

ORDINANCE NO. 7,792-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 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 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.

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

At a regular meeting of the Council of the City of Berkeley held on November 30, 2021, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

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

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 square footage 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. 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. 7,792-N.S. 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 7,792-N.S approving this Amended and Restated Development Agreement and authorizing its execution; that Ordinance took effect on January 14, 2022.
- 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

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 I.

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 G**, 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, there 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.

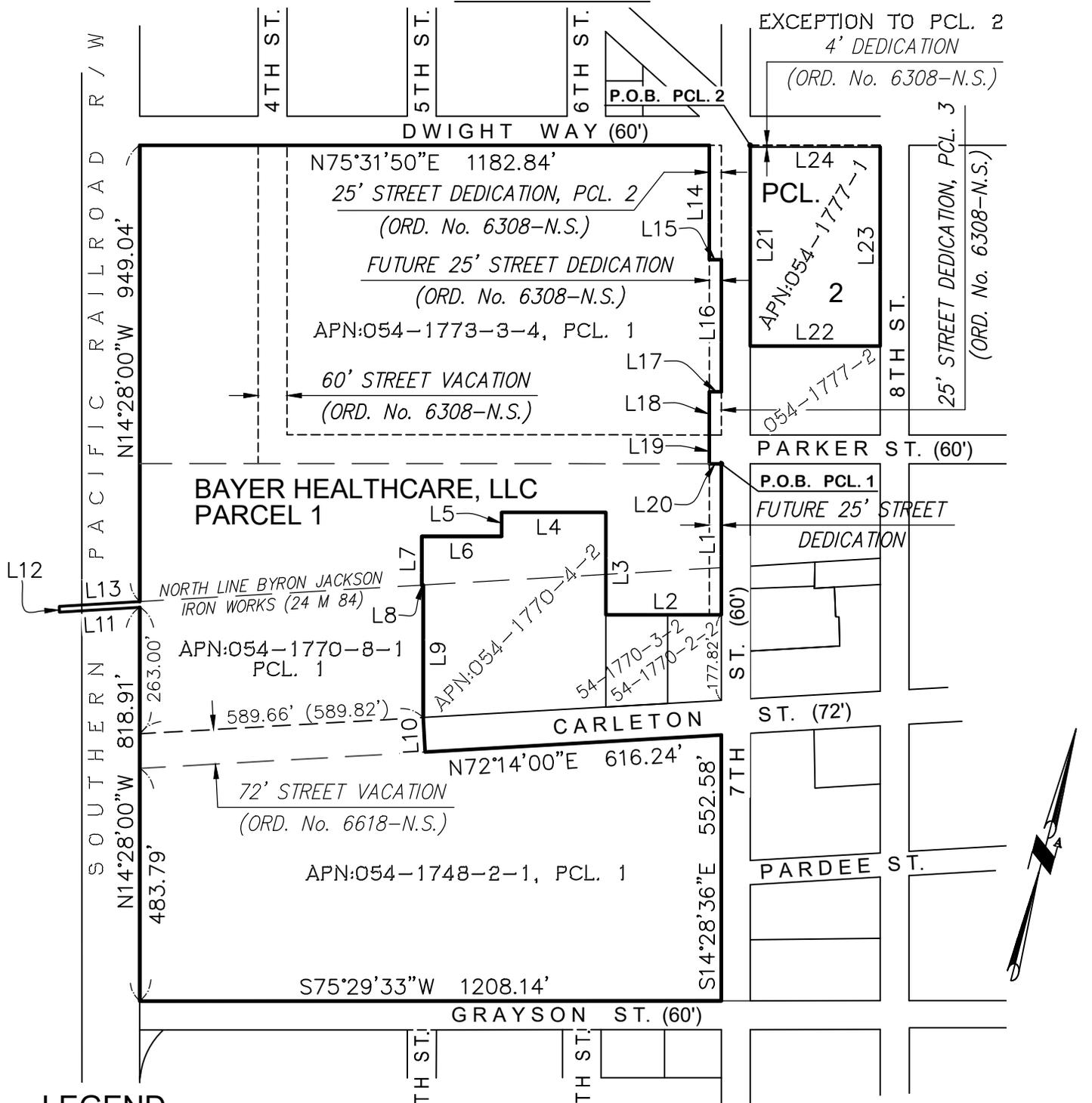
Section 6.20. Recordation. Within ten (10) Days after the Enacting Ordinance takes effect, the City Manager shall execute this Agreement on behalf of City, and the City Clerk shall record this Agreement with the Alameda County Recorder. If this Agreement is terminated, modified or amended pursuant to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

EXHIBIT A



EXCEPTION TO PCL. 2
4' DEDICATION
(ORD. No. 6308-N.S.)

PCL. 2
APN:054-1777-1
L21 L22 L23 L24
054-1777-2
8TH ST.
25' STREET DEDICATION, PCL. 3
(ORD. No. 6308-N.S.)

P.O.B. PCL. 1
FUTURE 25' STREET DEDICATION

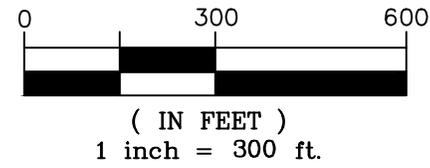
ST. (60')

ST. (72')

PARDEE ST.

LEGEND

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



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'

CITY OF BERKELEY

ALAMEDA COUNTY

CALIFORNIA

Civil Engineers
Traffic Engineers
SurveyorsAliquot Associates, Inc.
1390 S. Main St. - Ste. 310
Walnut Creek, CA 94596
Telephone: (925) 476-2300
Fax: (925) 476-2350Subject DEVELOPMENT AGREEMENT PLATJob No. 220040 Scale N/ABy MM Date 7/21/2021 Chkd. VJDSHEET 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.

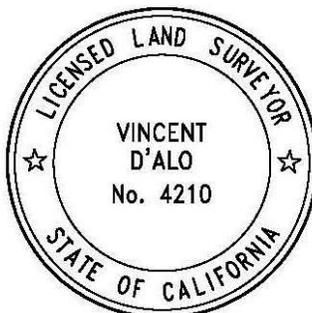
APN: 054-1777-001

END OF DESCRIPTION

Prepared by:



Vincent J. D'Alo
LS 4210



July 21, 2021
Date

EXHIBIT B

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'

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 PLATJob No. 220040 Scale N/ABy MM Date 7/21/2021 Chkd. VJDSHEET 2 OF 2

EXHIBIT C

Site Development Standards and Design Guidelines

The overall Site Development is based upon an Urban Campus concept, with the purpose of ensuring efficient and productive operations. The organizational approach is to provide a campus layout that prioritizes pedestrian travel, limits vehicle circulation, and improves outdoor gathering spaces, in order to help foster easier staff collaboration.

Table of Contents

1. Administration and Implementation
2. Zoning and Permitted Uses
3. Development Standards
4. Design Guidelines

1. Administration and Implementation

1.1 Purpose and Intent

These conditions pertain to the processing and issuance of the Reserved Discretionary Approvals for the Project. Terms used herein which are defined in the body of the Agreement shall have the meanings previously identified.

1.2 Special Determinations

The City shall grant Reserved Discretionary approvals for the Project Site so long as the following Specified Determinations can be made, supported by substantial evidence:

- A. General findings:
 - A.1 The application for the Reserved Discretionary Approval sought is complete.
 - A.2 The requested approval, together with conditions attached thereto, is consistent with applicable Ordinances and this Agreement.
 - A.3 Bayer is in compliance with the provisions of the Development Agreement as set forth in the project application for the subject Reserved Discretionary approval.
 - A.4 The project and the Bayer Campus have demonstrated compliance with all applicable mitigations measures as set forth in the Bayer Healthcare DA Amendment Subsequent Environmental Impact Report (EIR) via the included compliance checklist in Appendix B.
- B. Bayer has entered into agreements with, or obtained necessary permits and approvals from, other regional, State or Federal agencies with jurisdiction over all or part of the Project, to the extent necessary for the approval sought.

- C. To the extent necessary for the approval sought, the requirements of the California Environmental Quality Act (CEQA) have been satisfied. It is anticipated that future applications for discretionary land use approvals needed prior to actual construction of production buildings, parking structures and other improvements will be reviewed to determine whether the Final Supplemental EIR adequately identifies, analyzes and mitigates, as appropriate, significant project-level environmental impacts, including any significant adverse impacts on Aquatic Park. Where the impacts of proposed development activities are not adequately addressed, supplemental environmental analysis will be conducted and appropriate mitigation, as determined by the City pursuant to CEQA Guidelines Sections 15091-15093, shall be required.
- D. The requested approval is consistent with the Site Development Plan and Site Development Standards. The use, location, size and height of any proposed building will be deemed to be appropriate if it complies with the Site Development Plan and Site Development Standards, and deviations therefrom are permitted insofar as the City makes an express finding supporting a variance as described below.
- E. In undertaking the project or activity subject to an approval set forth in Table 1, the applicant meets or commits to meet, to the City's reasonable satisfaction, the City's applicable standard conditions (as provided in Appendix C), which are not in conflict with this Agreement.
- F. The proposal will not adversely affect the public health or safety.

In the event that any of the Specified Determinations required herein for issuance of a Reserved Discretionary Approval cannot be made, approval may nevertheless be granted if unique or special circumstances exist or there are overriding public benefits or considerations with respect to the Project that warrant granting the requested approval consistent with the applicable Ordinances and this Agreement, notwithstanding the inability to make all the special determinations.

Failure of the City to strictly comply with the requirements of this Section shall not invalidate any approval issued by the City in good faith and reasonably relied upon by Bayer.

1.3 Steps in Discretionary Permit Application Process

Table 1 – Permit Requirements

Development Type	Required Permit	Design Review
Signage not visible from the public right-of-way.	Building Permit	N/A
Guard stations (per Section 3.1.2.F).		
Demolition of buildings subject to permitting processes herein, except to extent subject to Mitigation Measures in the SEIR, as outlined in Appendix B.		
Interior renovations		

Temporary buildings (trailers or structures).		Plan Check Design Review
Temporary surface parking.		
Active interior private-open space (i.e., fitness usage, barbeque areas, etc.).		
Signage visible from the public right-of-way.		
Fencing		
Construction of buildings or exterior renovation of building areas of less than 40,000 square feet.	Zoning Certificate	Staff-Level Review
Towers, antennae etc. (per Section 3.1.2.D)		
Construction of buildings or exterior renovation of building areas of 40,000 square feet or greater.	Administrative Use Permit	Design Review Committee
Construction of buildings over 45' in height and buildings visible to pedestrians from the adjacent right of way.		
Seventh Street publicly accessible open space plan for zero-build height zone.		
Parking Garages and pedestrian bridge.		

Notes:

Staff, or the Design Review Committee for purposes of review of the parking garages, shall have final approval for the projects described in the table above per the DA outlined processes and shall not be subject to administrative appeal or referral.

Demolition or renovation of structures necessary for the development of the Project Site shall not be subject to the review by the Landmarks Preservation Board nor other requirements of Chapter 3.24, Chapter 23C.08, and 23E.76 of the Berkeley Municipal Code),

- A. Pre-application discussion with City, if requested by Bayer.
- B. Mitigation by mitigation verification that Bayer Campus in general and project in specific complies with all mitigation measures of the Supplemental Draft EIR.
- C. File Application for Administrative Use Permit.
- D. Environmental initial study and further environmental review, if required.
- E. Design Review to the extent necessary. Staff shall have final design review approval for all projects except parking garages and Seventh Street publicly accessible open space, which shall be reviewed by the Design Review Committee.
- F. Zoning Officer review, as applicable.
- G. Administrative Use Permit issued.
- H. Building Permit Application(s) filed.

I. Building Permit issued.

1.4 List of Required Items for Complete Reserved Discretionary Approval Applications

- A. All applications for approvals set forth in Table 1 shall include all of the following, unless explicitly waived by the City at the time of application:
- A.1 Relevant Application Forms.
 - A.2 Applicant's Statement – a written summary of the project including description of proposed building or addition, organisms to be used in the building, basis for making the findings required by Section 7.2. This requirement not applicable to: (a) demolition of buildings; and (b) guard stations.
 - A.3 Fees – application fees required by City Council Resolution as may be amended from time to time.
 - A.4 Completed Development Standards Conformity Review table (included in Appendix A below). This requirement not applicable to signs, fencing, and antennae visible and not visible from public right-of-way.
 - A.5 Completed Mitigation Measure Conformity Review (included in Appendix B). This requirement not applicable to: (a) signs visible and not visible from public right-of-way; (b) guard stations; (c) antennae; and (d) fencing.
 - A.6 Updated bicycle and vehicular parking count pre- and post- project. This requirement not applicable to: (a) signs visible and not visible from public right-of-way; (b) guard stations; (c) antennae; and (d) fencing.
 - A.7 Transportation Demand Management ministerial checklist confirming that Bayer's operations include the program elements listed in Exhibit I.
 - A.8 Design Review Application – where required for new construction and changes to building exteriors. Including application form and other submittal requirements for design review. This requirement not applicable to: (a) signs not visible from public right-of-way; and (b) guard stations.
 - A.9 Vicinity Map – to show project in context of the site and the neighborhood. This requirement not applicable to demolition of buildings.
 - A.10 Drawings, Plans, and Perspectives:
 - A.10.1 Drawings – two sets of the following full site plans and one reduction to 8-1/2" x 11". Project address, scale, north arrow, legend must appear on each sheet.
 - A.10.2 Site Plan – show proposed and existing buildings, parking spaces, driveways, property lines, fences, streets, curbs, sidewalks, landscape, and

natural features. Indicate dimensions of property, building, setbacks, and parking.

- A.10.3 Floor Plans – overhead view of each floor, mezzanine, basement, mechanical service area. Label rooms/areas with the use and dimensions of all spaces. Differentiate graphically existing from proposed walls, doors, windows, stairs, counters, and fixtures.
- A.10.4 Elevations – front, rear and side views of buildings. Show exterior walls, fences, landscaping, signs, etc. Include windows, doors, exterior finishes, and roof and eave lines.
- A.10.5 Rendered Perspective – for new buildings as viewed from the public street.
- A.10.6 Grading Plans – to show slope, excavation and fill areas.
- A.10.7 Landscaping Plans – show plant locations, size, and species.
- A.10.8 These requirements are not applicable to demolition of buildings.
- A.11 For Buildings Along the Public Right-of-Way – include two separate façade design concepts, a primary and an alternative, with varying exterior colors and materials that comply with the objective design guidelines stated herein, with City having the discretion to pick between the two alternatives.
- A.12 For Production Buildings – description of water conservation measures incorporated in the design. This requirement not applicable to: (a) demolition of buildings; and (b) guard stations.
- A.13 For Production Buildings – description of energy conservation measures incorporated in the design. This requirement not applicable to: (a) demolition of buildings; and (b) guard stations.
- A.14 Other information which may be reasonably requested by the City to complete review of the application consistent with the City’s generally applicable application requirements.
- B. Variances – A variance shall be considered concurrently with other project approvals, and shall be a discretionary approval considered by staff with appeal rights to the Zoning Adjustments Board \. A variance shall be issued to the extent the City may find the following findings, supported by substantial evidence:
 - B.1 That there are exceptional or extraordinary circumstances or conditions applying to the land, building, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, and/or uses in the same zoning district and the granting of the application is necessary for the preservation and enjoyment of substantial property rights of the petitioner; or
 - B.2 Strict application of the standard or requirement would result in practical difficulties or unnecessary hardships; and

- B.3 That the granting of such application will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood; and that the granting of the Variance will promote the municipal health, welfare, and safety and benefit the City as a whole.
- C. Applications for permits other than Administrative Use Permits and Variances shall include the following:
- C.1 Zoning Certificate.
- C.2 Design Review Application – Where applicable law so requires, for new construction and changes to building exteriors, including application form and other submittal requirements for design review. Refer to Table 1 for applicable projects.
- C.3 Building and other Ministerial Permit Applications – all submittals required for complete building permit application. The Mitigation Monitoring and Reporting Program must be printed on the second sheet of the building permit plans and must include the required conformance review.
- D. Design Review:
- D.1 Applicability
- D.1.1 Projects which are subject to either a Zoning Certificate or Administrative Use Permit, as dictated in Table 1, shall be reviewed for design criteria by Staff.
- D.1.2 Standalone parking garages and Seventh Street publicly accessible open space are subject to Design Review Committee, as dictated in Table 1. Parking garages below grade are not subject to Design Review Committee, but shall be processed otherwise in accordance with Table 1.
- D.2 Design Review Criteria. Staff or the DRC, whichever is applicable per Section D.1 and Table 1, shall review design applications for buildings on the Bayer Campus governed by the approved Development Agreement, based on the following criteria:
- D.2.1 The design of the proposed building is in substantial compliance with the intent of the Design Guidelines contained in the approved Development Agreement for the Bayer property.
- D.2.2 The project conforms to the Development Standards contained in the approved Development Agreement approved for the Bayer property.
- D.2.3 As outlined in Table 1, the size, location, and intensity of the project are in compliance with the Site Development Plan and Development Standards contained in the approved Development Agreement.

- D.2.4 Project details, materials, signage, and landscaping are internally consistent, fully integrated with one another, and used in a manner that is visually consistent with the proposed architectural design and buildings on the Bayer campus.
- D.2.5 Landscaping is designed to be compatible with and enhance the architectural character and features of the buildings on-site, and help relate the building to the surrounding landscape. Proposed planting materials avoid conflicts with views, lighting, infrastructure, utilities, and signage.

2. Zoning and Permitted Uses

Table 2 – Permitted Uses within the Site

Use	Block			
	A	B	C	D
Production	P	P	P	-
Laboratories	P	P	P	-
Maintenance	P	P	P	-
Parking	P	P	P	P
Utility	P	P	P	-
Administration	P	P	P	P
Warehouse	P	P	P	-
P = Permitted within this block – = Not permitted within this block				

Table 3 – Definitions of Permitted Uses within the Site

Use	Definition
Administration	Administration buildings provide: offices for management and support functions, conference rooms, computer rooms, fitness/health facilities, site security stations, training rooms, library spaces, and cafeteria spaces. In addition, offices for campus management are placed in buildings throughout the site according to function and discipline.
Laboratories	Laboratories provide areas in which research into production and manufacturing technologies can be accomplished. These areas also provide quality assurance examination and testing of therapeutic pharmaceuticals produced on-site. Laboratory related offices and utilities are permitted in these areas.
Maintenance	Maintenance provides areas to conduct necessary repair, replacement, and preventive maintenance activities in support of site operations. Generally, these activities require workshops and maintenance bays. Maintenance related offices parking, and utilities are permitted in these areas.
Parking	Parking areas are covered or uncovered parking for vehicles.
Production	Production uses may include pilot plants, production facilities and fill and finishing facilities. Pilot plants are used to develop and scale up processes and to support new drug applications. Production facilities are comprised of various processing areas with support offices. The interior spaces are among the most complex in the industry, with numerous data, safety, storage, air-handling, and testing systems technologies equipping the buildings. Fill and finishing areas involve processing the product into transportable containers and final packaging. Production related laboratories, offices, and utilities are permitted in these areas.

Utility	Utility buildings are used to house monitored water distillation operations, refrigeration equipment, electrical equipment, compressed air, and steam generation equipment. Additional functions may include a water retention basin. Utilities which support specific buildings may be located adjacent or in close proximity to those buildings which they support.
Warehouse	The warehouse area is used to hold products for distribution on-site and off-site. Warehouse related offices, utilities, and parking are permitted in these areas.

3. Development Standards

The Development Standards are the required standards govern the physical development of the site and supersede the City of Berkeley Zoning Ordinance. These Standards are intended to supplement and clarify the Site Development Plan and, where these Standards are silent with regard to any standard or definition, the standards and definitions in the City of Berkeley Zoning Ordinance shall apply as vested pursuant to Section 3.2 of the Development Agreement. In the event of a conflict between the Site Development Standards and the Site Development Plan, the Site Development Plan shall govern.

The conceptual development plan at year 30 of the extended Development Agreement is shown below in Figure 1, with the six Permitted Uses identified, as well as their conceptual distribution. This configuration represents the most reasonably foreseeable layout based on Bayer’s estimated long-term planning needs, although it is envisioned that densities of various Permitted Uses can be transferred to different portions of the site without increasing the overall site density.

Conceptual illustrations and tables showing the orientation of access, parking, and circulation, as well as phasing for years 10 and 30, are shown in later chapters of this exhibit. Consistent with Section 3.10 [to be updated pending final numbering of sections in DA] of the Development Agreement, buildout of the Project Site might not occur to the maximum extent predicted in these conceptual illustrations and tables, but to a lesser extent, and the final configuration of buildings and parking areas might not match these conceptual drawing.

