-alone with motorcycle/moped)*
   d. I drove alone on a motorcycle or moped and parked elsewhere (*One trip logged as drive-alone with motorcycle/scooter)*
   e. I took Lyft or Uber, without any other passengers (*One trip logged as TNC*)
   f. I drove/rode with others in a car, SUV, van, or truck (*One trip logged as carpool*)
   g. I got a ride from a friend, coworker, or family member who dropped me off at work in a car, SUV, van, or truck (*One trip logged as carpool*)
   h. I took Caltrain, Amtrak, or ACE (*One trip logged as commuter rail*)
   i. I took VTA light rail (*One trip logged as light rail*)

j. I took a public transit bus (*One trip logged as bus*)
k. I took a Google shuttle bus (*One trip logged as Google shuttle*)
l. I took a Google connector (One trip logged as Google connector)
m. I took a non-Google shuttle bus or connector (*One trip logged as shuttle*)
n. I walked (*One trip logged as walk*)
o. I rode my own biked (*One trip logged as bike*)
p. I rode an on-demand bike (one trip logged as bike)
q. I used an electric scooter or similar (*One trip logged as scooter*)
r. Other: _____ (*One trip logged as other*)

5B: "Think to the second trip you made that day prior to leaving the office. What mode did you use?"

a. I drove alone in a car, SUV, van, or truck and parked on-site (*One trip logged as drive-alone)*
b. I drove alone in a car, SUV, van, or truck and parked elsewhere (*One trip logged as drive-alone)*
c. I drove alone on a motorcycle or moped and parked on-site (*One trip logged as drive-alone with motorcycle/moped)*
d. I drove alone on a motorcycle or moped and parked elsewhere (*One trip logged as drive-alone with motorcycle/scooter)*
e. I took Lyft or Uber, without any other passengers (*One trip logged as TNC*)
f. I drove/rode with others in a car, SUV, van, or truck (*One trip logged as carpool*)
g. I got a ride from a friend, coworker, or family member who dropped me off at work in a car, SUV, van, or truck (*One trip logged as carpool*)
h. I took Caltrain, Amtrak, or ACE (*One trip logged as commuter rail*)
i. I took VTA light rail (*One trip logged as light rail*)
j. I took a public transit bus (*One trip logged as bus*)
k. I took a Google shuttle bus (*One trip logged as Google shuttle*)
l. I took a Google connector (One trip logged as Google connector)
m. I took a non-Google shuttle bus or connector (*One trip logged as shuttle*)
n. I walked (*One trip logged as walk*)
o. I rode my own biked (*One trip logged as bike*)
p. I rode an on-demand bike (one trip logged as bike)
q. I used an electric scooter or similar (*One trip logged as scooter*)
r. Other: _____ (*One trip logged as other*)

Etc. based on response to Question 4.

6. When you left the office for the day, how did you travel?
    a. I drove alone in a car, SUV, van, or truck and parked on-site (*One trip logged as drive-alone)*
    b. I drove alone in a car, SUV, van, or truck and parked elsewhere (*One trip logged as drive-alone)*

c. I drove alone on a motorcycle or moped and parked on-site (*One trip logged as drive-alone with motorcycle/moped)*
d. I drove alone on a motorcycle or moped and parked elsewhere (*One trip logged as drive-alone with motorcycle/scooter)*
e. I took Lyft or Uber, without any other passengers (*One trip logged as TNC*)
f. I drove/rode with others in a car, SUV, van, or truck (*One trip logged as carpool*)
g. I got a ride from a friend, coworker, or family member who dropped me off at work in a car, SUV, van, or truck (*One trip logged as carpool*)
h. I took Caltrain, Amtrak, or ACE (*One trip logged as commuter rail*)
i. I took VTA light rail (*One trip logged as light rail*)
j. I took a public transit bus (*One trip logged as bus*)
k. I took a Google shuttle bus (*One trip logged as Google shuttle*)
l. I took a Google connector (One trip logged as Google connector)
m. I took a non-Google shuttle bus or connector (*One trip logged as shuttle*)
n. I walked (*One trip logged as walk*)
o. I rode my own biked (*One trip logged as bike*)
p. I rode an on-demand bike (one trip logged as bike)
q. I used an electric scooter or similar (*One trip logged as scooter*)
r. Other: _____ (*One trip logged as other*)