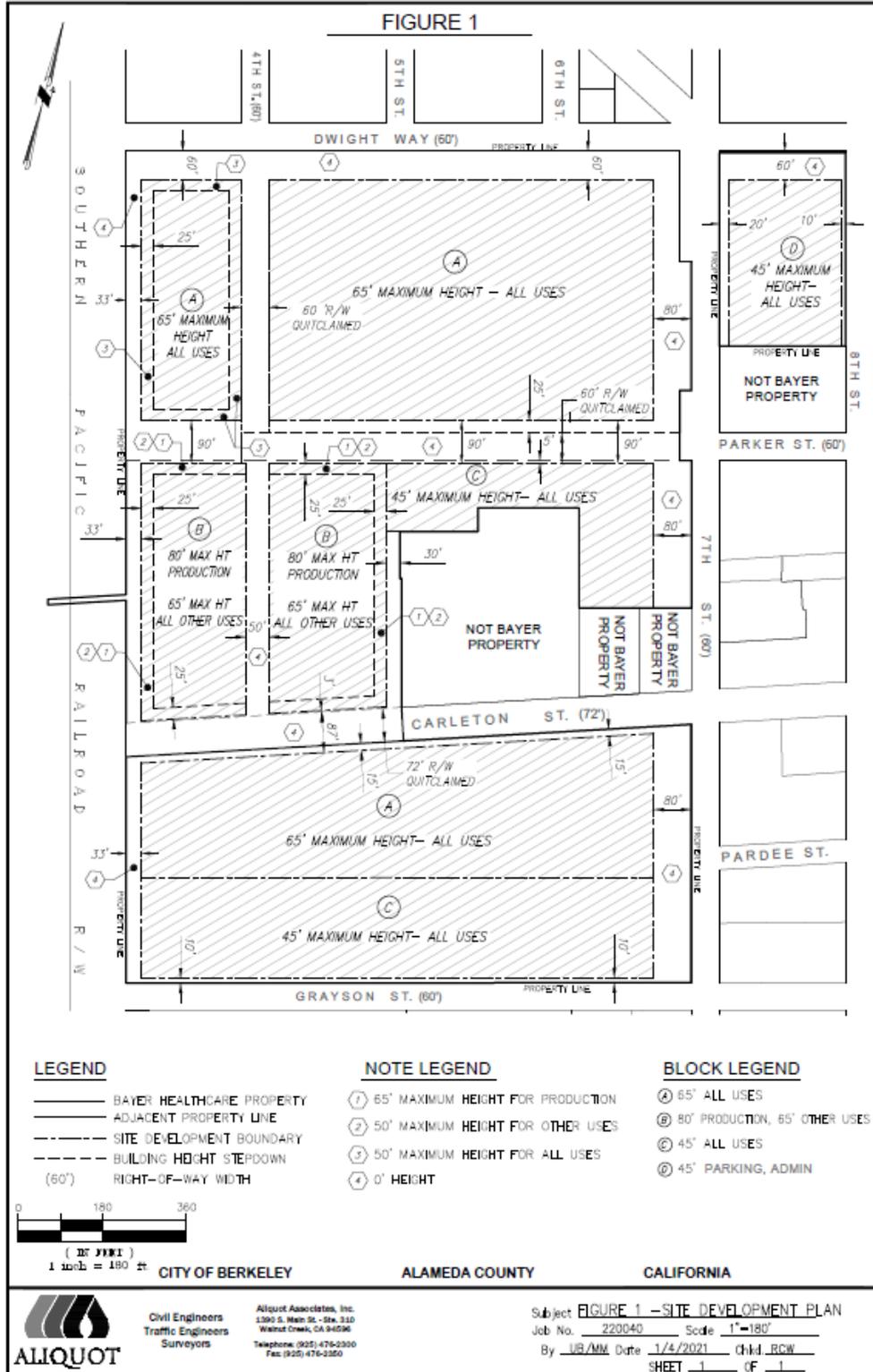
3.1 Building Design: Development Standards

Table 4 – Building Development Standards

Development Standard	Block			
	A	B	C	D
Maximum Height	65 feet	80 feet for manufacturing uses, 65 feet for all other uses	45 feet	45 feet
Stepbacks	Within stepback zone shown on-site development plan (Figure 1); all buildings must step down 15 feet from main building maximum allowed height.			

Note: See Section 3.1.2 for instructions on measuring height.

Figure 1 – Site Development Plan



3.1.1 Height Districts

- E. Height Districts define the height limitations for buildings within the Site Development Plan, where the term “building” means any enclosed structure having a roof and supported by columns or walls, consistent with the 2021 Berkeley Municipal Code. The Height Districts are sensitive to adjacent neighborhoods, relate to the scale and massing of existing buildings, support Production and Laboratory operations and accommodate future development within the Site Development Plan Area (refer to the Site Development Plan in Figure 1).

3.1.2 General

- A. Building Height Calculation: Allowable building heights are to be calculated by determining the average height from finished grade of a structure not to exceed the height limit for the Height Districts which the building is located as defined in the Site Development Plan.
- B. Finished grade for new development shall be the minimum amount necessary to account for drainage, sea level rise needs, or other applicable regulations, unless otherwise agreed to by the City and Bayer.
- C. Average building height is the vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building to: in the cases of sloped, hipped or gabled roofs, the average height of the roof between the ridge and where the eave meets the plate; in the case of a roof with parapet walls, to the top of the parapet wall; in the case of a gambrel roof the average height of the roof between the ridge and the point where the uppermost change in the roof’s slope occurs; in the case of a mansard roof, to the height of the deck; and in the case of a shed roof, to the height of the roof ridge.
- D. Towers, antennas and poles used for the transmission of electricity, telephone, telegraph, cable television, or other messages; except for electromagnetic signals for cellular radiotelephone service and wireless telecommunications; and flag poles, chimneys, water tanks, heating and air conditioning equipment, skylights, solar energy equipment, vents, pipes and similar structures and necessary mechanical appurtenances may be built and used to a greater height than the limit established for the height district in which the building is located. Roof-mounted wireless telecommunication antennas shall not extend or project more than 15 feet above the height limit of the district and shall require an Administrative Use Permit.
- E. Any projection not listed in the foregoing paragraph is prohibited except upon issuance of an Administrative Use Permit, including, but not limited to, mechanical penthouses, elevator equipment rooms, and cupolas, domes, turrets, and other architectural elements which exceed a District’s height limit. No such structure shall represent more than fifteen percent (15%) of the average floor area of all of the building’s floors; and no tower or similar structure shall be used as habitable space or for any commercial purpose, other than that which may accommodate the mechanical needs of the building.

- F. Guard stations and non-habitable structures may be located in the Zero Height Districts. Guard stations and non-habitable structures will not exceed twelve feet in height and 120 square feet of floor area. Guard stations shall only be located near ingress and egress locations and only as necessary for security purposes. Guard stations shall be subject to the building permit process as described in Table 1. Non-habitable structures shall not be located in Zero Height Districts along public streets.
- G. To the extent the Colgate Tower (B83) is refurbished, its height need not be reduced to conform to existing Height Districts.
- H. Fencing:
- H.1 Fencing along Seventh Street frontage adjacent to publicly accessible open space:
- H.1.1 Fencing around open space accessible to the public is permitted, with lockable gates.
 - H.1.2 Fencing around publicly accessible open space, while functional, should also be decorative.
 - H.1.3 Fencing shall not exceed eight feet in height at any point.
 - H.1.4 Fencing shall not be constructed in a manner or of materials that would substantially prohibit views into or out of the publicly accessible open space.
 - H.1.5 Fencing around open space accessible to the public shall not be constructed with chain link.
 - H.1.6 No fence, or portion of a fence, shall contain strands of barbed or razor wire, nor shall sharp or jagged glass, metal such as, but not limited to razor-spikes, or similar materials be attached to a fence.
 - H.1.7 Fencing around open space shall be subject to staff level design review.
- H.2 All other fencing along perimeter of and within closed portions of the campus:
- H.2.1 Fencing is permitted, with lockable gates.
Bayer shall not construct fencing in excess of 12 feet in height at any point.
 - H.2.2 Fencing can be constructed with a variety of materials, including, but not limited to, chain link, rod iron, or masonry.
 - H.2.3 A fence, or any portion of a fence, along the campus, may have, but not limited to, razor-spikes or strands of barbed or razor wire, provided that the lowest strand is more than five feet above the ground.
 - H.2.4 Fencing along the campus perimeter shall be subject to staff level design review.

3.1.3 Additional Building and Site Layout Development Standards (Refer to the Site Development Plan in Figure 1)

- A. General: These additional standards support and provide the framework for the future development of the Site Development Plan. Primary objectives:
 - A.1 The distance between buildings only need comply with California Building and Fire Codes.
 - A.2 Project physical improvements, including, but not limited to, backflow preventers, canopies, landscape walls, fire department connections, may be connected to existing buildings subject to applicable codes.
 - A.3 Buildings may span adjacent blocks, as depicted on the Site Development Plan, and encroach in a limited manner into open spaces within blocks depicted on the Site Development Plan, provided all other limitations of the Development Agreement are met and the building meets development standards of underlying block. This provision does not allow encroachment of buildings into identified setback areas.
 - A.4 Transfer of developable area for Permitted Uses is allowed between blocks, as depicted on the Site Development Plan, and open space areas, provided all other limitations of the Site Development Plan are met (e.g., requirements related to allowable square footage, cumulative open space, applicable building setbacks, building heights and proximity of parking; *see, e.g.*, Section 3.2 and Table 5).

3.1.4 Building Footprint, Setbacks, and Stepbacks

- A. Building Footprint: Building footprints will be determined by the setbacks defined in the Site Development Plan with the clarifications set forth below.
 - A.1 Setbacks:
 - A.1.1 Setbacks only apply to the above grade portion of any building.
 - A.1.2 No building setback is required adjacent to open space or adjacent to other structures; only setbacks depicted on the Site Development Plan govern site development.

3.1.5 Projections

- A. Service roads are permitted within setback areas to the extent necessary to comply with the California Fire Code, material delivery, or site production requirements. Pipe racks and other utilities can be located within setback areas to the extent they comply with the provisions of Section 3.4 below.
- B. Non-occupiable architectural features such as arcades, columns, overhangs, awnings, and trellises may extend a maximum of 10' within a setback of a public street as follows:

B.1 As determined by the City Traffic Engineer, lines of sight for pedestrians and on-coming vehicles along the public street are not blocked or impaired as to affect pedestrian and vehicular safety.

B.2 The maximum height does not exceed ten feet (10'-0").

C. Stepbacks that apply are those identified on the Site Development Plan.

3.2 New Construction Limits: Development Standards

A. Total new building floor area of the overall campus will not exceed 918,000 square feet with plans to keep approximately 820,000 square feet of existing facility floor area. Table 5 below provides the maximum square feet per block that is allowed. The purpose of these block limits (that cumulatively, exceed 918,000 square feet) is to allow for location flexibility for where the total allowable 918,000 square feet of new floor area is constructed.

Table 5 – Total Maximum Allowed Development

	Block			
	A	B	C	D
Total Maximum Allowed Floor Area (sq.ft) per block	1,500,000	495,000	400,000	30,000

B. Buildings proposed to be retained may be replaced in kind and/or remodeled and will not be counted against the new maximum allowed floor area.

C. Surface and structural parking shall not be counted towards maximum allowed floor area nor allowed floor area ratio (FAR).

3.3 New Construction and Demolition Phasing: Development Standards

	Values in Sq. Ft.				
	<i>Existing</i> ³	<i>Year 10</i>	<i>Year 30</i>		
	2020	2032	2052	Total	Net Increase to Existing (New - Demo)
North Property (Current DA)	567,000	672,000	1,122,000		
Existing	567,000	567,000	672,000		
Demolition		(140,000)	0	(140,000)	
New Construction		245,000	450,000	695,000	555,000
South Property (Use Permit)	520,000	516,000	616,000		
Existing	520,000	520,000	516,000		
Demolition		(127,000)	0	(127,000)	
New Construction		123,000	100,000	223,000	96,000
Entire Campus (North + South) Combined	1,087,000	1,188,000	1,738,000		
Existing	1,087,000	1,087,000	1,188,000		
Demolition	0	(267,000)	0	(267,000)	
New Construction	0	368,000	550,000	918,000	651,000

3.4 **Parking and Loading: Development Standards**

- A. The number of parking spaces will comply with the parking requirement stipulated in Table 6 below.
- B. Adequate parking will be provided at any time during the project build-out for all uses on-site at issuance of a certificate of occupancy.
- C. Parking requirements will be determined by buildings’ principal use, defined to be the use occupying the greatest square footage within a given building.

Table 6 – Parking Requirements

Use	Automobile Parking Requirements	Bicycle Parking Requirements
Production	1 space per 1,000 square feet of floor area	1 space per 2,000 square feet of floor area
Laboratory		
Warehouse	1 space per 5,000 square feet of floor area	
Utility		
Administration	1 space per 500 square feet of floor area	

- D. The parking standards in Table 6 can be adjusted through the processes set forth in Table 1 in cases when the specific number of employees for a specific building can be verified and/or Transportation Demand Management programs to which Bayer commits demonstrate a verifiable reduction in parking demand.
- E. Unoccupied space is not counted as floor area when figuring required number of parking spaces. These standards can be adjusted in cases when the specific number of employees for that building can be verified. For purposes of clarification, only space occupied by employees shall be counted as floor area when figuring required number of vehicular or bicycle parking spaces. Unoccupied space, including without limitation mechanical spaces and rooms, stairwells, closets, storage, and penthouses shall not count as floor area when calculating parking requirements. Employee amenities, whether standalone or collocated with other facilities, including without limitation cafeteria space and fitness rooms, shall also not count as floor area when calculating parking requirements.
- F. Bayer will include cumulative building areas and provide calculations related to require vehicle and bicycle parking requirements, which will include both existing parking and necessary sitewide parking to demonstrate the necessary amount of parking is being provided.
- G. Vehicular and bicycle parking will be calculated on a sitewide basis, based on square footage in accordance with Sections D and E above. Permitting will be conducted in

accordance with Table 1. Parking spaces shall not be required within any specific distance of a specific building so long as the parking is located within the Bayer Campus.

- H. Approval of parking structures shall conform with the approval process identified in Table 1 and the foregoing requirements in Section 3.2 and no further entitlements are necessary to approve parking at any specific location.
- I. Off-street loading docks for individual buildings will not be required provided that delivery and shipping of materials to and from the site occurs from a central warehouse(s) only, and the size and number of loading docks at the warehouse(s) will be adequate for the volume and traffic at the warehouse(s), as approved with the building approval in accordance with Table 1.

3.5 Landscape and Open Space: Development Standards

- A. The open space areas depicted in Figure 2 create an ‘Urban Campus’ environment, which integrates urban structures with significant amounts of open space. Open space areas accessible to Bayer employees will consist of fields, sports courts, pedestrian trails, bicycle trails, outdoor eating areas, landscaping, and similar uses. Open space along the Seventh Street frontage will be accessible to the public and will consist of urban park facilities, as shown in Table 7 below.

Table 7 – Allowed Uses for Open Spaces within the Site

Allowed Uses within Restricted Access Open Space	Allowed Urban Park Facilities within Publicly Accessible Open Space
Fields	Pedestrian and/or bicycle trails
Sport Courts	Hardscape and softscape surfacing areas
Pedestrian and Bicycle Trails	Benches and tables
Outdoor eating areas	Landscaping
Landscaping	

- B. The Site Development Plan enhances the existing view corridors from the Berkeley Hills by establishing Zero Height Districts (see Figure 1) within, and setbacks from, the public streets, and maintaining view corridors along Parker and Carleton Streets. The pedestrian experience has been enhanced along Seventh Street and Dwight Way through increased setbacks, inclusion of landscaping, and publicly accessible open space. This publicly accessible open space shall be operated and maintained by Bayer. This area is also intended to be passive open space to provide a buffer from new buildings and also possibly include walking and bike paths, benches, public art, trees, hardscape and softscape surfacing areas, and landscaping (as identified in the Design Guidelines below). This area will be open to the public during daylight hours and for longer durations at the discretion of Bayer.

- C. The Site Development Plan ‘consolidates’ Height Districts that allow for taller buildings, generally aligning them along an east-west axis, to mitigate the view corridor impacts. The consolidation of the Height Districts minimizes the impact and benefits the view corridor from the Berkeley Hills.
- D. Open spaces identified in Figure 2 do not reflect exact locations within the Site Development Plan's planning area, but rather that an open space area will occur within a general location. Development of these open spaces will correspond to building development defined in the Site Development Plan. The conceptual development plan contains the following open space commitments: Bayer will provide
- a minimum of 0.8 acres of publicly available open space along Seventh Street at Year 5,
 - a minimum of six acres of open space that includes 1.6 acres of publicly accessible open space area along Seventh Street at Year 10, and
 - a minimum of nine acres of open space at Year 30.

Any administrative Use Permit or other land use entitlement submitted for the improvement of open space pursuant to Table 1 shall be separate and independent of any land use permits or other entitlements submitted for project buildings and other improvements, and accordingly shall be considered for approval separately and independently by the City.

- E. Landscape and site improvements associated with, or adjacent to, a proposed building should be installed at the time of construction of the building. This may include, but is not limited to: plant materials, street trees, automatic irrigation, sidewalks, internal roads, and open space plazas.

Figure 2 – Conceptual Open Space Areas



3.6 Access and Circulation: Development Standards

- A. Access to the site is separated by Visitor, Staff, Service, and Delivery access.
- B. Visitor entries/exits, staff access entries/exits, service entries/exits, and delivery entries/exits are depicted in Figures 3a and 3b, below.
- C. On-site streets as shown on the Site Development Plan shall be aligned generally as depicted. Minor modifications to existing private roads and new private roads within the campus not depicted on the Site Development Plan can be located and sized to meet Bayer's circulation needs and corporate specifications, so long as they comply with the California Fire Code, and no modification to the Development Agreement or variance need be issued. Any new or modified private streets shall be reviewed with the Public Works Department as part of the associated application.
- D. Pipe racks and other utilities can be located within, beneath, or over circulation network components so long as they do not result in violations of the California Fire Code. Pipe racks shall not exceed 40 feet in height. Notwithstanding anything else in the Development Agreement or its exhibits, to the extent pipe racks or other utilities are located over circulation network components, the height to the bottom of the pipe rack shall be no more than is required for truck clearance.
- E. Parking demand for any one building can be satisfied with any parking area located within the Site Development Plan.

- F. Temporary surface parking lots and temporary structures (Ten years (10) or less) can be located anywhere on-site. Notwithstanding the above, temporary parking structures cannot be located in Zero Height Districts (see Figure 1 above).
- G. The Site Development Plan includes an option to integrate some parking into other new buildings located along the northeast perimeter of the site, near the intersection of Dwight Way and Seventh Street, new buildings near the intersection of Seventh Street and Parker Street, and in new buildings adjacent to the B83 near the intersection of Seventh Street and Carleton Street, in order to potentially reduce the amount of area allocated solely to parking. However, these underground parking locations would not increase total parking, but rather accommodate a redistribution of parking inventory.
- H. Conceptual illustrations and tables showing the orientation of access at the time of development phasing, are shown in Figures 3a and 3b below. To the extent that buildout of the Site is ultimately less than the amount depicted in these conceptual drawings and tables, parking inventory shall be reduced below the parking supply amounts therein by a commensurate amount so long as parking supply is provided consistent with the provisions set forth in Section 3.4.
- I. Service and Utilities: The flow of site services and utilities should be consolidated and efficiently routed, prioritizing pedestrian movements along inner streets. These services include deliveries, material flows, and waste movement and removal. There should be designated access points for fire service and a shared surface in the green corridor which can also be used by fire trucks in emergency situations. See Figures 3a and 3b below.

Figure 3a – Campus Access Points Year-10 of Development

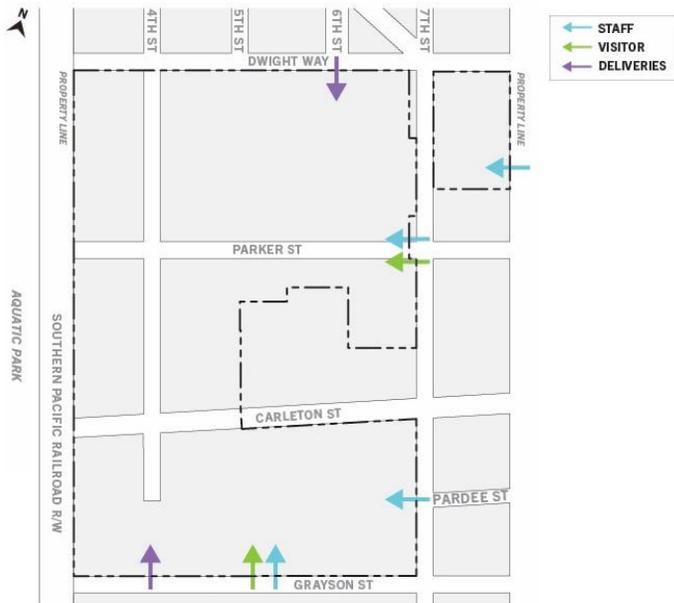
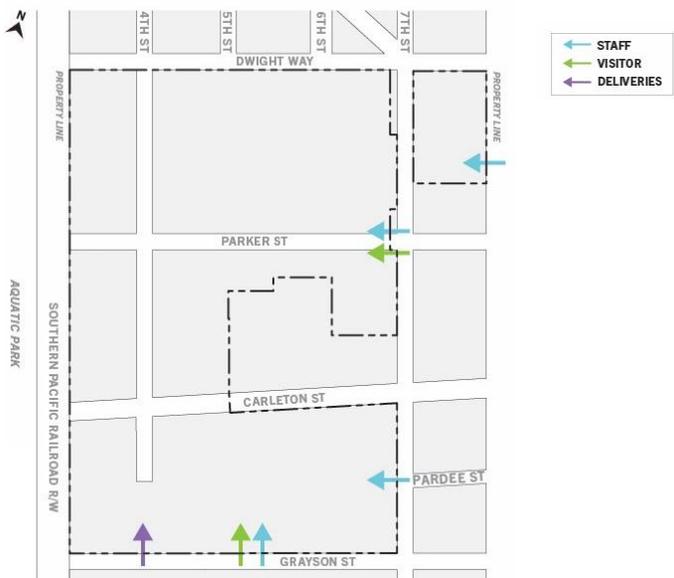


Figure 3b – Campus Access Points Year-30 of Development



3.7 Signage: Development Standards

- A. Ground-floor marquee signs are permitted at any main site entrance and shall not exceed 6 feet in height.