Residential Survey:

1. On **Wednesday, November 3,** did you leave your home for any reason?
    a. Yes (*survey continues*)
    b. No, I did not leave and was not working from home *(Entry not included in results)*
    c. No, I was working from home (*two trips logged as telecommute*)
    d. No, I was not at home on that day due to travel / other reasons. (*Entry not included in results*)
2. Think about the first time you left home that day, for any reason – to commute, work out, grab a coffee, etc. How did you travel?
    a. I drove by myself (*One trip logged as drive-alone)*
    b. I took Lyft or Uber, without any other passengers (*One trip logged as TNC*)
    c. I drove with others (*One trip logged as carpool*)
    d. I got a ride from a friend, coworker, or family member (*One trip logged as carpool*)
    e. I took Caltrain, Amtrak, or ACE (*One trip logged as commuter rail*)
    f. I took VTA light rail (*One trip logged as light rail*)
    g. I took a public transit bus (*One trip logged as bus*)
    h. I took a shuttle bus (*One trip logged as shuttle*)
    i. I walked (*One trip logged as walk*)
    j. I biked (*One trip logged as bike*)
    k. I used an electric scooter or similar (*One trip logged as scooter*)
    l. Other: _____ (*One trip logged as other*)

3. When you returned to your home from that trip, how did you travel?
    a. I drove by myself (*One trip logged as drive-alone)*
    b. I took Lyft or Uber, without any other passengers (*One trip logged as TNC*)
    c. I drove with others (*One trip logged as carpool*)
    d. I got a ride from a friend, coworker, or family member (*One trip logged as carpool*)
    e. I took Caltrain, Amtrak, or ACE (*One trip logged as commuter rail*)
    f. I took VTA light rail (*One trip logged as light rail*)
    g. I took a public transit bus (*One trip logged as bus*)
    h. I took a shuttle bus (*One trip logged as shuttle*)
    i. I walked (*One trip logged as walk*)
    j. I biked (*One trip logged as bike*)
    k. I used an electric scooter or similar (*One trip logged as scooter*)
    l. Other: _____ (*One trip logged as other*)
4. How many other trips did you make that started at home?
    a. (Numeric entry)
5. 5A: (Similar to above, repeat mode leaving and mode returning for total number of trips)

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

Annual Report

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

Non-Compliance

If timely reports are not submitted and/or reports indicate that the office and residential uses combined have failed to achieve the non-SOV mode share specified above in two consecutive years after issuance of the certificate of occupancy for 50 percent of the office development, the project will be considered in violation of this mitigation measure. The City will issue a notice of non-compliance after the first year the project fails to meet monitoring requirements (submittal of timely reports and/or achieving specified non-SOV mode share), after which the applicant has one year to comply with the monitoring requirements through the project's discretionary implementation of additional TDM measures.

Enforcement and Action

After two years of not meeting the project-wide monitoring requirements, the City may initiate enforcement action against the applicant and successors. In an enforcement action, the non-SOV mode share for the office and residential uses will be identified separately to determine whether the office and/or residential components are in non-compliance.

Office Penalties

Enforcement actions for owners and/or operators of the office development may include imposition of financial penalties that will support the funding and management of transportation improvements that would improve the project's ability to achieve the target non-SOV mode share. Financial penalties shall generally be consistent with City Council Policy 5-1, although adjusted to reflect non-SOV mode share rather than VMT and to include an annual penalty cap of $5M (in 2021 dollars[2]) for the office uses.

Financial penalties are defined by San José City Council Policy 5-1. As of 2020, annual penalties for failing to meet performance targets are set at 1/5th of the City's Transportation System Improvement fees for new development, which are $3,200 per VMT for office uses[3].