- B. The sign area of wall signs shall not exceed fifteen (15) percent of the building face of the premises or eight hundred (800) square feet, whichever is less.

4. Design Guidelines

The guidelines outlined in this section establish general parameters for the continued development of the Bayer campus in terms of urban planning, building design, landscape design, and sustainable design strategies. They are intended to provide for both consistency with existing conditions (as guided by the previous Development Agreement) and the positive evolution of the campus during the next 30 years. They outline a consistent framework for development across the entire site in order to provide a unified campus environment. They provide a framework for the continuation of the mutually supportive relationship between Bayer and the adjacent neighborhoods of West Berkeley, paying special attention to transition zones where the campus meets the City. They will assist Bayer in delivering a world class campus that attracts and retains the best talent, as well as forging links with partner companies and innovators. The guiding principles outlined here will drive the continued development of a safe, sustainable, modern working environment that exists in harmony with its urban context. Provided that the project as whole meets the intent of the guidelines, the issuance of any variance from the guidelines is unnecessary. In no case shall a guideline be implemented in a manner that would operate to modify or render more restrictive, directly or indirectly, one of the development standards or the Site Development Plan and, where a conflict between a development standard or Site Development Plan and a design guideline exists, the development standard or Site Development Plan shall prevail.

The design guidelines will also be used by the City, as outlined in Table 1, to review the design of future buildings.

4.1 Signage: Design Guidelines and Approval Process

- A. Prior to the issuance of a building permit for a sign, staff level design review shall only be conducted if it's determined by City Staff that the proposed signage is visible from the public right-of-way. Signage visible from the public right-of-way shall be subject to staff-level design review.

Section	Sub Topic	Design Guideline
Building Design	Entrances	Primary building entrances must be clearly defined to promote visual interest and architectural presence. Building entrances shall be clearly identifiable by use of scale change and material changes. Emphasize using features such as glazing, panel color, size and accent stripes.
	Building Design	<p>Large, blank walls along the public streets shall be avoided. Blank walls (facades without doors, windows, landscaping treatments, or other elements of pedestrian interest) shall be less than 30 feet in length for buildings 75 feet or longer or 20 feet in length for buildings less than 75 feet. Building facades along public streets shall incorporate features, including but not limited, the treatments below to mitigate blank walls:</p> <ul style="list-style-type: none"> • windows • doors • canopies • landscaping • decorative materials and textures • building wall offsets, including projections and recesses (relief and reveal depths shall be a minimum of three-quarter inch)
		<p>All buildings shall employ at least two of the following techniques:</p> <ul style="list-style-type: none"> • Change material or color with each building module to reduce the perceived mass, or: • Vary the height of a wall plane or building module, or: • Change roof form to help express the different modules of the building mass, or: • Change the arrangement of windows and other facade articulation features, such as columns or strapwork, that divide large wall planes into smaller components.
		<p>Through the use of transparency and activity, the building should create an environment that promotes and spurs a strong connection back to the campus.</p> <p>When feasible, for buildings with public facing facades, incorporate science windows (transparent windows at the ground-floor that encourage visibility into buildings) facing onto the adjacent right-of-way.</p>

	Rooftop Equipment	Integrate roof equipment screens and/or penthouses with building design. Use similar or same color and materials as on building exterior.
	Building Color/Materials ¹	The materials and finishes selected shall focus on sustainability and functionality, ensuring long-term durability and ease of maintenance.
		Accent colors may be used and shall be compatible with the overall color scheme. Reserve bolder colors as accents for building details, ornamentation, or special features.
		The design principals followed in façade design are: <ul style="list-style-type: none"> • Simple palette of durable and sustainable materials • Repetition of materials on various facades to create a unified composition for the building • Facades designed to control solar glare and gain • Materials should reflect and support the function contained within the spaces • Vertical and horizontal breakup of the façade using materials such as shading and solar fins, facility access means, or other functional structure
		New buildings will be designed to include varying materials, color, texture, ornamentation, and/or other facade details to provide visual interest.
		Recommended exterior building finish materials include: glass curtainwall, aluminum or other coated metal panel, natural materials panels as accents, or similar sustainable materials.
		New buildings will target 100% bird-safe glass or similar bird-safe treatments as specified in Mitigation Measure BIO-2 (i.e., in the west-facing facades of new, expanded, and renovated buildings adjacent to or directly visible from Aquatic Park). In other portions of the project site not addressed by Mitigation Measure BIO-2, Bayer shall target for new and renovated facilities 100% bird-safe glass or similar treatments

¹ For Buildings Along the Public Right-of-Way – include two separate façade design concepts, a primary and an alternative, with varying exterior colors and materials that comply with the objective design guidelines stated herein, with City having the discretion to pick between the two alternatives.

		unless inclusion of such would compromise the ability of a given facility to meet or exceed Title 24 standards.
Landscape and Open Space	Tree Canopy	For new interior roads, site coverage of tree canopy at maturity shall be a minimum of twenty percent (20%) for the existing right-of-way, excluding intersections. Trees shall be planted upon establishment of new interior road segments to meet this canopy requirement.
		For new surface parking lots, site coverage of tree canopy at maturity shall be a minimum of fifty percent (50%) of the total outdoor surface area. Trees shall be planted upon establishment of new surface parking lots to meet this canopy requirement.
	Landscaping	Examples of potential landscape design elements include: different scaled parks, open common areas, circulation corridors, and green roofs.
		Plant selection will be based on compatibility with the local climate. All plants shall be drought tolerant, be low maintenance, and at least 70% native and/or wildlife supporting. The selection of plants shall provide variety between different types of spaces but also provide consistency across the site creating a unified, landscaped campus. Planting zones shall combine different species, heights, and colors of planting to create visual interest and variety.
		Landscape elements shall be compatible with the California Energy Commission, Climate Zone 3 and California Water Efficient Landscape Ordinance, as amended.
		All projects shall be designed to meet or exceed the California Department of Water Resources Model Water Efficient Landscape Ordinance ("MWELO") or any other equivalent standard.
Access and Circulation	Access	Campus circulation shall be designed to separate service corridors from pedestrian and bicycle corridors similar to the manner conceptually shown below in Figure 4.
		Provide pedestrian access between buildings.
Lighting	Lighting	Exterior lighting shall illuminate the open space for vehicular, bicycle and pedestrian paths, provide for security in public areas and reinforce the style and ambiance of the surrounding area, including the additional security measures as set forth in Mitigation Measure PS-1: Security Measures in the Supplemental EIR.
		Any permanent lighting shall not blink, flash, or be of unusually high intensity or brightness.

		Outdoor lighting shall be shielded and directed, with a full cut off fixture of no more than 2.5% of lamp lumens at or above 90°, and no more than 10% of lamp lumens at or above 80°.
		Lighting fixtures shall be energy efficient.
		All outdoor lighting fixtures shall be designed and installed so that light rays are not emitted across property lines, to the extent feasible. Lighting shall be located to minimize glare and/or impact on adjacent neighborhoods, be architecturally integrated with the character of project structures, be energy-efficient and fully shielded or recessed, and must completely turn off or be significantly dimmed at the close of business hours when the exterior lighting is not essential for security and safety.
		Wherever feasible, require motion sensors or timers to prevent unnecessary energy use and light pollution.
		Outdoor lighting shall be no brighter than 3000 Kelvin.
New Construction and Demolition	Phased Development	The campus shall be developed through a combination of renovating existing buildings, demolishing buildings where appropriate, and adding new structures using a phased approach. See Figures 5, 6, and 7 below for conceptual renderings of the campus' potential buildout.
Signage	Illumination	No illuminated signs shall face Aquatic Park.
		Signs are allowed to be illuminated, except as noted above, but shall not move or flash. Any illuminated signs shall be maintained and kept in functioning order.
Sustainability	Building Materials	Incorporate protections for birds as set forth in the Mitigation Measure BIO-2: Bird Strike Avoidance of the Supplemental EIR for window area of the west-facing façades of new, expanded, and renovated buildings adjacent to or directly visible from Aquatic Park.
	Energy Efficiency	Building designs shall be energy efficient utilizing site-wide energy efficiency programs and standards and exceed California Title 24 Standards.
	Building Design	All buildings shall be designed using the LEED certification process.
	Water	Where feasible and not compromising sanitation, incorporate water capture, retention, and reuse for new buildings.

Parking	Parking Garage	Consistent with Mitigation Measure AES-1: Parking Structure Design in the Supplemental EIR, structured parking adjacent to public streets that includes a frontage onto the street should use appropriate design (such as faux facades, plantings and landscaping, green walls, public murals, etc.) to minimize its visual impact.
	Access	Provide identifiable pedestrian paths in the parking lots which lead to the building entrances. Parking structures shall fit within designed parking and circulation patterns and shall be linked to the pedestrian circulation system. Consider pedestrian routes to and from parking structures.
	Parking Garage and Pedestrian Bridge Design	Materials and colors shall be compatible with adjacent buildings, as set forth in Mitigation Measure AES-1: Parking Structure Design in the Supplemental EIR.

Figure 4 – Service and Utility Zones

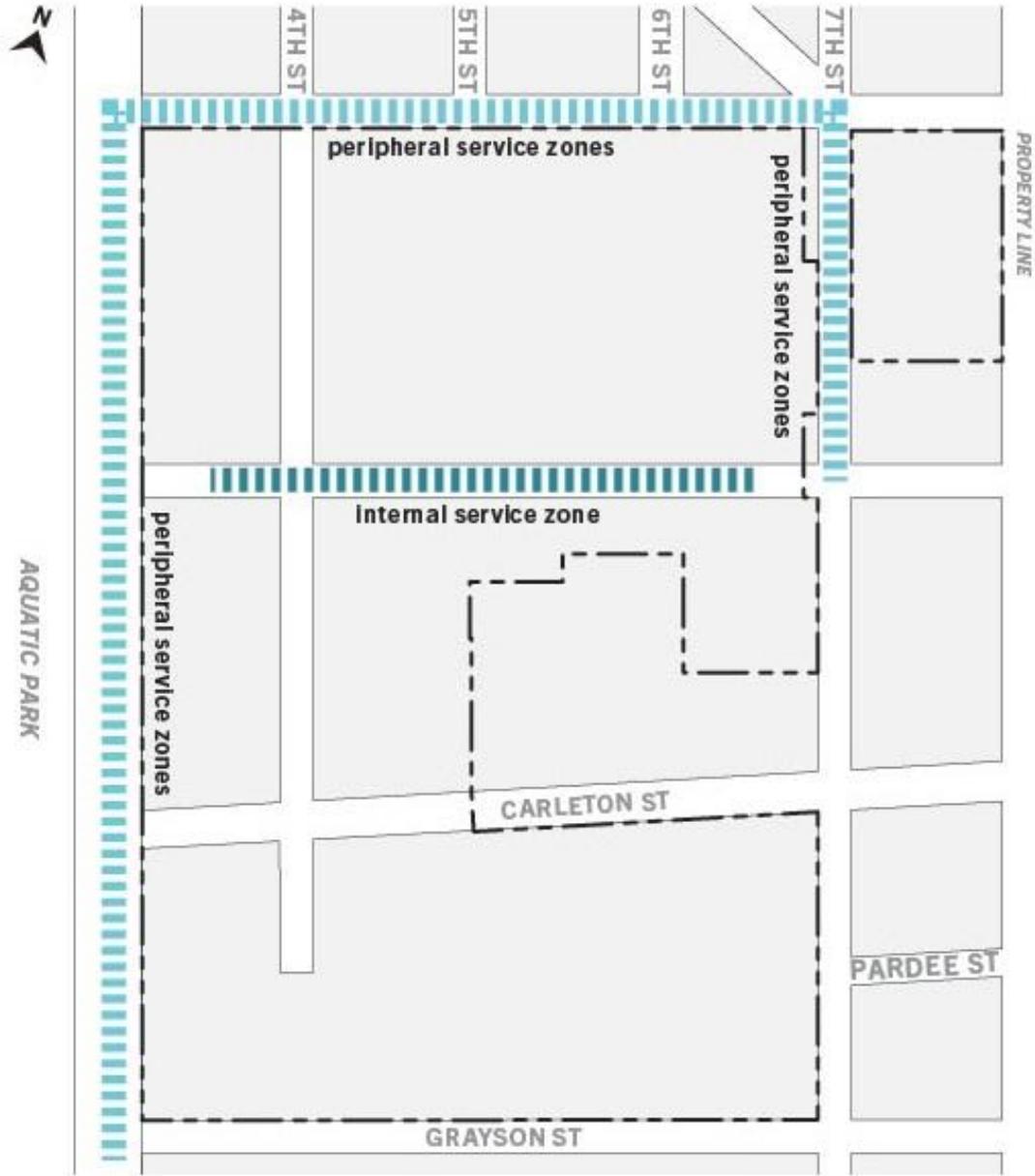
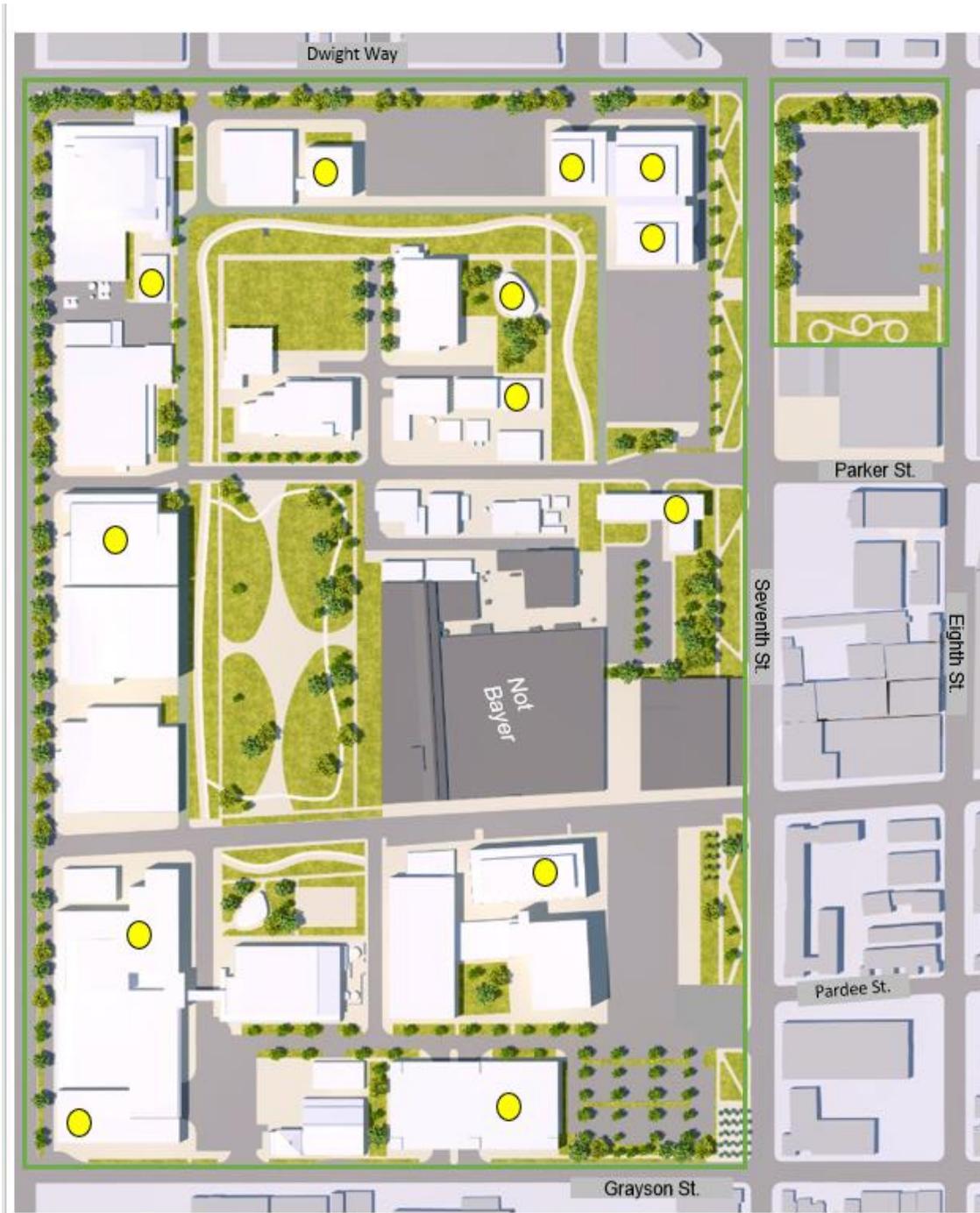
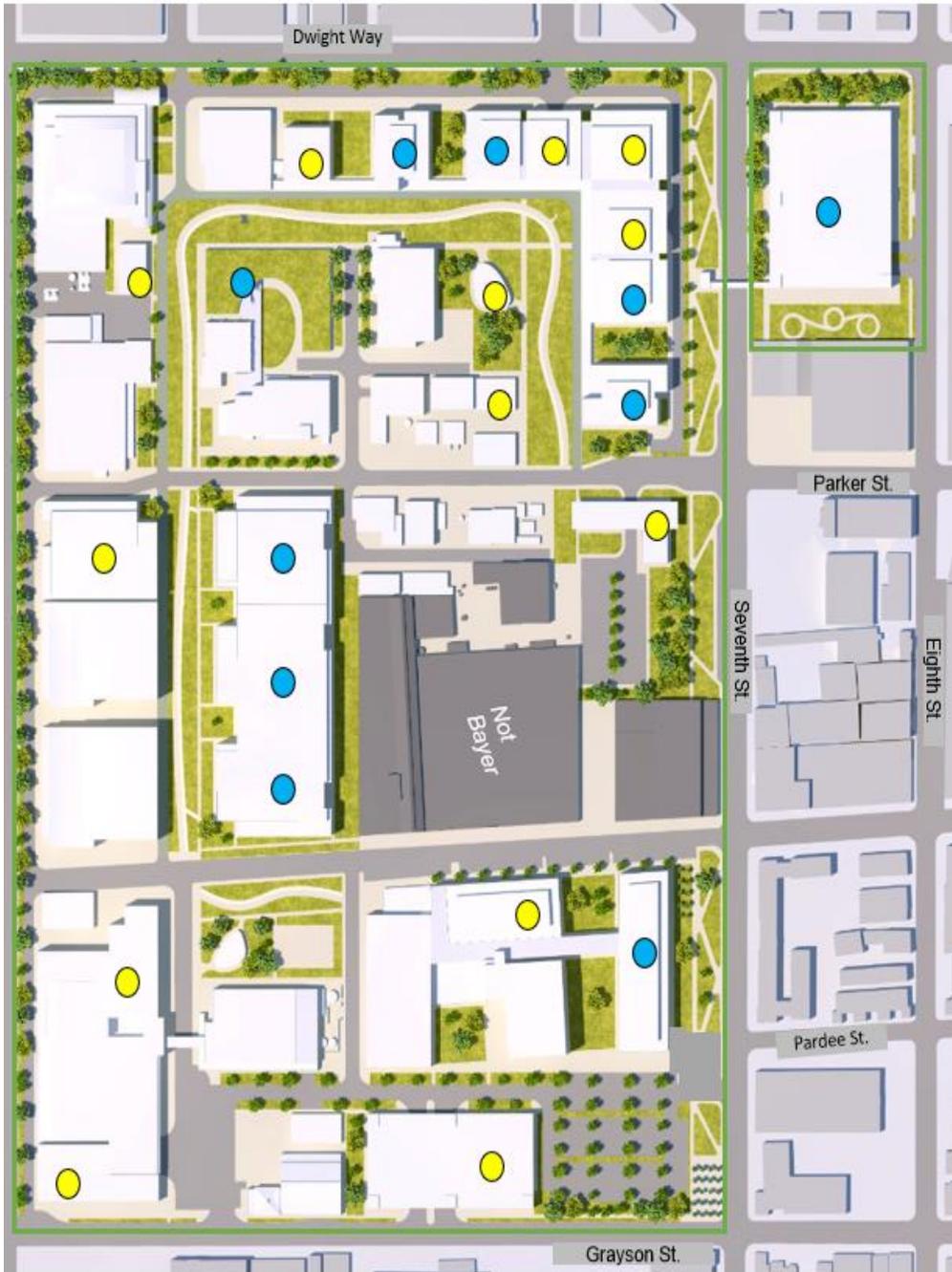


Figure 6 – Conceptual Year-10 of Development



● New at Year 10

Figure 7 – Conceptual Year-30 of Development



- New at Year 30
- New at Year 10

Appendix A: Development Standards Conformity Review

The table below provides a template of which is required for all applicable projects to complete.

Standard	DA Source	Standard Per DA	Proposed Project	Plan Set Source
Block Standards				
Project Block				
Permitted Land Use				
Max. Height				
Average Height				
Stories				
Max Floor Area within Project's Block				
Site Development Standards				
Gross Floor Area (sq. Ft.)		n/a		
Setbacks				
(insert applicable setback requirements)				
Stepbacks				
(insert applicable stepback requirements)				
Fencing Height				
Fencing Materials				
Special Requirements for portions of buildings above 45' in height				
Top floor max floor area				
Top floor stepback				
All walls above 45' stepped back from west property line				
Façade length				
Footprint Diagonal Length				

Standard	DA Source	Standard Per DA	Proposed Project	Plan Set Source
Campus-Wide Standards				
Vehicle Parking – Campus Wide				
Bicycle Parking – Campus Wide				
Open Space – Campus Wide				

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, and the termination of grants shall be made on the basis of criteria and outcome metrics 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 committees 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 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 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.

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.
 - 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.

EXHIBIT E

Mitigation Monitoring and Reporting Program

The Subsequent Environmental Impact Report (SEIR) for the Bayer HealthCare LLC Development Agreement Amendment Project identifies mitigation measures to reduce the potential impacts of the project. The California Environmental Quality Act (CEQA) requires a public agency to adopt a monitoring and reporting program for ensuring compliance with required mitigation measures.

The following table lists mitigation measures identified in the SEIR and identifies the timing of and responsibility for monitoring each measure. The project proponent will have the responsibility for implementing the measures, and the various listed City of Berkeley departments will have the primary responsibility for monitoring and reporting the implementation of the mitigation measures.

The Development Agreement, Exhibit C, Site Development Standards and Design Guidelines, may include more stringent measures than those required in the EIR. As required by Exhibit C, applications for approvals set forth in Table 1 of Exhibit C must include a completed Development Standards Conformity Review table and completed Mitigation Measure Conformity Review.

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
AESTHETICS						
Mitigation Measure AES-1: Parking Structure Design (Updated 1991 EIR MM)						
The proposed parking structure between Dwight Way, Seventh Street, Eighth Street, and Parker Street shall be designed to maximize visual compatibility with the low-rise, low intensity uses to the north and east, in terms of the parking structure’s massing, color, and adjacent landscaping. The Eighth Street façade of the garage shall be articulated to add texture and depth to the structure. A setback as well as landscape and streetscape amenities shall be provided on the perimeter of the parking structure. Stepbacks shall also be provided along Eighth Street.	Review design of parking structure to ensure it maximizes compatibility with adjacent uses, is articulated, and provides setbacks and stepbacks.	Prior to issuance of building permits	City of Berkeley Department of Planning & Development			
Mitigation Measure AES-2: Glare Reduction (Updated 1991 EIR MM)						
For new and renovated buildings along and visible from the western property line, the use of reflective glass or other glazing that would cause glare as the sun sets shall be prohibited.	Review design of new and renovated buildings along and visible from western property line to ensure the use of reflective glass and glazing that would cause glare is not used.	Prior to issuance of building permits	City of Berkeley Department of Planning & Development			
AIR QUALITY						
Mitigation Measure AQ-1: Construction Emissions Measures						
Demolition, grading and construction activities shall comply with the current Bay Area Air Quality Management District’s basic control measures for reducing construction emissions (Table 8-2, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the May 2017 BAAQMD CEQA Guidelines or equivalent as updated by BAAQMD).	Review all demolition, grading, and building permits to ensure compliance.	Prior to issuance of building or engineering permit	City of Berkeley Department of Planning & Development			
Mitigation Measure AQ-2: Tier 4 Construction Equipment						
Demolition, grading and construction activities shall utilize at least 90 percent Tier 4 equipment (or better) through 2032 and all Tier 4 equipment (or better) after 2032. If the use of such equipment is not commercial available, the applicant shall prepare a project-specific air quality assessment to evaluate construction-related criteria air pollutant. If the project-specific air quality assessment finds that construction emissions would exceed any of the applicable BAAQMD thresholds, the air quality assessment shall identify	Review all demolition, grading, and building permits to ensure compliance. If the use of Tier 4 equipment is not commercially available,	Prior to issuance of building or engineering permit and during demolition, grading and construction	City of Berkeley Department of Planning & Development and Public Works Department			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>emission reduction measures to reduce emissions below the thresholds and the applicant shall implement the measures. Measures may include, but would not be limited to, some or all of the following, as necessary:</p> <ul style="list-style-type: none"> ▪ Equip construction equipment with Tier 3 or Tier 4 certified engines or CARB-certified Level 3 diesel particulate filters. All diesel particulate filters shall be kept in working order and maintained in operable condition according to manufacturer’s specifications. ▪ Minimizing the idling time of diesel-powered construction equipment to two minutes. ▪ Use late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available. ▪ Use low-sulfur fuel or other non-diesel for stationary construction equipment. ▪ Use low-emission on-site stationary equipment. ▪ Use alternatively-fueled construction equipment (e.g., natural gas, electric). ▪ Schedule soil import and/or export to reduce the number of daily haul truck trips. ▪ Phase construction activities to reduce daily equipment use. ▪ Limit the simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time to reduce the amount of disturbed ground surfaces at any one time. 	<p>require and review a project-specific air quality assessment.</p>					

BIOLOGICAL RESOURCES

Mitigation Measure BIO-1: Nesting Bird Surveys and Avoidance

<p>Demolition, grading, construction and tree removal activities shall be conducted outside of the migratory bird nesting season (February 1 through August 31) to reduce any potentially significant impact to birds that may be nesting in the project site. If construction and tree removal activities must occur during the migratory bird nesting season, an avian nesting survey of the project site shall be conducted for active nests of protected migratory birds. The avian nesting survey shall be performed by a qualified wildlife biologist within seven days prior to the start of ground or vegetation disturbance or building demolition activities. The survey will consist of a qualified biologist conducting a visual inspection of the disturbance area plus a 200-foot buffer and vicinity, as is feasible depending on possible access and/or line-of-site</p>	<p>If construction and tree removal activities must occur during the migratory bird nesting season, review and approve avian nesting survey.</p> <p>If an active bird nest is found, review all demolition, grading, and</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley Department of Planning & Development</p>			
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Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>constraints, to detect any suitable nesting locations and determine if any nests occur. If an active bird nest is found, the nest shall be flagged and mapped on the construction plans, along with an appropriate no disturbance or protection buffer based on site conditions, which shall be determined by the biologist based on the species sensitivity to disturbance (generally, standard buffers can be 50-250 feet for passerines and 250-500 feet for raptors and special-status species, but site- and species-specific adjustments can be made within the discretion of the biologist, with different buffers established with respect to different levels of disturbance). Work within the nest avoidance buffer shall be prohibited or otherwise restricted per requirements determined by the biologist until the juveniles have fledged. The nest buffer shall be demarcated in the field with flagging and stakes or construction fencing.</p>	<p>building permits to ensure nests are buffered have been flagged and mapped.</p>	<p>Ongoing during construction activities</p>				
<p>Mitigation Measure BIO-2: Bird Strike Avoidance</p>						
<p>New structures or structures undergoing exterior renovations shall include the following:</p> <ul style="list-style-type: none"> ▪ One hundred (100) percent of the window area of the west-facing façades of new, expanded, and renovated buildings adjacent to or directly visible from Aquatic Park shall consist of verified bird-safe glazing products, e.g., American Bird Conservancy-endorsed products such as Arnold Glass Ornilux Mikado, Acopian Birdsavers, Bendheim Channel Glass, GlasPro Bird Safe Glass, Guardian Glass SunGuard SN68, Viracon, or others. Alternatively, The reflective or transparent surface area visible to the west-facing frontage of the property shall employ bird-safe glazing treatments, including fritting, netting, permanent stencils, frosted glass, exterior screens, physical grids placed on the exterior of glazing or UV patterns visible to birds. To qualify as bird-safe glazing treatment, vertical elements of the window patterns shall be at least 1/4-inch wide at a maximum spacing of 4 inches, or have horizontal elements at least 1/8-inch wide at a maximum spacing of 2 inches. ▪ Automatic shades shall be installed on windows and shall be programmed to operate between 10:00 p.m. and sunrise on new building facades facing the western boundary of the project site. Non-emergency exterior lighting shall be shielded to minimize light emission. ▪ Transparent glass shall not be allowed on rooftops of new, expanded, and renovated buildings, including in conjunction with green roofs. 	<p>Review building permits to ensure compliance with bird strike avoidance measures.</p>	<p>Prior to issuance of building permits</p>	<p>City of Berkeley Department of Planning & Development</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments

- The cumulative area of glass façades for newly constructed or expanded buildings facing the project site's westerly boundary shall not exceed 2,250 square feet.

CULTURAL RESOURCES

Mitigation Measure CR-1: Architectural History Evaluation

Demolition or alteration of a building or structure that is at least 40 years old at the time of permit application and has not previously been evaluated for demolition or renovation within the last five years from the time demolition or alternation is proposed shall be subject to review at the request of the City by a qualified architectural historian who meets the Secretary of the Interior's Professional Qualifications Standards (PQS) in architectural history or history. The qualified architectural historian or historian shall conduct an intensive-level evaluation in accordance with the guidelines and best practices recommended by the State Office of Historic Preservation to identify if the building or structure proposed for demolition or alteration qualifies as a historical resource under CEQA guidelines. Buildings and structures shall be evaluated within their historic context and documented in a technical report and on Department of Parks and Recreation Series 523 forms. The report shall be submitted to the City for review and approval prior to the issuance of a building permit. If no historic resources are identified, no further analysis is warranted. If historic resources are identified, the applicant shall be required to implement Mitigation Measure CR-2.

If applicable, require and review historical resources evaluation to ensure compliance.

Prior to issuance of building permits

City of Berkeley Department of Planning & Development

Mitigation Measure CR-2: Architectural History Mitigation

For renovations involving Building B83 or historical resources identified through the process described in the architectural history evaluation mitigation measure (CR-1), project activities shall comply with the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (Standards). During the project planning phase (prior to any construction activities), input shall be sought from a qualified architectural historian or historic architect meeting the *Secretary of the Interior's Professional Qualifications Standards* to ensure project compliance with the Standards for Rehabilitation. This input will ensure the avoidance of any direct/indirect physical changes to historical resources. The findings and recommendations of the architectural historian or historic architect shall be documented in a Standards Project Review Memorandum at the schematic design phase. This memorandum shall analyze all project components for compliance with the Standards for Rehabilitation.

Review project plans and Standards Project Review Memorandum to ensure compliance.