Since the City's fee in City Council Policy 5-1 is VMT based, the observed non-SOV rate will be converted to number of trips. Using the non-SOV rate and occupancy level, the monitoring report will calculate the number of trips that exceed the TDM Program's non-SOV requirement. The fee will be calculated by multiplying the number of trips calculated to exceed the TDM Program's non-SOV requirement by the office trip length of 4.2 miles[4] and multiplying the resulting product by the per-VMT penalty, as shown in the formula below.

$$Excess\ trips = (Actual\ SOV\ \% - \ Target\ SOV\%) * Occupancy * Vehicle\frac{trips}{occupant}$$

$$Fee = Excess\ trips * Office\ trip\ length * \frac{Fee}{VMT}$$

If the applicant, with City concurrence, has implemented any multimodal transportation improvement projects aimed at increasing non-SOV mode share that benefit the Project and that are not already required by the Local Transportation Analysis (LTA, November 2020), any future Focused LTAs, the

[2] The value of the penalty cap may be adjusted annually starting on January 1, 2022, in line with the Engineering News-Record Construction Cost Index (ENR CCI).

3 Per Council Policy 5-1, the value of Transportation System Improvements fee increases annually, on January 1st, in line with the Engineering News-Record Construction Cost Index (ENR CCI) to ensure that the value remains consistent over time.

4 The daily office trip length for office uses, represents that average trip length of all trip purposes in a day. The office employment trip length in Table 3.13-4 of the Draft EIR is the trip length for commute trips only and does not include other office trips that occur throughout the day and are generally shorter than the commute trips.

Development Agreement or a Reimbursement Project, the City shall provide a credit against future penalties in the amount of the cost of such improvement projects.

Use of Penalty Funds

The purpose of the penalties is to provide funding for transportation improvements in the project area that would assist with increasing the non-SOV mode share, such as improvements that increase project area transit accessibility, transit service, traffic calming, or multimodal bicycle/pedestrian connectivity and safety. Penalties will be paid to the Transportation Management Agency (TMA) that is anticipated to be formed as part of the Parking Benefit District that is proposed in the City's Diridon Station Area Plan Update. If the City has not formed a TMA, then the funds shall be directed to the City Public Works Department. Within 180 days of receipt of the penalties, the TMA (or City) shall identify the improvements in the project area that will be supported by the penalty funds and the expected timing for completing the improvements, which, to the extent feasible, shall be within two years (up to five years based on length of project approval or additional funding) of receipt of the funds. A longer timeline may apply for improvements that require additional funding or other constraints require a longer timeline, if agreed to by applicant. If the TMA has not identified the improvements to be supported within 180 days of receipt, it shall invite applicant to meet and confer to agree on the improvements to be supported by the penalty funds and the timeline for implementing the improvements.

Penalty Cap Increase

If the applicant continues to be assessed the maximum penalty for five consecutive years, the City may review the applicant's TDM program to determine if the applicant is employing all feasible TDM measures. If it determines that additional measures are feasible, then the City shall provide the applicant written notice of such additional measures. If the applicant fails to implement the recommended measures, or fails to demonstrate that such measures are infeasible, then the City may increase the annual maximum penalty cap by 50 percent until the additional measures are implemented or the applicant demonstrates that such measures are infeasible. Any disagreement regarding the feasibility of additional measures shall be resolved after meeting and conferring.

Residential Penalties

Enforcement actions for the owner and/or operators of the residential development would include required implementation of additional feasible TDM measures as proposed by the applicant and approved by the City. If such additional TDM measures are not implemented as required, regardless of measured effectiveness, financial penalties may be imposed.

Frequency of Reporting

If timely reports are submitted and demonstrate that the applicant has implemented required features and strategies and has achieved the non-SOV mode share specified above for five consecutive years after issuance of certificates of occupancy for 50 percent of the office development, annual monitoring shall no longer be required annually, and shall instead be required every five years, or if reasonably determined by

the City of San Jose Planning, Building, and Code Enforcement Department or Department of Public Works to ensure ongoing compliance, then monitoring and reporting may be required up to once per year.

Flexibility and Amendments

The project applicant may propose amendments to the approved TDM program as part of its annual report each year, provided that the applicant shall not be permitted to decrease the performance standards specified in subsection (A) and subject to review and approval by Directors of Public Works and Planning, Building, and Code Enforcement or the Directors' designees. The City and the project applicant expect that the TDM program will evolve as travel behavior changes and as new technologies become available. Any proposed changes will be considered approved unless the Department of Public Works or Planning, Building, and Code Enforcement object to the proposed change within 30 days of receipt.