Prior to issuance of building permits

City of Berkeley Department of Planning & Development

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>The memorandum should recommend design modifications necessary to bring projects into compliance with the Standards for Rehabilitation, which shall be incorporated into project designs to ensure compliance with the Standards. The memorandum shall be submitted to the City for review and approval prior to the issuance of a building permit.</p>						
Mitigation Measure CR-3: Cultural Resources Desktop Analysis						
<p>Prior to demolition, grading, new construction, or underground work such as utility installation, a cultural resources Desktop Analysis, consisting of a review of existing information regarding cultural resources on a given project site, shall be conducted. The Desktop Analysis shall include, but not be limited to, a review of the project description and extent of proposed ground disturbance, a review of recent cultural resources records on file at the California Historical Resources Information System, and a review of available historic maps and aerial photography. If a project would solely involve the refurbishment of an existing building and no ground disturbance would occur, this measure would not be required. If no resource impacts are identified, no further analysis is warranted. If potential impacts to resources are identified, the applicant shall be required to implement Mitigation Measure CR-4. If the desktop analysis identifies that an area has been subject to a Phase I cultural resources study in the previous five years, Measure CR-4 would not be required. If the Desktop Analysis identifies that no further analysis is warranted, the results will be documented in a memorandum for review and approval by the City prior to issuance of a building permit.</p>	<p>Review desktop analysis to ensure compliance.</p>	<p>Prior to issuance of building permits</p>	<p>City of Berkeley Department of Planning & Development</p>			
Mitigation Measure CR-4: Phase I Archaeological Resources Study						
<p>If the desktop analysis described in Mitigation Measure CR-3 identifies the potential to encounter cultural resources, a Phase I cultural resources study shall be performed by a qualified professional meeting the Secretary of the Interior's (SOI) Professional Qualifications Standards (PQS) for archaeology (National Park Service 1983). The Phase I cultural resources study shall include a pedestrian survey of the project site and sufficient background research and fieldwork to determine whether archaeological resources may be present. Archival research shall include a records search of the California Historical Resources Information System and a Sacred Lands File search with the Native American Heritage Commission. The report will be submitted to the City for review and approval prior to the issuance of a building permit. Recommendations in the Phase I Report must be implemented prior to and/or during construction to avoid or reduce impacts on archaeological resources.</p>	<p>If applicable, review Phase I report to ensure compliance.</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley Department of Planning & Development</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>Adherence to recommendations included in the Phase I report shall be documented as appropriate for verification by the City. If the Phase I identifies an archaeological site and/or a high likelihood of subsurface deposits, Measure CR-5 shall be implemented.</p>						
Mitigation Measure CR-5: Extended Phase I Testing						
<p>For any projects proposed within 100 feet of a known archaeological site or in areas that have not been subject to previous archaeological testing, monitoring, or other subsurface investigation, as determined by the Desktop Analysis (Mitigation Measure CR-3) or Phase I Report (Mitigation Measure CR-4), the project applicant shall retain a qualified archaeologist to conduct an Extended Phase I (XPI) study to determine the presence/absence and extent of archaeological resources on the project site. If the boundaries of the archaeological site are already well understood based on previous work and are clearly interpretable as such by a qualified cultural resource professional, or if there is documentation that fill is already present to the depth of the current project, XPI testing will not be required. XPI testing shall include a series of shovel test pits and/or hand augured units and/or mechanical trenching to establish the boundaries of archaeological site(s) on the project site. All archaeological excavation shall be conducted by a qualified archaeologist(s) under the direction of a principal investigator meeting the SOI's PQS for archaeology (National Park Service 1983). The results of the XPI will be documented in a technical report and submitted to the City for review and approval prior to the issuance of a building permit. If the archaeological resource(s) of concern are Native American in origin, the qualified archaeologist shall confer with local California Native American Tribe(s) and, if applicable, a Native American monitor shall be present in accordance with Mitigation Measure TCR-2. Recommendations in the XPI Report shall be implemented for all ground disturbance activities and documented as appropriate for verification by the City.</p>	<p>If applicable, review XPI study to ensure compliance.</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley Department of Planning & Development and Public Works Department</p>			
Mitigation Measure CR-6: Archaeological Site Avoidance						
<p>Avoidance will be the preferred treatment measure for an archaeological site identified on the Bayer campus. Any identified archaeological sites will be avoided by project-related construction activities, to the maximum extent feasible to still be able to fulfill the project objectives as determined by Bayer and confirmed by the City. The determination of feasibility will include an assessment of project redesign options, including but not limited to relocation of a proposed building, realignment of utilities, redesign of building plans to</p>	<p>Review all demolition, grading, and building permits to ensure compliance.</p>	<p>Prior to issuance of building and engineering permits and during construction</p>	<p>City of Berkeley Department of Planning & Development and Public Works Department</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>build above the existing ground surface and/or to minimize the proposed depth of disturbance, or other options as appropriate for a given project. A barrier (temporary fencing) and flagging will be placed between the work location and any resources within 60 feet of a work location to minimize the potential for inadvertent impacts. The 60-foot avoidance buffer may be reduced as appropriate if recommended by the qualified archaeologist. If the feasibility of avoidance of an archaeological resource of Native American origin is not immediately apparent, Bayer and the City of Berkeley shall contact consulting Tribes to discuss appropriate treatment of the resource, including the implementation of MM CR-7 and CR-8. If, after a good faith effort at resolution, the City, Bayer, and consulting Tribe conclude that agreement is not possible, MM CR-7 shall be implemented.</p>						
Mitigation Measure CR-7: Phase II Site Evaluation						
<p>If the results of the Phase I Report and/or XPI indicate the presence of archaeological resources that cannot be avoided by the project and that have not been adequately evaluated for CRHR listing at the project site, the project applicant shall retain a qualified archaeologist to conduct a Phase II investigation to determine if intact deposits are present and if they may be eligible for the CRHR or qualify as unique archaeological resources.</p> <p>A Phase II evaluation shall include necessary archival research to identify significant historical associations and mapping of surface artifacts, collection of functionally or temporally diagnostic tools and debris, and excavation of a sample of the cultural deposit. The sample excavation will characterize the nature of the site, define the artifact and feature contents, determine horizontal and vertical boundaries, and retrieve representative samples of artifacts and other remains.</p> <p>If the archeologist and, if applicable, a Native American monitor or other interested tribal representative from a locally affiliated Tribe as listed by the Native American Heritage Commission determine it is appropriate, cultural materials collected from the site shall be processed and analyzed in a laboratory according to standard archaeological procedures. The age of the materials shall be determined using radiocarbon dating and/or other appropriate procedures; lithic artifacts, faunal remains, and other cultural materials shall be identified and analyzed according to current professional standards. The significance of the sites shall be evaluated according to the criteria of the CRHR. The results of the investigations shall be presented in a technical report following the standards of the California Office of Historic Preservation publication "Archaeological Resource Management Reports:</p>	<p>If applicable, review the Phase II evaluation to ensure compliance.</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley Department of Planning & Development and Public Works Department</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>Recommended Content and Format (1990 or latest edition).” The report shall be submitted to the City for review and approval prior to the issuance of any building or engineering permits that could disturb identified resources. Recommendations in the Phase II report shall be implemented for all ground disturbance activities and documented as appropriate for verification by the City.</p>						
<p>Mitigation Measure CR-8: Phase III Data Recovery</p>						
<p>If the Phase II site evaluation identifies resources that meet CRHR significance standards and if the resources cannot be avoided, the project applicant shall incorporate recommendations for mitigation of archaeological impacts into the final design as per CR-7 above prior to construction. If the resource is significant for its data potential and if recommended by the archaeologist and approved by consulting Tribes if appropriate, Phase III data recovery may be required, including excavation, to exhaust the data potential of significant archaeological sites, and shall be carried out by a qualified archaeologist meeting the SOI standards for archaeology according to a research design reviewed and approved by the City and prepared in advance of fieldwork and using appropriate archaeological field and laboratory methods consistent with the California Office of Historic Preservation Planning Bulletin 5, Guidelines for Archaeological Research Design (1991 or the latest edition thereof). Methods of artifact disposition may include reburial onsite within a tribal cultural resources easement as identified in TCR-3 or curation. The final Phase III Data Recovery reports shall be submitted to the City of Berkeley prior to issuance of any building permit for grading or construction. Recommendations contained therein shall be implemented throughout all ground disturbance activities.</p>	<p>Review all demolition, grading, and building permits to ensure compliance that all feasible recommendations for mitigation of archaeological impacts are incorporated.</p>	<p>Prior to issuance of building and engineering permits</p>	<p>City of Berkeley Department of Planning & Development and Public Works Department</p>			
<p>Mitigation Measure CR-9: Worker’s Environmental Awareness Program</p>						
<p>Prior to any ground disturbing activities, the project applicant shall retain an SOI qualified archaeologist to conduct a Worker’s Environmental Awareness Program (WEAP) training. The WEAP training shall be focused on archaeological sensitivity and shall be provided to all construction personnel prior to the commencement of any ground-disturbing activities. The WEAP training shall include a description of the types of cultural material that may be encountered, cultural sensitivity issues, the regulatory environment, and the proper protocol for treatment of the materials in the event of a find. Attendance at the WEAP training shall be documented with a sign-in sheet to be submitted to the City for verification of adherence to this measure. This</p>	<p>Monitor compliance with WEAP training.</p>	<p>Prior to ground disturbing activities</p>	<p>City of Berkeley Department of Planning & Development</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
WEAP training may be presented in tandem with the training required under TCR-1.						
Mitigation Measure CR-10: Archaeological Monitoring						
If recommended by the Desktop Analysis, Phase I, XPI, Phase II, or Phase III studies, the project applicant shall retain a qualified archaeologist (Monitor) to observe project-related ground-disturbing activities. The Monitor will have the authority to halt and redirect work if any archaeological resources are identified during monitoring. If archaeological resources are encountered during ground-disturbing activities, work in the immediate area must halt and the find must be evaluated for listing in the CRHR. Archaeological monitoring may be reduced or halted at the discretion of the monitors, in consultation with the lead agency, as warranted by conditions such as encountering bedrock, sediments being excavated are fill, or negative findings during the first 60 percent of ground disturbance. If monitoring is reduced to spot-checking, spot-checking shall occur when ground-disturbance activity moves to a new location within the project site and when ground disturbance will extend to depths not previously reached (unless those depths are within bedrock). Following the completion of monitoring, a report documenting the monitoring effort shall be prepared and submitted to the City of Berkeley and the Northwest Information Center.	If applicable, ensure retention of a qualified archaeologist.	Prior to issuance of building and engineering permits	City of Berkeley Department of Planning & Development			
	Monitor ongoing compliance.	Ongoing during construction				
Mitigation Measure CR-11: Unanticipated Discovery of Archaeological Resources						
If archaeological resources are encountered during ground-disturbing activities, whether or not an archaeological monitor is present, work within 60 feet shall be halted. The project applicant shall notify the City and retain an archaeologist meeting the SOI's Professional Qualification Standards for archaeology (National Park Service 1983) to evaluate the find. If necessary, the evaluation may require preparation of a treatment plan and archaeological testing for CRHR eligibility. If the discovery proves to be eligible for the CRHR and impacts cannot be avoided, data recovery excavation may be required. Reports prepared to document and/or evaluate unanticipated discoveries and their treatment shall be submitted to the City of Berkeley for review and approval. Recommendations contained therein shall be implemented throughout the remainder of ground disturbance activities.	If applicable, ensure retention of a qualified archaeologist. Monitor compliance with required measures in the event of unanticipated discovery of archaeological resources.	Ongoing during construction.	City of Berkeley Department of Planning & Development			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
GEOLOGY AND SOILS						
Mitigation Measure GEO-1: Discovery of Paleontological Resources						
<p>If a project would solely involve the refurbishment of an existing building and no ground disturbance would occur, this measure would not be required. Prior to ground-disturbing activities, the project applicant shall retain a qualified paleontologist to provide on-call services in the event of an unanticipated discovery. A qualified paleontologist is defined by the Society of Vertebrate Paleontology (SVP) standards as an individual preferably with an M.S. or Ph.D. in paleontology or geology who is experienced with paleontological procedures and techniques, who is knowledgeable in the geology of California, and who has worked as a paleontological mitigation project supervisor for a least two years (SVP 2010). Prior to the start of construction, the qualified paleontologist shall conduct a Paleontological Worker Environmental Awareness Program (WEAP), a training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff. The WEAP shall be fulfilled at the time of a preconstruction meeting at which a Qualified Paleontologist shall attend.</p> <p>In accordance with SVP (2010) guidelines, all work shall halt in the immediate vicinity of a find and the qualified paleontologist shall evaluate the discovery. The qualified paleontologist shall determine the significance of the discovery and identify whether additional mitigation or treatment is warranted. Measures may include testing, data recovery, reburial, archival review and/or transfer to the appropriate museum or educational institution, such as the University of California Museum of Paleontology. All testing, data recovery, reburial, archival review or transfer to research institutions related to monitoring discoveries shall be determined by the qualified paleontologist and shall be reported to the City. Work in the area of the discovery may resume after the find is properly documented and authorization is given to resume construction work.</p>	<p>Ensure retention of a qualified paleontologist.</p> <p>Monitor compliance with WEAP training and SVP guidelines.</p>	<p>Prior to permit approval.</p> <p>Ongoing during construction.</p>	<p>City of Berkeley Department of Planning & Development and Public Works Department</p>			
GREENHOUSE GAS EMISSIONS						
Mitigation Measure GHG-1 Renewable Electricity Resources						
<p>Electricity used at the site shall be sourced from 100 percent renewable energy resources by 2030. Bayer shall submit documentation showing as such to the City every five years, or at intervals required by the City, to ensure compliance.</p>	<p>Review documentation of electricity sourced from renewable energy.</p>	<p>Every five years when documentation submitted</p>	<p>City of Berkeley Department of Planning & Development</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
HAZARDS AND HAZARDOUS MATERIALS						
Mitigation Measure HAZ-1 Property Assessment – Phase I and II Environmental Site Assessments (ESA)						
<p>The project applicant shall prepare a site-specific Phase I ESA for each development area / Block, in accordance with standard ASTM methodologies, to assess the land use history of the project site. Phase II ESAs (i.e., soil, groundwater, soil vapor subsurface investigations) shall be completed where a building is proposed south of Carleton Street or based on the results of the Phase I ESAs. Specifically, if the Phase I ESAs identify recognized environmental conditions or potential concern areas, a Phase II ESA would be conducted to determine whether the soil, groundwater, and/or soil vapor has concentrations exceeding regulatory screening levels for commercial/industrial land uses.</p> <p>If the Phase II ESA concludes that the site is or may be impacted and could affect the planned development, then an assessment, remediation, or corrective action (e.g., removal of contaminated soil, in-situ treatment, capping, engineering controls) shall be conducted prior to or during construction under the oversight of federal, state, and/or local agencies (e.g., USEPA, DTSC, SFB RWQCB, City of Berkeley TMD, Alameda County DEH) and in full compliance with current and applicable federal and state laws and regulations. Additionally, Voluntary Cleanup Agreements may be used for parcels where remediation or long-term monitoring is necessary.</p>	Review Phase I and Phase II ESAs.	Prior to issuance of building or engineering permits	City of Berkeley Department of Planning & Development and Public Works Department			
Mitigation Measure HAZ-2: Regulatory Agency UST Involvement – City of Berkeley TMD and SFB RWQCB						
<p>Because the project site and immediately adjacent properties are associated with open and closed LUST and Cleanup Program cases overseen by the SFB RWQCB, the project applicant shall notify the SFB RWQCB of the following:</p> <ul style="list-style-type: none"> ▪ Development plans for each Block located south of Carleton Street and for Block B North east of Fourth Street ▪ Completion of subsequent Phase I ESAs ▪ Identification of unanticipated stained or odorous soils during demolition, grading, and/or construction activity ▪ Identification of additional underground tanks and associated piping, or other underground features such as railroad spurs or ties, unknown piping, cisterns, wells, waste/burn pits, etc., if encountered <p>Additionally, all onsite UST removals and associated assessment work shall be completed under the direction of the City of Berkeley TMD and/or the SFB RWQCB. To the extent there are any pending LUST and Cleanup Program cases</p>	Review Phase I and Phase II ESAs to ensure compliance. Maintain correspondence with SFB RWQCB throughout development. Maintain correspondence with SFB RWQCB and City of Berkeley TMD throughout construction, as necessary.	Prior to issuance of building or engineering permits and during construction	City of Berkeley Department of Planning & Development and Public Works Department			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>on the project site, the UST closure and agency approval documents shall be reviewed and approved by the City of Berkeley TMD and/or the SFB RWQCB prior to issuance of building permits for grading or any other ground disturbance.</p> <p>Upon identification of stained soil, odorous soil, USTs, or other underground features onsite, City of Berkeley TMD and/or SFB RWQCB could require actions such as: preparation of removal action workplans; obtaining permits for removal of USTs or other underground features; excavation and offsite disposal of soil; assessment of soil and/or groundwater beneath the excavation; and/or completion of UST removal reports or case closure documents.</p>						
<p>Mitigation Measure HAZ-3: Regulatory Agency Subsurface Involvement – ACPWA, SFB RWQCB and City of Berkeley</p>						
<p>The City of Berkeley TMD and the SFB RWQCB shall continue to provide agency oversight of assessment and remediation of the open Cleanup Program case (case #01S0045) on the project site. Additionally, the applicant shall notify the City of Berkeley and SFB RWQCB Cleanup Program project manager of the following:</p> <ul style="list-style-type: none"> ▪ Development plans for Block B North east of Fourth Street and development south of Carleton Street ▪ Onsite use of 14 hydraulic elevators that may have contained oils containing PCBs (Farallon, 2020) ▪ Onsite use of above-ground storage tanks used to store diesel for generators (Farallon, 2020) ▪ Other regulatory UST case listings (City of Berkeley and SFB RWQCB) and assessment work that will be completed under the direction of other regulatory agencies ▪ All former environmental documents completed for the site of development disturbance, including this SEIR <p>Upon notification of the information listed above, the City of Berkeley and the SFB RWQCB could require actions such as: preparation of subsurface investigation workplans; completion of soil, soil vapor, and/or groundwater subsurface investigations; installation of soil vapor or groundwater monitoring wells; excavation and offsite disposal of soil; completion of human health risk assessments; and/or completion of remediation reports or case closure documents.</p> <p>If groundwater wells or soil vapor monitoring probes are identified within the construction area during demolition, subsurface demolition, or construction at the project site, they will be abandoned/destroyed under permit from the</p>	<p>Review all demolition, grading, and building permits to ensure oversight by City of Berkeley TMD and the SFB RWQCB.</p> <p>Coordinate with City of Berkeley TMD and the SFB RWQCB to ensure compliance with required measures.</p>	<p>Prior to permit approval.</p> <p>Ongoing during cleanup.</p>	<p>City of Berkeley Department of Planning & Development</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>Alameda County Public Works Agency (ACPWA). Demolition activities will be documented in a letter report submitted to the ACPWA and SFB RWQCB within 60 days of the completion of abandonment activities. Abandonment of sub-slab vapor points will be completed with SFB RWQCB approval and demolition activities will be documented in a letter report to SFB RWQCB. The SFB RWQCB non-objection, concurrence, no further action, closure, and/or agency approval documents shall be delivered to and reviewed by the City of Berkeley prior to issuance of any building permit authorizing grading or construction on the site. The SFB RWQCB may determine that City of Berkeley TMD or DTSC may be best suited to perform the lead agency duties for assessment and/or remediation at the project site, in which case this and other mitigation measures will still apply.</p>						
<p>Mitigation Measure HAZ-4: Soil and Groundwater Management Plan</p>						
<p>The project applicant shall implement the recommendations of the Soil and Groundwater Management Plan (SGMP) prepared by Farallon Consulting LLC dated December 28, 2020. The SGMP shall be reviewed by the City of Berkeley Toxics Management Division prior to issuance of permits for grading or other ground disturbance and the report shall be updated if needed. The SGMP recommendations are related to:</p> <ul style="list-style-type: none"> ▪ Management of Unanticipated Subsurface Conditions ▪ Health and Safety Requirements ▪ Onsite Soil Management ▪ Groundwater Management ▪ Stormwater Management ▪ Soil and Groundwater Management Plan Reporting Requirements <p>Construction workers shall be informed about environmental conditions and measures to mitigate potential risks to the environment, construction workers, and other nearby receptors from potential exposure to hazardous substances that may be associated with unknown conditions or unexpected underground structures, and known contaminated soil or groundwater encountered during construction activities.</p> <p>The SGMP shall be updated and the updated recommendations shall be implemented in the following cases:</p> <ul style="list-style-type: none"> ▪ A change in project site uses; ▪ Receipt of additional information pertaining to project site environmental conditions; ▪ Updated chemical toxicity information for contaminants detected at the project site based on revised regulatory screening levels; or, 	<p>Review and approve updated SGMP and review all demolition, grading, and building permits to ensure compliance.</p>	<p>Prior to issuance of building or engineering permits.</p>	<p>City of Berkeley Department of Planning & Development</p>			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<ul style="list-style-type: none"> New legal or regulatory soil or groundwater management requirements applicable to the project site. 						
Mitigation Measure HAZ-5: Hazardous Materials Safety Plan (Updated 1991 EIR MM)						
<p>The project applicant shall prepare a Hazardous Materials Safety Plan to address potential issues that may be encountered during project operation involving the use, storage, transport, and disposal of biohazardous and chemical materials. The Hazardous Materials Safety Plan shall be updated annually and reviewed by Berkeley’s Toxics Management Division. The Plan shall include, but not be limited to, the following information and measures:</p> <ul style="list-style-type: none"> Documentation of ongoing compliance with all applicable federal, state, and local regulations related to biohazardous safety, storage, transport, and disposal procedures, and emergency response preparedness, including biosafety guidelines published by the NIH and CDC. Documentation that current and future operations would prohibit the use of biohazardous agents within Risk Groups 3 and 4. Documentation of ongoing coordination for emergency preparedness with the City of Berkeley, including preparation of an emergency response plan and an emergency disaster procedures manual for release of hazardous biological materials. The disaster preparedness plan shall include annual training for and coordination with City of Berkeley emergency responders as to the nature of hazards on site, types of organisms likely to be encountered, where to take exposed persons to receive appropriate treatment, and staging semi-annual mock disaster drills. Updates to and continued compliance with the site’s Risk Management Prevention Plan (RMPP) for the use of ammonia. The RMPP shall be subject to review and approval by the USEPA. Updates to and continued compliance with the Hazardous Materials Release Response Plan and inventory and Risk Management and Prevention program required by CalEPA. 	Review and approve Hazardous Materials Safety Plan.	Annually	City of Berkeley Department of Planning & Development			
HYDROLOGY AND WATER QUALITY						
Mitigation Measure HWQ-1: Best Management Practices (Updated 1991 MM)						
<p>The project applicant shall prepare documentation of Best Management Practices to minimize the potential for water pollution. Typical elements of such a document would include addressing the possibility of substituting less</p>	Review all demolition, grading, and building permits to ensure compliance.	Prior to issuance of building and engineering permits	City of Berkeley Department of Planning & Development			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
toxic compounds in manufacturing and research and development and proper handling of those toxic compounds used.			and Public Works Department			
Mitigation Measure HWQ-2: Source Control (Updated 1991 MM)						
The project applicant shall manage pollutants on the project site such that they are not easily mobilized and discharged into stormwater runoff. This shall involve configuring fuel storage under roofed areas and preventing on-site runoff from flowing through these areas. Hazardous materials stored in uncovered areas shall be fully contained or covered such that they do not come into contact with rainfall.	Review all demolition, grading, and building permits to ensure compliance.	Prior to issuance of building and engineering permits.	City of Berkeley Department of Planning & Development and Public Works Department			
	Monitor compliance during operation.	Ongoing				
Mitigation Measure HWQ-3: Water Quality Monitoring (Updated 1991 MM)						
The project applicant shall perform sampling and testing of stormwater runoff from the project site four times per year. The extent and location of this monitoring will be based upon the degree of source runoff controls implemented. Monitoring shall be used primarily to ensure source controls are working and to detect any additional or accidental pollutants in stormwater runoff.	Review sampling and testing of stormwater runoff to ensure compliance.	Quarterly	City of Berkeley Department of Planning & Development and Public Works Department			
Mitigation Measure HWQ-4: Pollutant Removal (Updated 1991 MM)						
The project applicant shall install systems to remove pollutants before stormwater runoff leaves the project site. This may involve physical removal or chemical or biological treatment depending on the type of pollutants that would be present. Uncovered parking areas shall receive street sweeping monthly to remove pollutants, oils, and greases before they are mobilized by runoff. Storm drains downstream of hazardous materials storage areas shall be equipped with manual shut-off valves. In the event of a spill, these valves shall be immediately closed, and shall remain closed until clean-up has been completed.	Review all demolition, grading, and building permits to ensure compliance.	Prior to issuance of building and engineering permits.	City of Berkeley Department of Planning & Development and Public Works Department			
	Monitor compliance during operation.	Ongoing				
Mitigation Measure HWQ-5: Management of Underground Tanks (Updated 1991 MM)						
The project applicant shall protect from damage existing wells that monitor potential releases of pollutants from underground tanks and may be required to relocate them if they would be affected by construction. Remediation or excavation of soil contaminated by underground tank releases, if necessary, shall be completed before construction of permanent foundations.	Review all demolition, grading, and building permits to ensure compliance.	Prior to issuance of building and engineering permits	City of Berkeley Department of Planning & Development and Public			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
			Works Department			
Mitigation Measure HWQ-6: Monitoring and Remediation of Seepage into Aquatic Park (Updated 1991 MM)						
The project applicant shall contribute to the funding of (as determined by the City), or perform, periodic groundwater sampling and monitoring where groundwater seeps from the 10- to 12-foot high embankment along the western edge of the Southern Pacific Railroad. If the City determines that the Bayer Campus' use of hazardous material has contributed to contamination of groundwater seepage which supports the narrow freshwater wetland between the main lagoon at Aquatic Park and the railroad, Bayer shall contribute to the funding of remediation, if necessary. If the City determines that contamination of groundwater seepage originates from properties outside the Bayer Campus, then the project applicant shall not be responsible for funding remediation of such contamination.	Review results of groundwater sampling and, if applicable, require funding.	Ongoing	City of Berkeley Department of Planning & Development and Public Works Department			
Mitigation Measure HWQ-7: Source Control for Groundwater Contamination (Updated 1991 MM)						
The project applicant shall implement standard safeguards, monitoring, and contingency measures to minimize the potential for future contamination of the local groundwater. Such measures include roofing and/or berming of storage areas, lining storage areas to prevent infiltration, and/or installing shutoff valves in downslope storm drain lines.	Review all demolition, grading, and building permits to ensure compliance and monitor compliance during operation.	Ongoing	City of Berkeley Department of Planning & Development and Public Works Department			
NOISE						
Mitigation Measure N-1: Construction-Related Noise Reduction Measures						
The following measures shall be implemented during construction for the purpose of reducing construction-related noise impacts: <ul style="list-style-type: none"> ▪ Neighbor Notification. At least two weeks prior to initiating construction activities requiring the use of two or more pieces of heavy construction equipment at the project site, the applicant shall provide notice to businesses and residents within 500 feet of the project site construction areas, including: (1) a description of the Project; (2) a description of construction activities; (3) a daily construction schedule (i.e., time of day) and expected duration (number of weeks or months); (4) the name and phone number of the "Noise Management Individual" for the Project; (5) a commitment to notify neighbors at least four days in advance of any 	Monitor compliance with noise reduction measures.	Monitoring during construction	City of Berkeley Department of Planning & Development			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>authorized extended work hours and the reason for extended hours; (6) notice that construction work is about to commence; and (7) the designated "Disturbance Coordinator" responsible for responding to any local complaints about construction noise. The noise manager would determine the cause of the noise complaints (e.g., starting too early, bad muffler) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.</p> <ul style="list-style-type: none"> ▪ Disturbance Coordinator. The applicant shall designate a disturbance coordinator who shall be responsible for responding to any local complaints about construction noise. The noise disturbance coordinator shall determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and shall require that reasonable measures warranted to correct the problem be implemented. A telephone number and webpage for the disturbance coordinator shall be conspicuously posted at the construction site outside the gate visible to passersby (the campus is closed). ▪ Noise Reduction Program. The applicant shall develop a site-specific construction noise reduction program prepared by a qualified acoustical consultant to reduce construction related noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer or a delegate. The noise reduction program shall include time limits for construction and all technically and economically feasible measures to ensure that construction complies with the City of Berkeley Municipal Code Section 13.40.070. The program shall include, but is not limited to, the following available controls to reduce construction noise levels to as low as practical: <ul style="list-style-type: none"> ▪ Temporary Noise Barrier. The applicant shall construct eight-foot high solid plywood fences along construction site boundaries adjacent to off-site noise sensitive residences or other noise-sensitive land uses (e.g., school uses) to meet applicable thresholds. These fences shall be outfitted with noise control blanket barriers where necessary to effect reductions that result in compliance with the City's quantified noise construction thresholds, as determined by the noise control plan. ▪ Mufflers. Construction equipment shall be properly maintained and all internal combustion engine driven machinery with intake and exhaust mufflers and engine shrouds, as applicable, shall be in good condition and appropriate for the equipment. During 						

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
<p>construction, all equipment, fixed or mobile, shall be operated with closed engine doors and shall be equipped with properly operating and maintained mufflers, consistent with manufacturers' standards.</p> <ul style="list-style-type: none"> ▪ Electrical Power. The applicant shall utilize "quiet" models of air compressors and other stationary noise sources where technology exists. The applicant shall select hydraulically or electrically powered equipment where feasible and avoid pneumatically powered equipment where feasible. ▪ Equipment Staging. All stationary noise-generating equipment shall be located as far as possible from sensitive receivers when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible. ▪ Equipment Idling. Unnecessary idling of internal combustion engines shall be prohibited. Construction equipment that would not be used for more than five minutes should be turned off completely. ▪ Construction Vehicles. Construction-related traffic shall be routed along major roadways and away from sensitive receivers, where feasible. ▪ Workers' Radios. All noise from workers' radios shall be controlled such that radios are not audible at sensitive receivers near construction activity. ▪ Smart Back-up Alarms. Mobile construction equipment shall have smart back-up alarms that automatically adjust the sound level of the alarm in response to ambient noise levels. Alternatively, back-up alarms shall be disabled and replaced with human spotters to ensure safety when mobile construction equipment is moving in the reverse direction. ▪ Additional Noise Attenuation Techniques. For development on the portion of the site east of Seventh Street, implement the measures set forth in the Noise Reduction Program and either: (1) erect temporary noise control blanket barriers, where necessary, along building facades facing construction sites; (2) restrict construction to weekdays; or (3) implement other noise reductions alternatives that could feasibly reduce noise to achieve the City's quantified noise construction thresholds. 						

PUBLIC SERVICES

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
Mitigation Measure PS-1 Security Measures (Updated 1991 MM)						
<p>The project applicant shall continue implementing the following measures recommended by the Berkeley Police Department including but not limited to:</p> <ul style="list-style-type: none"> Prepare a Crime Prevention Evaluation Analysis Report in coordination with the Police Department; Employ a highly visible security guard; Provide adequate lighting in parking areas and around buildings in use in the evenings; and Utilize solid walls, burglar alarms, and/or safety glazing on the windows for buildings containing pharmaceuticals. 	Review all demolition, grading, and building permits to ensure implementation of security measures.	Prior to issuance of building permits	City of Berkeley Department of Planning & Development			
RECREATION						
Mitigation Measure REC-1 Aquatic Park Funding (Updated 1991 MM)						
The project applicant shall contribute to park maintenance and improvements related to Aquatic Park through an upfront payment of \$385,000. The contribution shall be paid to the City of Berkeley Parks, Recreation, and Waterfront Department by February 25, 2022.	Require contribution of a fair share of the cost of park maintenance.	Once prior to February 25, 2022	City of Berkeley Department of Planning & Development			
TRANSPORTATION						
Mitigation Measure T-1 Transportation Demand Management Program (Updated 1991 EIR MM)						
<p>The project applicant shall continue to implement and update the Transportation Demand Management (TDM) Program to reduce single-occupant automobile trips generated by the project site. The TDM Program shall be reviewed and approved by the City of Berkeley prior to issuance of building permits for development allowed under the amended DA. In addition, the TDM Program shall be updated by Bayer and approved by the City every five years, or at intervals required by the City, to ensure that services are consistent with best practices to reduce the use of single-occupant automobile trips to and from the project site.</p> <p>The TDM Program may include, but not be limited to, the following information and measures:</p> <ul style="list-style-type: none"> Continued funding and implementation of the West Berkeley Shuttle with regular service and expansion to meet demand; Pre-tax commuter benefits; Travel coordination, via a Transportation Coordinator and regularly disseminated transportation and commute information; On-site amenities such as eating and recreation facilities; 	Review and approve TDM program.	Every five years, or at intervals required by the City of Berkeley Transportation Division	City of Berkeley Department of Planning & Development and Public Works Department (Transportation Division)			

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments

- Telecommute program; and,
- Bicycle parking, repair stations and education, as well as employee showers, changing facilities and lockers.

TRIBAL CULTURAL RESOURCES

Mitigation Measure TCR-1 Worker’s Environmental Awareness Program

Prior to ground disturbing activities, the project applicant will retain a locally affiliated tribal member who represents a tribal organization that was contacted as part of Assembly Bill 52 outreach to conduct a Worker’s Environmental Awareness Program (WEAP) training. The WEAP training shall be provided to all construction personnel (in conjunction with the cultural resources WEAP) prior to the commencement of ground-disturbing activities. The WEAP training shall include a description of the types of materials that may constitute Tribal Cultural Resources, the reasons for their traditional cultural significance and importance to tribal members, the stop work authority of the Native American monitor, and the proper protocol for the respectful treatment of the resource in the event of an unanticipated discovery. Attendance at the WEAP training shall be documented with a sign-in sheet for submittal to the City for verification of adherence to this measure. This WEAP training may be presented in tandem with the training required under CR-9.

Monitor compliance with WEAP training.

Prior to ground disturbing activities

City of Berkeley
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Planning &
Development

Mitigation Measure TCR-2 Native American Monitoring

If recommended by the Desktop Analysis, Phase I, Extended Phase I (XPI), Phase II, or Phase III studies required under Mitigation Measures CR-1 through CR-8, the project applicant shall retain a qualified local Native American monitor to observe all ground disturbance, including archaeological excavation, associated with development facilitated by the project. Native American monitoring shall be provided by a locally affiliated tribal member. Monitors will have the authority to halt and redirect work if any tribal cultural resources are identified during monitoring. If tribal cultural resources are encountered during ground-disturbing activities, work in the immediate area must halt and the find must be evaluated. Native American monitoring may be reduced or halted at the discretion of the monitors, in consultation with the lead agency, as warranted by conditions such as encountering bedrock, sediments being excavated are fill, or negative findings during the first 60 percent of ground disturbance. If monitoring is reduced to spot-checking,

If applicable, confirm a qualified Native American monitor has been retained and review all demolition, grading, and building permits to ensure compliance with required monitoring and measures in the event that tribal cultural resources are identified.

Prior to issuance of building permits.

City of Berkeley
Department of
Planning &
Development

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Agency	Compliance Verification		
				Initial	Date	Comments
spot-checking shall occur when ground-disturbance moves to a new location within the project site and when ground disturbance will extend to depths not previously reached (unless those depths are within bedrock). Following the completion of monitoring, a report documenting the monitoring effort shall be prepared and submitted to the lead agency and the California Historical Resources Information System.	Monitor ongoing compliance.	Periodically throughout construction activities, or as determined by the Native American monitor.				
Mitigation Measure TCR-3 Cultural Resources Open Space Easement						
The project applicant will set aside an area that could be used as a Tribal Cultural Resources Open Space Easement in the event that tribal cultural resources are encountered during construction activities and are unable to be avoided. The purpose of the Cultural Resources Open Space Easement will be to provide an onsite location for reinterment of sensitive Native American cultural resources and/or human remains, as well as other associated funerary objects. If said remains are encountered, a Cultural Resource Open Space Easement will be developed and granted by the project applicant in consultation with the identified Most Likely Descendant(s), and other affiliated tribes identified by the NAHC as applicable. Should an easement be necessary, the following actions would be prohibited on the land subject to said easement, except as required for the reburial of sensitive cultural resources: grading; excavation; placement of soil, sand, rock, gravel or other material; clearing of vegetation with machinery; construction; erection or placement of a building or structure; vehicular activities; trash dumping; installation of wet or dry infrastructure, such as irrigation systems; or for a purpose other than as open space for tribal use only. Exceptions include the following: <ul style="list-style-type: none"> Placement and reburial of sensitive Native American cultural resources or human remains. Access shall be provided for identified Most Likely Descendant(s), and other affiliated tribes identified by the NAHC in perpetuity. Selective clearing of vegetation by hand if required by fire authorities for the purpose of reducing an identified fire hazard or the removal of vegetation using chemicals for vector control purposes where required by the Department of Environmental Health. The installation of a bench, marker, or other amenity if desired by the consulting Tribe(s). 	Confirm area has been identified that could service as a cultural resources open space easement.	Prior to ground disturbing activities	City of Berkeley Department of Planning & Development			

EXHIBIT F

REPORT ON JUSTIFICATION FOR HEIGHTS IN EXCESS OF FORTY-FIVE FEET

Pursuant to Recital J of the Amended and Restated Development Agreement between the City of Berkeley and Bayer HealthCare LLC, the attached letter from Urban Planning Partners Inc. comprises the engineering, land use, and environmental analyses demonstrating the need for buildings which exceed the standard height limits identified in the current iteration of the West Berkeley Plan and the Berkeley General Plan.

March 29, 2021

Leslie Mendez, Senior Planner
City of Berkeley
Department of Planning and Development
1947 Center Street, 3rd Floor
Berkeley, CA 94704

Dear Ms. Mendez:

Attached you will find our compiled research for the justification and reasoning for building height as it relates to life sciences building height on the Bayer Campus. The following information was compiled by conducting interviews with industry professionals, personal experience, and other research.

EXECUTIVE SUMMARY

Since the Bayer Campus (previously the Miles Inc./Cutter Biological campus) was first developed over 40 years ago, the needs of life sciences campuses have and continues to rapidly evolve. Previously single- and two-story height, but long, warehouse style buildings were seen as the ideal fit for these types of facilities. However, product demand and changing operations for life sciences companies have changed and resulted in different ideologies when constructing these types of structures.

To stay flexible and responsive to demand, life sciences buildings need to be adaptable to whatever uses that might be necessary now, but also other uses in the future – having the appropriate height, both in terms of individual floor design and total building stories, can play a vital role in that adaptability. Height is also necessary for core life sciences operations for equipment, air circulation, and structural integrity.

While much of this discussion highlights some of the operational needs of technical life science buildings, not all buildings will require such demanding physical requirements. Buildings such as those that perform administrative purposes are also required – allowing for additional building height at these facilities plays a pivotal role too. Height plays an indirect, but important role in freeing up the floor area that can result in the development of amenities and open spaces that will provide a social benefit, as well as help attract and retain talent. Lastly, building height, especially in the context of a town such as Berkeley, will help to create a more aesthetically pleasing environment for employees and surrounding communities by breaking up the monotony of low-rise industrial buildings, all the while having little aesthetic impacts.

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LIFE SCIENCES OPERATIONS

The operations on the Bayer campus drive height requirements for individual floors and multi-story requirements. Many of the findings described in this section are reflective of Bayer's most recent work related to the development of its CCTC_{2/3} building for which future development is likely to be of a similar vein.

A. Life Sciences Equipment Accommodation and Maintenance

Life sciences operations typically require very specialized infrastructure and equipment, and thus require very specialized buildings. Much of the necessary equipment can be quite large and tall and would otherwise not be able to be hosted in buildings with traditional floor to floor heights. As such, life science buildings, especially those that involve production and manufacturing, require the appropriate floor-to-floor heights to not only fit large equipment and machines, but also allow additional space for overhead maintenance and appropriate access to components. All building equipment and systems must undergo routine maintenance, which typically involves replacement of filters, valve elastomers, gaskets, and drive belts in fans and motors, as well as calibration of instruments and collection of samples for quality control. These maintenance requirements necessitate physical access to all systems, instruments, and components that require servicing, which in turn drives space requirements and floor-to-floor heights. This access is critical, as it allows for quick and efficient maintenance during therapy production operations, which are extremely sensitive.

B. Flexibility of Multiple Product Types

At its Berkeley, CA site, Bayer develops and produces commercial biopharmaceuticals that are distributed globally. Bayer intends to develop and market a wide variety of biopharmaceutical products employing an array of technologies/modalities such as protein therapeutics, cell therapy and gene therapy, while maintaining flexibility to respond to shifting product modalities or product volumes driven by patient demand. The range of modalities being considered are consistent with research, development and manufacturing efforts being pursued by biotechnology companies in the San Francisco Bay Area and around the globe.

A robust physical infrastructure is needed in order to develop, manufacture and perform lab testing on the spectrum of products that may be developed and manufactured at the Berkeley site. Future buildings will need several capabilities, including: transportation routes of the campus roads and walkways, site security, utilities, and amenities. The refined site development plan was designed to meet the following needs:

- Manufacturing buildings that handle raw materials, in-process intermediates, drug substance and drug product;
- Facilities to receive and store raw materials to develop, manufacture and test products;

- Closed processing areas to protect manufacturing personnel and the products being manufactured;
- Environmental controls such as cleanrooms, airlocks, and facility segregation to protect manufacturing personnel and products;
- Laboratories to develop products, processes and analytical methods for various therapy types, and to test the safety of products manufactured in order to release those products to patients;
- Spaces that ensure biosafety measures can be implemented per National Institutes of Health (NIH)/Center for Disease Control (CDC) guidelines (up to Basics of Biosafety Level [BSL] 2);
- Facilities and equipment to produce and distribute utilities, including clean, GMP utilities as well as standard utilities for heating, cooling and electrical power;
- Emergency power generation capability to protect the inventory of work-in-progress and finished goods or critical process steps in progress;
- Workshops and spare parts storage to maintain manufacturing, laboratory and utility equipment and instruments on site;
- Office space for manufacturing, quality control, development, maintenance, quality assurance, engineering, HSES, regulatory affairs, supply chain, procurement, accounting, legal, information technology, human resources, and managerial personnel;
- Storage space for work-in-progress material and finished goods under ambient, refrigerated (+2°C to +8°C) or frozen conditions (-20°C to -196°C); and
- Receiving and shipping facilities to accept truck traffic required to bring raw materials to the site, ship out finished goods or work-in-progress material, and to haul away waste.

One of the critical components required for operation of production facilities is the accommodation of a system that provides flexible modules that can be readily reconfigured to produce a wide variety of therapies in a range of volumes. This flexibility requires that the design of production module floorplates measure a certain size and shape to enable process steps for anticipated cell therapy modules. Another feature that enables the required level of flexibility is stacked production floorplates. This vertical configuration allows future production processes to have unit operations distributed on different levels. The time sensitivity of the performance of certain unit operations, as well as the delicacy of processing materials such as cells (especially refrigeration requirements), drive *intra*-module horizontal proximity and *inter*-module vertical adjacency. This drives the requirement for colocation of the modules in a single facility in a stacked arrangement. These requirements between unit operations are reflected in the design of facilities. The viability and functionality of facilities will be lost if these adjacency requirements are not met

C. Flexibility to Pivot

In contrast to the point above, the ability to produce a single product is also important and is facilitated by building height. When considering the wide range of products under development in cell and gene therapy, it's likely that during development and testing that breakthroughs could lead

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to production efforts shifted to produce a distinct product. Pivoting manufacturing to only one item may require the utilization of production equipment and spaces typically used in another production processes, including cell culture technology (suspension verses adhesion), separation, purification, formulation, and primary packaging.

Technology, modern medicine, and consumer needs are continuously changing and advancing. With this change, life sciences must stay nimble and ready to adapt as necessary. This is especially apparent in COVID times where the global pandemic has prompted possibly the largest and fastest mobilization of the global scientific community we've ever seen. The current crisis demonstrates the importance of life science buildings that can adapt to a wide range of uses where many life sciences companies have had to modify and dedicate their facilities towards finding treatments or producing vaccines to meet demand. Constructing buildings with additional height will help to facilitate built-in flexibility for the future – creating a building that is currently appropriate for production and manufacturing may need to shift products or research purposes (and vice versa). With additional height, since floors are segregated, uses can change quickly on a floor-by-floor basis.

For example, the purpose of the CCTC_{2/3} building is to design and construct a building to house facilities for the production of Advanced Therapy Medicinal Products (ATMPs) for use in late-stage clinical trials and in early commercial launch. Specifically, the aim of the facility is to produce both cell therapy and gene therapy products, and to have the flexibility to produce different products in the future with minimal reconfiguration, and even to produce one single product in larger volumes. Floors 1 and 3 would contain manufacturing, inspection, and support functions associated with biopharmaceutical production, along with offices for Bayer production employees. Both floors would contain their own "module" (for a total of 2 modules). The Gene Therapy Module production space would be located on Floor 1 and the Cell Therapy Module production space would be located on Floor 3. After being used to produce a product that shows promise in clinical trials, the CCTC_{2/3} building may be modified to focus on producing larger quantities of that product for commercial use. An example of the flexibility incorporated into the CCTC_{2/3} building includes some space on the 2nd floor and the ground floor module, which can be reconfigured to accommodate a cell maturation step that will enable the building as designed to deliver product to a much larger patient population. Furthermore, the high-level concept is that a module can be constructed and used for a variety of purposes, or even re-purposed after initial fit-out. As shown in the image below, by orienting support spaces such as utility, warehouse/logistics areas, offices, and cleanroom transition airlocks at the building perimeter, a large central process area can be left available so that it can be configured and re-configured to accommodate a desired purpose.

CCTC Modular Design

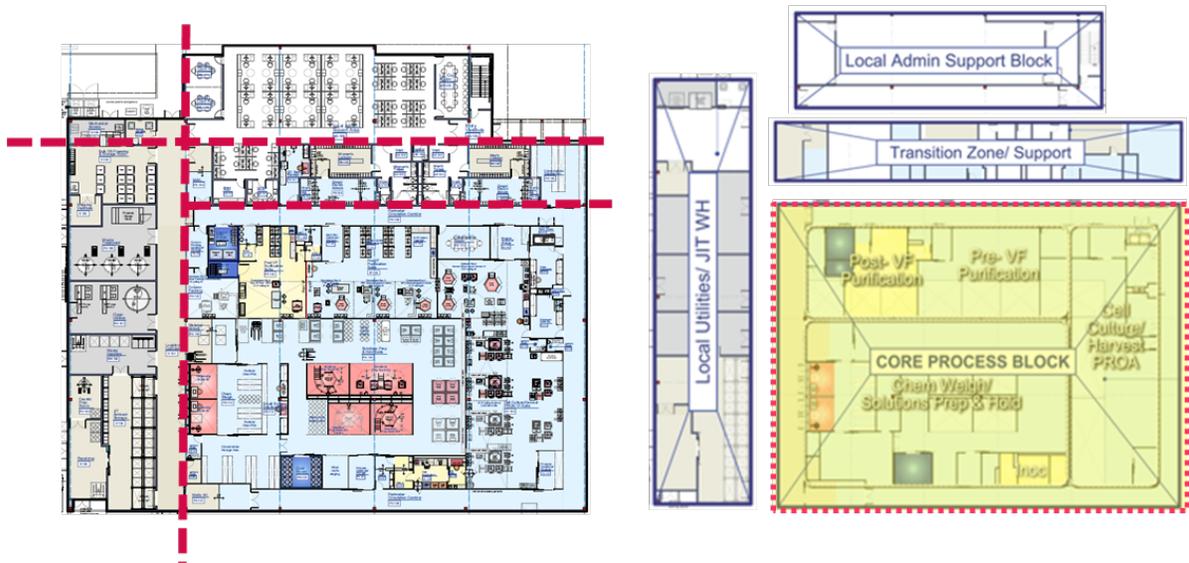


Figure 1: CCTC2/3 Module Configuration

The life sciences field is highly competitive when it comes to acquiring funding and research. Companies that are quickly able to adapt their needs and bring products to market quickly are more successful at acquiring both. Height, as demonstrated throughout, facilitates flexibility and is necessary for an operator to remain competitive and deliver therapies to patients as quickly as possible.

D. Time Sensitive Testing

During the course of production processes, various “just-in-time” tests are needed to verify the quality of the products being produced. In many cases, there is a critical time sensitivity of these tests which leads to requirements of testing facilities to be located in close proximity to the original production spaces. Given the sensitivity of the products (living cells), several production process constraints must be considered, including:

- Storage conditions, especially temperature;
- Time tolerances for processing steps/transfers;
- Shear force sensitivity;
- Pressure sensitivity; and
- Temperature and light sensitivity during processing.

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With these constraints, the physical proximity of two modules and their processing trains becomes critical to ensure complete production capabilities are provided. When considering the need for upstream and/or downstream equipment proximity simultaneously, in concert with other process constraints, the vertical adjacency of the two modules becomes a technical requirement. This vertical arrangement allows the potential use of gravity to manage transfers without damaging cells and the close process step adjacency to manage time/temperature/light constraints. The separate modules allow for routine flexibility with segregated independent operations. The stacked configuration illustrated in Figure 1 allows the facility to ensure future product manufacturing capabilities as well as efficient building design. All these factors dictate the need for production buildings to be taller than 45 feet. Furthermore, by placing testing facilities in the shared 2nd floor of the building (as shown in Figure 1 below), the travel time for the test samples is reduced. If these particular facilities were located further away from each other because of horizontal distances, the time required to transfer cells from the cell culture area through the airlocks into a different filling facility would be longer than the time allowed for the cells to be out of refrigeration, which could lead to compromised products. Success or failure of these processes is often a matter of seconds, and adjacency is therefore a key consideration.

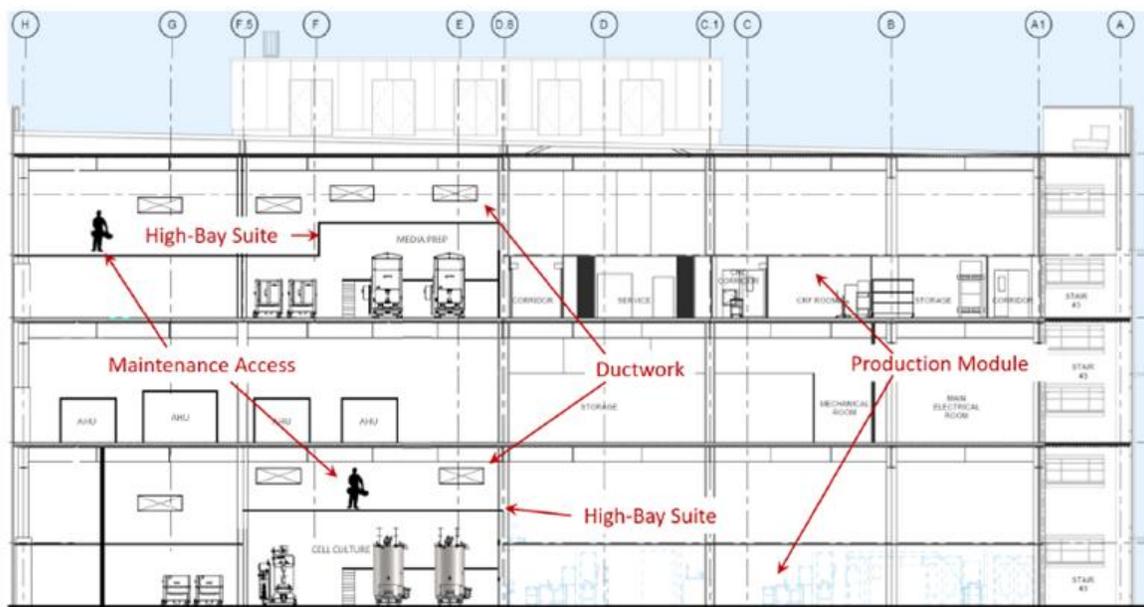


Figure 2: CCTC2/3 Building Configuration

E. Reduction of Cross-Contamination

Life science operations are moving away from large-scale bulk production of single products to multiproduct facilities as the demand for small-volume, personalized medicines has increased. In other words, the future of therapies for illness will become more personalized, abandoning a "once-

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size-fits-all" model. As a result, production of multiple products requires meticulous tracking and increases the potential for cross-contamination; however, increased building height can help to reduce this potential. As previously discussed, future production buildings are anticipated to involve multiple cell culture production suites to be run simultaneously. Because of this, additional measures are required to protect the cells in one suite from incompatible cells or other agents that could be introduced from another suite. While safety protocols are in place to reduce cross-contamination of the various operations occurring in life science manufacturing and production, creating physical separation of modules via verticality creates a clear and obvious physical barrier where separate functions and/or products can be developed on separate floors. Allowing for additional floors allows for multiple product development without out the worry for other separation methods that might otherwise be required if they were on the same floor in a longer and shorter building, which would ultimately increase the needed floor area if it were a single-floored building.

An additional measure to mitigate cross-contamination is the use of dedicated ductwork and HVAC systems on the 2nd floor to serve each module, rather than using shared systems. While this results in a greater number of total HVAC systems, its energy impact is offset by the reduced length of airducts due to the close proximity to production areas, as opposed to a longer building which would result in more energy required to push air through longer airduct systems.

F. Other Operational Support Functions

Another important requirement for life sciences buildings is the need for adequate air circulation. Many buildings follow a "once in, once out" model, where air is circulated into the building, run through the facilities, then filtered and released. This process is vital in ensuring that potential contamination of both operations and outdoor air is eliminated. This requirement for air circulation is much more intensive than traditional office, manufacturing, or research and development needs, and thus requires specialized air conduction systems. An example of this is in the CCTC2/3 building where nearly the entire 2nd floor is dedicated to mechanical space that would serve both the 1st and 3rd floors, which reduces the amount of noise generated that might otherwise be if it were located externally.

For buildings with limited horizontal space, load-bearing floors and vertical height are important structural considerations for life sciences buildings. Based on discussions with industry professionals, floorplates of approximately 30,000 square feet and floor-to-floor heights of 16 feet are seen as instrumental to the operational success of life science buildings. These specifications allow for the structural integrity required of these types of buildings due to internal circulation of people and materials, allow for appropriate load-bearing for large specialized equipment, adequate airflow (as discussed above), and provides for flexibility for the future (as discussed in greater detail below).

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INCREASED OPEN SPACE AND LANDSCAPING

Allowing for increase vertical configuration not only serves the technical demands of life sciences buildings, but also serves many important urban planning goals. Since the original adoption of the Development Agreement in 1991, many of the core ideologies of urban planning have shifted. Many of the benefits of increasing accessibility and open space are essential tenants of “smart-growth” and increasing height for social benefits is now the expectation, not the exception.

The current Development Agreement allows for taller buildings, but in scattered locations throughout the campus. Meanwhile, the Mixed Manufacturing zoning district that would apply in the absence of the Development Agreement only allows for building heights of up to 45 feet, even within interior portions of large properties that are not readily visible from public streets and open spaces. As discussed above, that creates several challenges and inefficiencies, but also limits the available open space on the campus. One of the biggest urban planning benefits to increases in vertical height of buildings is that it increases open space at the ground floor level that would otherwise be occupied by ground floor building area. This freed-up space can in turn be used for other uses, and in this instance, primarily amenities and more open space within and along the edges of the campus. Campuses that provide common spaces for peers help to create a sense of community by creating flexible and adaptable spaces that allow for a variety of working styles and spontaneous interactions with colleagues. Providing such amenities in the biopharmaceutical industry, is necessary to attract and retain top talent, for which there is fervent competition among companies.

Open spaces are important to help create aesthetically-pleasing spaces for not only employees, but the surrounding communities. In the instance of the Bayer Campus, under the Development Agreement Extension, allowing for more building height will allow the campus to be setback further west of Seventh Street then currently plausible, allowing for development of a public promenade, as shown in the visual simulations below.



Figure 3: Current Conditions at the corner of Seventh and Carleton Street, looking southwest



Figure 4: Proposed Conditions at the corner of Seventh and Carleton Street, looking southwest

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As demonstrated, by increasing the height of the building along Seventh Street, the building is allowed to be more setback into the campus, freeing up space between the building and the right-of-way. If approved, this newly generated space is currently planned to be reprogrammed to be used as a promenade that would extend along most of Seventh Street. The open space area along Seventh Street would be expanded to approximately 1.6 acres. Creating additional open space would not only beautify the area, but has also been shown to improve the physical and mental well-being of nearby residents.¹ The majority of Berkeley is transit rich, and known as a very walkable and bikeable area.² There are some exceptions to this however, and West Berkeley isn't quite as connected as some other areas. Clearing the ground floor allows Bayer to put in trail networks for employees in campus and along frontages, further enhancing pedestrian and bicycle connectivity for West Berkeley.

This effect can be even more dramatic when looking at the Bayer Campus as a whole. As shown in the images below, by modifying height limits in most of the areas, facilities in existing buildings can be relocated into newer, taller buildings, creating additional free space to be reprogrammed as open space and landscaping. Meanwhile, by carefully locating taller buildings within the campus



Figure 6: Bayer Campus under Baseline Conditions



Figure 5: Bayer Campus under Proposed Conditions

and along east-west axes, this reallocation of space can occur without causing any significant

¹ Bratman et al, 2012. The impacts of nature experience on human cognitive function and mental health.

² According to WalkScore.com, Berkeley has a walk score of 83, transit score of 59, and bike score of 82. See <https://www.walkscore.com/CA/Berkeley> for more information.

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aesthetic impacts (discussed in more detail below). The amended DA includes at least nine acres of open space, which would exceed the existing three acres on-site. Open space would consist of fields, sports courts, pedestrian trails, bicycle trails, outdoor eating areas, and landscaping.

ACQUIRING AND MAINTAINING TALENT

The needs for life sciences buildings aren't the only thing that has changed over time – the needs of workers and employees has changed too. One of the key reasons why open space, amenities, state-of-the-art facilities, and a sense of community are important to the life sciences field is the competition for talent. It has also been proven that increasing access to open space can help reduce stress and can improve our physical and emotional well-being, which can be essential for not only attracting talent, but also ensuring that workers are happy.³ Life sciences companies have always competed with the technology and information sectors for highly skilled workers such as data scientists, programmers and engineers. Now, both life sciences and tech companies are also competing with financial institutions, business and professional services firms, and nearly every other industry as they work to redefine their businesses using data sciences, machine learning and artificial intelligence. Life sciences companies are in an increasingly competitive landscape for access to skilled talent in the fields of science, technology, engineering and mathematics. To draw in high-quality talent, life sciences companies need to take every measure possible to have a competitive edge, which is why having amenities open space that might not otherwise be possible to have without building height, especially for such a small campus such as Bayer's. Open space also helps promote the health of employees through wellness features, such as open green space, pedestrian and bicycle circulation, and other amenities, and create a unified campus with consistent design principles that creates a sense of place within the campus and that integrates with the surrounding community.

To secure and maintain talent, many of the competitors in the life sciences field are taking significant measures and investing in high-quality buildings, open spaces, and amenities. One example of this is at the Gilead Campus in Foster City, where Gilead has proposed to eliminate a surface parking lot to construct a private outdoor park with a promenade, amphitheater, and outdoor garden.

³ Song et al, 2016. Association between Urban Greenness and Depressive Symptoms: Evaluation of Greenness Using Various Indicators.

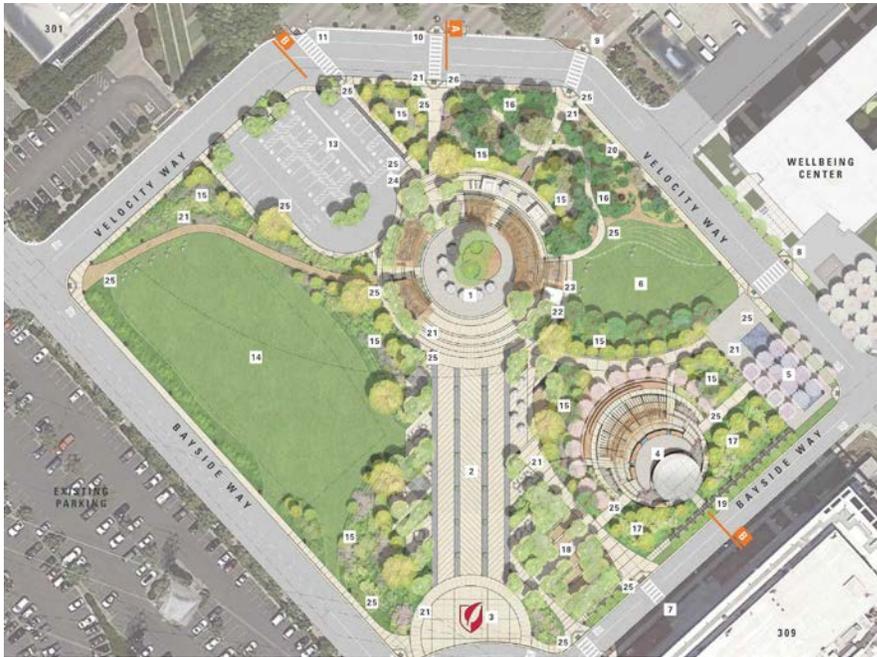


Figure 7: Gilead's Planned Private Park

Another example of this is the Genentech Campus in South San Francisco, which contains a massive 207-acre campus with numerous open spaces and dedicated facilities for amenities, including cafeterias and gyms.



Figure 8: Genentech Campus in South San Francisco

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Gilead and Genentech are located in suburban communities and are much larger campuses. In comparison, Bayer is located in an urban environment and has a more condensed campus. Given the suburban nature of their campuses, Gilead and Genentech have more flexibility in laying out their campus and providing green/open space and employee amenities throughout the campus. Being in an urban location, Bayer does not have the same opportunities to develop the type of buildings necessary or provide the green space/open space and employee amenities that are necessary to compete with their competitors, who are primarily located in suburban settings, to attract high quality employees without buildings that are taller than 45 feet. Given the urban environment around the campus, it is possible to provide taller buildings in strategic locations within the context of the surrounding neighborhood. Without the ability to “build out”, the only option is to “build up”. By increasing building verticality, additional opportunities for open spaces and amenities are created (as described above). This all plays a vital part in ensuring the best and brightest come to work at Bayer and live in Berkeley.

AESTHETICS

Land use in West Berkeley is characterized by a wider range of activities than in any other section of Berkeley, but is primarily considered Berkeley’s manufacturing and wholesaling district. As such, the areas near the Bayer Campus are primarily occupied with expansive low-rise industrial, manufacturing, and warehouse buildings, which can sometimes occupy the equivalent of entire, or even multiple, city blocks. In doing so, the industrial nature of West Berkeley can create uninviting places and restrict mobility due to sheer amount of ground floor area occupied by industrial land uses and buildings. Areas where these types of buildings are congregated are also usually lacking in visual character and can be an eyesore, especially in the context of such an urban city like Berkeley. By diversifying height and visual character of buildings in the area, a more aesthetically pleasing environment can be facilitated. Furthermore, increasing height can help to create clear sight lines that foster a sense of expansiveness, which might otherwise might not be available, especially in denser urban neighborhoods. Increased height could be perceived as an aesthetic problem in an area where single-floor homes, businesses, and industrial facilities would be located, but being located in a neighborhood with diverse building design and massing lends itself well to a flexibility of building design and massing that might not otherwise be possible.

The buildings with additional height have been strategically located to minimize visual impacts to the community. To illustrate this point, FirstCarbon Solutions (FCS) conducted an analysis to determine if implementation of the Development Agreement Extension Project would create any significant aesthetics impacts. The project site is located in a mixed urban area with office, commercial, and residential uses as well as Aquatic Park. The proposed conditions would not change the visual character of the project site or surrounding areas, and would retain an urban look with implementation of the project. Taller buildings would also not impair views of any protected scenic corridors, nor would it significantly impact other surrounding views, including views from

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Aquatic Park, which are mostly already obstructed from views due to the existing landscape (as shown in the images below). Proposed conditions with the taller buildings would retain the baseline visual character by renovating baseline buildings, improving project frontages, and constructing new buildings that better utilize the proposed project for office and commercial uses and use exterior materials that ensure buildings are visually interesting and fit in with the urban environment.

Lastly, there would be a marginal increase in net new shadows cast as the impact would be contained solely on the Bayer Campus, adjacent roadways, and the railroad tracks (also shown below). While the project would cast new shadow on the eastern perimeter of Aquatic Park, it would only cast shadow on areas currently covered in landscaping, of which already causes shading in that respective vicinity. As such, the shading with new buildings will not be significantly different than the existing conditions.



Figure 9: Existing View of Bayer Campus from Berkeley Hills



Figure 10: Proposed View of Bayer Campus from Berkeley Hills



Figure 11: Existing View from Carleton and Seventh Street



Figure 12: Proposed View from Carleton and Seventh Street



Figure 13: Existing View from Grayson Street



Figure 14: Proposed View from Grayson Street



Figure 15: Existing View from Aquatic Park Trail



Figure 16: Proposed View from Aquatic Park Trail



Figure 17: Existing View from Southern Aquatic Park



Figure 18: Proposed View from Southern Aquatic Park



Figure 19: Existing View from Northern Aquatic Park



Figure 20: Proposed View from Northern Aquatic Park

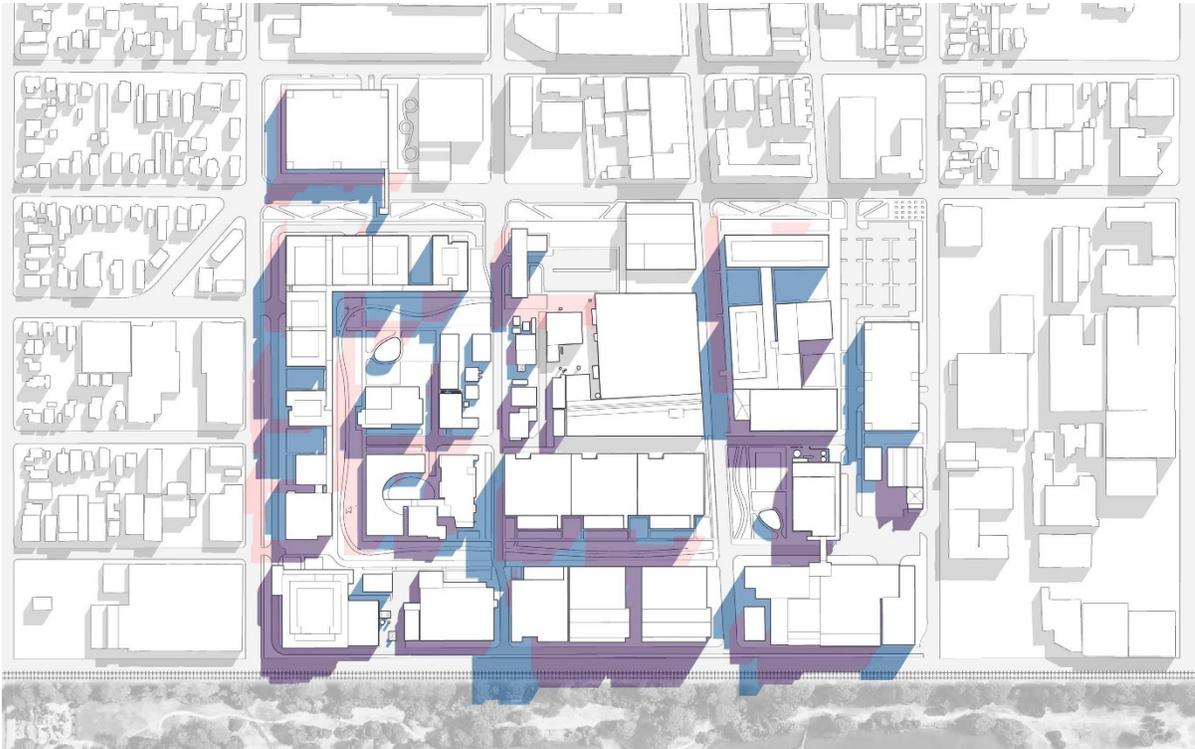


Figure 21: Proposed Shadow Conditions

As demonstrated in the above images, construction of the Bayer Campus at full build out would not significantly impair surrounding views while also creating new opportunities for open spaces, both from within and outside of the campus. The proposed design and land use configuration would, ultimately, confer aesthetic benefits compared to baseline development, and even development under Mixed Manufacturing zoning development standards.

EXHIBIT G**DEVELOPMENT AND MANUFACTURING ACTIVITIES, ENVIRONMENTAL SAFETY**

- A. Bayer produces commercial and clinical biopharmaceuticals at its Berkeley, California site that are distributed globally. Bayer intends to develop and market a wide variety of biopharmaceutical products employing many different modalities. Site operations shall include the manufacturing and development of products and associated research, and not discovery research. The range of modalities being considered is consistent with development and manufacturing efforts being pursued by biotechnology companies in the San Francisco bay area and around the globe. A number of these products will be developed and manufactured at the Berkeley site since the San Francisco Bay Area is recognized as an important locus for biopharmaceutical technology and innovation. This document will outline the spectrum of products that may be developed and manufactured at the Berkeley site and outline the facilities that will be needed to support the development and manufacture of such products. Bayer will continually modernize and adapt its site to meet business goals and objectives.
- B. As detailed further below, insofar as Bayer introduces new biological agents into site operations, Bayer will only use biological agents that can be contained at Biosafety Levels 1 and 2 (“Levels 1 and 2”), as defined by guidelines published by the National Institutes of Health Recombinant Advisory Committee and the Center for Disease Control. For purposes of clarification, agents requiring Level 1 containment include biological agents that are found in the environment and do not cause disease in healthy humans. Agents requiring Level 2 containment include moderate-risk agents that occur in the community and are associated with human disease of varying severity, and risks associated with such are generally similar to the risks one encounters at an outpatient medical facility. For the past 30 years, Bayer’s work at the site has involved research and manufacture of therapies using agents requiring Level 1 and 2 containment. Consistent with past practice and in satisfaction of mitigation requirements, in handling the foregoing biological agents, Bayer shall follow the standard practices established by the Center for Disease Control, the National Institutes of Health, and the Recombinant DNA Advisory Committee of the National Institutes of Health.
- C. Many of the development and manufacturing activities carried out on the site will utilize methods, technologies, and techniques of biotechnology. Examples of biopharmaceutical products which may be developed and manufactured at the Berkeley site and techniques and technologies that will be used include, but are not limited to, the following:
- a) Cloning and subcloning of existing hybridoma and recombinant cell lines.

- b) Initiating or enhancing the biosynthesis of potential therapeutic molecules in existing eukaryotic cell lines utilizing established recombinant techniques, the transfer of genetic information will be only into those host systems which, should they be inadvertently released from the culture vessel, would not survive and therefore would pose no practical threat to the surrounding environment.
 - c) The insertion of promoter/enhancer sequences into existing recombinant cell lines.
 - d) Polymerase chain reaction ("PCR") testing, and the construction of probes and sequences related to PCR testing.
 - e) Large- and small-scale cell culture to produce protein therapeutics.
 - f) Creating new cell lines for manufacture of protein therapeutics, viral vectors, or cell therapies using gene editing technologies such as clustered regularly interspaced short palindromic repeats ("CRISPR").
 - g) Manufacture of gene editing reagents. These include short- and long-chain ribonucleic acids ("RNAs"), nucleases, plasmids and synthetic nanoparticles. RNA molecules may be manufactured via chemical synthesis or in vitro transcription methods. Nucleases and plasmids may be manufactured using prokaryotic cells.
 - h) Manufacture of non-replication-competent viral vectors.
 - i) Manufacture of cell therapy products derived from stem cells or other donor cells. Cell therapy products may include engineered tissues for engraftment into humans.
- D. The following are activities that will not be performed at Bayer's Berkeley campus:
- a) Deliberate formation of recombinant deoxyribonucleic acid ("DNA") containing genes for the biosynthesis of toxic molecules lethal to humans, animals and plants, at an LD50 of less than 100 nanograms per kilogram weight of the organism. Examples of such toxins are botulinum toxin, tetanus toxin, diphtheria toxin and Shigella dysenteriae neurotoxin.
 - b) Deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire it naturally if such acquisition could compromise the use of the drug to control disease agents in human or veterinary medicine or agriculture.
 - c) Insofar as Bayer incorporates new biological agents or materials into site operations, use of biological agents that must be contained at Biosafety Levels 3 and 4 ("Level 3 and Level 4"), as defined by the by the National Institutes of

Health Recombinant Advisory Committee and the Center for Disease Control, including but not limited to:

- i) Use of agents that must be contained at Level 3 or Level 4 as hosts for recombinant DNA vectors.
 - ii) Use of DNA from agents that must be contained at Level 3 or 4 which have not been demonstrated to be a totally and irreversibly defective fraction of the agents' genome for transfection into a host cell. (Note - Recombinant DNA molecules which contain less than two-thirds of the genome of any eukaryotic virus are considered defective.)
 - iii) Use of defective animal viruses that must be contained at Level 3 or Level 4 in vectors for transfection of eukaryotic cells containing a specific helper virus.
- d) Heritable alterations to the human germline (i.e., embryos, ova, spermatozoa).
- e) Genetic manipulation of viral particles designed to enhance pathogenicity. For the sake of clarity, pathogenicity is defined as the ability to cause disease.
- E. Bayer will require specialized facilities to support its product development and production operations, as well as ancillary facilities to support these operations, set forth in further detail below. All facilities will comply with local, state, and federal regulations governing the operation of such facilities. The following is a non-restrictive list of examples of facilities that Bayer might require to develop and manufacture therapies:
- a) Bayer will require facilities to receive and store raw materials to develop, manufacture and test products as described in sections B and C. Ambient temperature, refrigerated and frozen storage capabilities (-20°C to -196°C) will be required. Bayer will also require the ability to store work-in-progress material and finished goods under refrigerated or frozen conditions. Truck traffic will be required to bring raw materials to the site, ship out finished goods or work-in-progress material, and to haul away waste.
 - b) Bayer will require facilities to manufacture raw materials, in-process intermediates, drug substances and drug products described in Sections B and C. Closed processing will be employed where possible to protect manufacturing personnel and the products being manufactured. Where closed processes are not feasible or provide insufficient protection, environmental controls such as cleanrooms, airlocks and facility segregation may be employed to protect

manufacturing personnel and products. Personnel protective equipment will be used by manufacturing personnel as specified by government regulations, site procedures and risk assessments.

- c) For some therapies, cells may be irradiated to prevent proliferation after administration to the patient, and Bayer will install up to two fully protected gamma irradiation devices.¹ The Berkeley site may construct facilities to perform such irradiation and will comply with all associated regulations governing such operations.
- d) Bayer will require laboratories to test products manufactured as described in Sections B and C in order to release those products for use. Environmental controls and personnel protective equipment will be employed in the laboratory facilities as specified by government regulations, site procedures and risk assessments. These measures include:
 - i) For all laboratory facilities, standard microbiological standard practices.
 - ii) For Level 2 facilities, personal protective equipment, such as eye protection, gowns, and gloves. Secondary barriers, such as hand washing sinks, self-closing and locking laboratory doors, limited laboratory windows that do not open to the building exterior, use of biological safety cabinets, vacuum lines protected with liquid disinfectant traps, eye-wash stations, and waste decontamination facilities, will be available to reduce potential exposure and release.
- e) Bayer will require laboratories to develop products, processes and analytical methods for therapy types described in Sections B and C Bayer will employ gene editing techniques to develop new cell lines. In order to assess the safety of therapeutics under development, Bayer may use well-characterized animal model viruses in a Level 2 containment facility, as commonly practiced within the biotech industry. Environmental controls and personnel protective equipment will be employed in the laboratory facilities as specified by government regulations, site procedures and risk assessments.
- f) Preclinical development of the biopharmaceutical therapies mentioned in Section CC will require testing in animal models to demonstrate efficacy or a lack of

¹ Fully protected gamma irradiation devices have a de minimis radiation output at their surface (i.e., a dose rate of less than 3 μ Sv/h). They require no additional protection measures to reduce radiation output, and no radiation surveillance with dosimeters is required for staff.

toxicity. Bayer may elect to re-establish a vivarium on its Berkeley site to support such studies.

- g) Bayer will require facilities and equipment to produce and distribute utilities for manufacturing facilities, laboratories and office spaces. These include clean, Good Manufacturing Practice utilities (as identified by the International Society for Pharmaceutical Engineering) or its equivalent, as well as standard utilities for heating, cooling and electrical power. Emergency power generation capability will be required to protect the inventory of work-in-progress and finished goods or critical process steps in progress. Utility systems will be established, operated and maintained in compliance with applicable local, state and federal regulations.
 - h) Bayer will require workshops and spare parts storage to maintain manufacturing, laboratory and utility equipment and instruments on site.
 - i) Bayer will require office space for manufacturing; quality control; development; maintenance; quality assurance; engineering; Health, Safety, Environment, and Security ("HSES"); regulatory affairs; supply chain; procurement; accounting; legal; information technology; human resources; and managerial personnel. Office areas shall also include auditoriums conference rooms to host meetings. Bayer will provide parking for employees commuting to work and will also sponsor programs that encourage employees to use public transportation. Bayer will also provide amenities, such as a cafeteria, for site employees.
- F. Bayer will prepare a Hazard Operability ("HAZOP") Study for the existing phosphoric acid and caustic storage tanks and for the Pilot Plant phosphoric acid tanks. Bayer will also conduct a HAZOP Study and an Off-site Consequence Analysis for any 100,000 gallon fuel storage tank or any future fuel storage tanks of 10,000 gallons or more. Bayer will utilize state-of-the-art safety measures for the construction and operation of all fuel storage tanks. In addition, if Bayer wishes to install a fuel tank larger than 25,000 gallons, Bayer will provide the City with a report of its investigation into the feasibility of obtaining an uninterrupted fuel supply, including an explanation of why the tank is needed if that should be the case. Bayer will consult with the City as to the location of this tank, and the siting of the tank shall be subject to the approval of the City Manager or his designee. Moreover, the location of this tank will be no closer than 200 feet from Dwight Way, Seventh Street and Carleton Street and shall be readily accessible to emergency response vehicles. HAZOP studies will also be conducted for all subsequent facilities containing bulk hazardous chemical storage. Summaries of all HAZOP studies will be provided to the City.
- G. Bayer will implement an Emergency Preparedness Program consisting of the following elements:

- a) Bayer will prepare an Emergency Response/Business Plan for existing operations which goes beyond current requirements for business plans, including, but not limited to, identification of classes of organisms used in each building on the site.
 - b) Bayer will conduct emergency preparedness training for onsite emergency response teams. Additionally, Bayer will revise its existing Emergency Procedures Manual. Bayer will at all times maintain on-site fire suppression capabilities, as a supplement or back-up to the City system. Bayer and the City Fire Department will jointly assess on-site fire suppression capabilities within 12 months of approval of the Agreement. Should this assessment identify the need for additional on-site fire suppression capability, Bayer will employ measures to meet that capability. These measures may include on-site fire water retention vaults and distribution systems; generators, pumps, and hoses to draw water from Aquatic Park; and chemical suppression systems.
 - c) Bayer will conduct annual on-site training of the City's emergency responders. The training would consist of familiarization with the procedures of the on-site emergency response team; delivery, distribution, and storage of hazardous materials (including radioactive, chemical and bio-hazards); and the site layout. The training will consist of an initial session and annual updates.
- H. Bayer will supply appropriate medical assistance in case of accidental release of viruses.
- I. Bayer will inform suppliers of bulk hazardous materials that carriers must use truck routes that are approved by the City. Bulk hazardous materials carriers are limited to use of the Ashby Avenue exit from I-80 and the use of 7th street and Grayson Street to the Bayer site.
- J. Through coordination with City staff, Bayer will conduct annual Emergency Response Exercises. These Exercises will include participation by City emergency responders, local medical treatment facilities and community members. Prior to implementation, a detailed outline of the Emergency Preparedness Program will be submitted to the City six months after approval of the Amended Development Agreement.
- K. Bayer will implement a seismic safety program for all new buildings. To reduce the potential for damage to structures from ground shaking, Bayer will comply with the following:
- a) New structures will be designed to withstand the effects of ground shaking. This includes compliance with the seismic requirements of the most current Uniform Building Code, incorporation of the best current knowledge about earthquake-resistant design and incorporation of engineering recommendations by a qualified geotechnical engineer.

- b) All building foundations will be constructed on strong native soil areas, or property engineered fill as approved by a geotechnical engineer.
 - c) All proper engineering procedures are undertaken to reduce the potential for structural damage to the site and foundation preparation from an earthquake during construction.
 - d) Potentially hazardous chemical and industrial processes will be designed with redundant and back-up safety systems.
 - e) A qualified structural engineer will evaluate all existing occupied buildings. A copy of the structural engineer's report shall be filed with the City.
- L. Amendments or modifications to the above restrictions on biological agents and permitted activities will require an amendment to the Development Agreement. Should Bayer request such an amendment, the City may, at its discretion, hire a qualified consultant with credentials as a biosafety officer or other professional biosafety accreditation (e.g. Association for Biosafety and Biosecurity [“ABSA”] Registered Biosafety Professional or ABSA Certified Biosafety Professional), to assist the City in evaluating the request. Bayer will pay the reasonable costs of hiring the consultant. The City's evaluation will determine whether the proposed modification(s) will require a major or minor amendment to the Agreement.

EXHIBIT H

TRANSPORTATION DEMAND MANAGEMENT PROGRAM

Bayer will develop and implement a transportation demand management program ("TDM Program") to reduce the use of single-occupant cars and encourage alternative transportation by Bayer employees. This program will have the components listed below in Sections 1 through 5 of this Exhibit I.

1. **Transit Program:** Bayer shall implement the following measures:
 - A. ***Shuttle Program.***
 - a. Bayer will continue to contract for services for an employee shuttle that seats approximately sixteen (16) passengers and is free to employees between the Ashby BART station and the Bayer Campus running on a regular schedule at the A.M. and P.M. peak hours, which as of September 1, 2021 are approximately 6:00 – 10:00 A.M and 3:00 – 7:00 P.M, which coordinate with Bayer's dayshift schedule. Bayer shall change hours of operation to the extent it changes its dayshift schedule.
 - b. Bayer shall expand shuttle service by increasing the frequency of shuttle headways, providing larger shuttles, or increasing bus capacity via other means in the event that bus service capacity, as measured by the difference between maximum bus capacity and Bayer employee ridership (i.e., ridership subtracted from maximum bus capacity), on average during a calendar month falls below ten percent.
 - c. Shuttle service shall be sufficient to provide for headways of no more than approximately twenty (20) minutes unless BART service is reduced during pandemics, emergency, or other circumstances, in which case headways shall be spaced to align with any reduced BART service.
 - d. Shuttle service information shall be disseminated through the communication channels identified in Measure 2.B, below, including information about pick-up location(s) at the Ashby BART station.
 - e. The shuttle service shall make stops at a minimum of two pick-up and drop-off locations, which are currently provided at Seventh Street at Parker Street and Dwight Way at Sixth Street. Bayer may relocate these pick-up and drop-off locations to better serve its employees with the consent of the City. These locations shall be maintained by Bayer so that they are visible, accessible as identified in Section 1.A.f, below, and identified with signage.

- f. The shuttle shall comply with the Americans with Disabilities Act and include bicycle storage/transport to facilitate multi-modal travel. The cost of operating the shuttle can be shared with other Berkeley employers or property owners.

B. *Pre-Tax Commuter Benefits.*

- a. To the extent permitted by state and federal tax laws, Bayer shall offer pre-tax commuter benefits to allow employees to pay for public transit passes¹ (e.g., train, BART, light rail, bus, and ferry) and related parking expenses if they are a part of their daily commute to work with before-tax payroll deductions. Employees need to enroll and they can determine to opt in/opt out, along with how much to contribute, each month. The maximum contribution limit is determined by the Internal Revenue Service for parking-related expenses and transportation-related expenses.
- b. Bayer shall offer a convenience service that employees may use to purchase stored value cards that are accepted by transit operators (i.e. Clipper, BART, MUNI, AC Transit, Caltrain, and others) directly from their pre-tax commuter dollar contribution account.

2. *Travel Coordination:* The following measures shall be undertaken by Bayer or, at Bayer's election, a qualified third-party operator hired by Bayer:

- A. ***Designation of Transportation Coordinator.*** Bayer will appoint or otherwise retain a Transportation Coordinator to be responsible for the vehicle trip reduction and transportation demand management program. The Transportation Coordinator will be a trained transportation professional.
- B. ***Transportation and Commute Information.*** The Transportation Coordinator shall provide information about transportation via an electronic messaging board or other means (e.g., Bayer intranet or other internal digital communications system), which will contain transportation information such as Emergency Ride Home, transit schedules, bike maps, carpooling/ride-matching, taxi/ride-hailing, and real-time transportation information such as transit arrivals and departures, including shuttle arrivals and departures, and shared mobility (short-term rental) service availability (bicycle, electric scooter, and car sharing) to the extent that transit providers make information reasonably available in an accessible format. Information will be updated by the designated Transportation Coordinator when there are service changes. Information will also be provided at the time an employee is hired as part of new employee orientation.

¹ At the time of preparation of this Exhibit, pre-tax benefits for bicycle commuting are not available under applicable tax laws but, insofar as pertinent tax laws allow for such in the future, Bayer shall offer such benefits to its employees.

3. **On-site Amenities:**

- A. ***On-site Eating and Recreation Facilities.*** Bayer will continue to provide on-site eating facilities for employees as part of the trip reduction program. On-site amenities within the Bayer campus shall also include fields, sport courts, pedestrian and bicycle trails, and/or outdoor eating areas.
- B. ***Parking Designated for Carpooling/Car-Sharing.*** Four (4) percent of new parking spaces associated with new or renovated buildings shall be designated/marked for carpooling and/or car-sharing.

4. **Telecommute Program:** Bayer shall encourage telecommuting where feasible, and shall provide its employees with electronic notice of approved telecommuting options during orientation for new hires and otherwise at least once per year. The telecommute program shall include a hybrid offering, where a hybrid model means a mix of work completed on site and work completed at an off-site location convenient to the employee, including the primary residence of an employee. The specific scheduling will vary across roles based on the type of work that is performed. Within these schedules, the number of days spent on site will vary based on the demands and needs of various departments.

5. **Bicycle Measures:**

- A. ***Bicycle Parking.*** Bayer shall provide bicycle parking at a ratio of one (1) space per two thousand (2,000) square feet of gross floor area for new floor area construction and expansions irrespective of land use type. New bicycle parking shall be located within perimeter security fencing and near to entrances to new and renovated buildings. Ten (10) percent of new bicycle parking spaces shall include access to electric outlets for e-bikes. A combination of covered and uncovered bicycle parking, to be located near the entrances of new or renovated buildings, will be evaluated during the architectural design phase and implemented so long as the design does not conflict with site manufacturing requirements (e.g., material deliveries, pedestrian pathways, waste management, and emergency access) as determined within the sole discretion of Bayer engineers.
- B. ***Bicycle Repair Station.*** Bayer shall include on its campus bicycle repair stations consisting of designated, secure areas where bicycle maintenance tools and supplies are readily available on a permanent basis and offered in good condition to encourage bicycling. Bayer currently operates two bicycle repair stations on the campus, which it shall continue to maintain, though relocation of such facilities is permitted, and Bayer shall provide one (1) additional bicycle repair station for every additional five hundred (500) employees above one thousand (1,000 employees) that Bayer adds to the campus, for a maximum total of four bicycle repair stations.
- C. ***On-site Employee Showers/Changing Facilities and Lockers.*** The Bayer campus shall also include changing rooms with showers and lockers for

employees using alternative transportation. For new and renovated buildings, Bayer shall provide one combination changing/shower stall per new or renovated building and one locker per assigned building employee so long as inclusion of changing/shower stalls and lockers does not conflict with site manufacturing requirements (e.g., material deliveries, pedestrian pathways, waste management, and emergency access) as determined within the sole discretion of Bayer engineers. Changing/shower stalls and lockers need not be co-located.

D. *Bicycle Promotion and Education.*

- a. Bayer shall offer employees the following bicycle-related services: repair clinic, urban riding classes, and memberships to local bicycle organizations.
- b. Bike-share locations and bike supply/service stores within ¼ mile of campus shall be disseminated through the communications channels set forth in Measure 2.B, above.
- c. Bayer sponsored programs to encourage health and wellness initiatives shall include promotion of biking to work.

6. City Review:

- A. ***Regular Review.*** Consistent with the terms of this Section 6.A., the TDM Program shall subject to review by the City of Berkeley's Traffic Engineer every five years, or at a three-year interval if requested by the City, to ensure that services are consistent with best practices to reduce the use of single-occupant automobile trips to and from the project site. As used herein, "best practices" means the selection of TDM Measures necessary, to the extent feasible, to reach a goal whereby 20 percent of total dayshift employees² are electing to commute using travel modes other than single occupant vehicles ("SOVs"). If evidence shows the TDM Program is not meeting the foregoing performance standard, the City of Berkeley's Traffic Engineer may elect to require substitute or additional feasible TDM measures, and any changes shall be memorialized in an updated version of this Exhibit. Such adjustments are within contemplation of the Amended and Restated Development Agreement and shall not require an amendment thereto, but can be administratively adopted by the City of Berkeley's Traffic Engineer. The City shall not make any changes to the TDM Program if evidence shows the TDM Program is meeting the aforementioned performance standard.
- B. ***Monitoring and Reporting Program.*** As part of its annual review process, as set forth in the Amended and Restated Development Agreement, Bayer shall include in its annual report to the City the following information:

² Dayshift employees are those Bayer employees, inclusive of employees electing to telecommute, who are scheduled to work shifts with arrival or departing times during a.m. and p.m. peak hours (i.e., 6:00 a.m. to 10 a.m. and 3:00 p.m. to 7:00 p.m.).

- a. A list of TDM Program measures offered consistent with the measures identified in Sections 1 through 5 of this Exhibit I, as might be updated pursuant to the review process set forth in Section 6.A.
- b. A census of the current number of total Bayer Berkeley employees by shift.
- c. A report of whether the TDM Program is meeting the 20 percent goal, as set forth in Section 6.A, according to gate count information consisting of the number of employees driving to the site for work shifts. If the 20 percent goal is not being met then Bayer shall also report the number of users, by shift, of transportation mode splits. An employee survey or other methodology determined to be appropriate by the Transportation Coordinator may be used to provide this information.
- d. A report of shuttle capacity and average ridership.

C. ***Review Upon Submission of Building Permits.***

- a. Compliance with this TDM Program and the associated monitoring and reporting program shall be subject to a consistency review by the City of Berkeley's Traffic Engineer prior to issuance of building permits for development allowed under the DA. The City shall find there is compliance if Bayer has shown evidence it has offered the TDM Program measures outlined in Sections 1 through 5 of this Exhibit, as might be updated pursuant to the review process set forth in Section 6.A, through use of the checklist provided below.
- b. This consistency review shall not include any update to the TDM Program as contemplated in Section 6.A, but shall be a ministerial review to ensure all TDM Program elements, as identified above, have been incorporated into Bayer operations.³ The table below, as periodically updated pursuant to Section 6.A, shall be completed and submitted by Bayer as part of its building permit application with reasonably appropriate evidence, and the completed table shall guide the City's ministerial consistency determination.

³ The process for updating the TDM Program, as set forth in Section 6.A, shall occur separate and independent of the TDM compliance review set forth in this Section 6.C, and the update process in Section 6.A shall not delay the City's processing of building permit or other project-related applications.

TDM Program Compliance Checklist		
Standard	Standard Per DA	Compliance
Transportation Demand Management Standards		
Bicycle parking	1 space per 2,000 square feet	<input type="checkbox"/> Yes <input type="checkbox"/> No
Bicycle repair stations	1 station for every 500 employees	<input type="checkbox"/> Yes <input type="checkbox"/> No
Changing/shower stalls	1 changing/shower stall per new or renovated building (unless confirmed by Bayer engineer in writing that inclusion of amenity would conflict with development and/or manufacturing of therapies)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Lockers	1 lockers per each employee assigned to building (unless confirmed by Bayer engineer in writing that inclusion of amenity would conflict with development and/or manufacturing of therapies)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Current number of Bayer employees	No.: _____	
Number of Bayer employees assigned to subject new or renovated building.	No.: _____	
List of Transportation Demand Management Measures		
Transit Program	<i>Shuttle Program</i>	
	Employ a shuttle that seats approximately 16 passengers	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Shuttle running on a regular schedule at the A.M. and P.M. peak hours (6-10 am, 3-7 pm)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Regular headways of no more than approximately 20 minutes	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Disseminate shuttle service information through communication channels	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Provide a minimum of two shuttle stops	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Shuttle shall comply with the Americans with Disabilities Act	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Shuttle shall include bicycle storage/transport	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<i>Other Transit Support</i>	
	Offer pre-tax commuter benefits to pay for transit passes (e.g., train, BART, light rail, bus, and ferry) and related parking expenses.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Offer a convenience service that employees may use to purchase stored value cards that are accepted by transit operators (i.e. Clipper, BART, MUNI, AC Transit, Caltrain, and others) directly from their pre-tax commuter dollar contribution account	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Travel Coordination	Appoint or otherwise retain a Transportation Coordinator	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Provide electronic messaging board or other means containing transportation information; for example: transit schedules, emergency ride home programs, bike maps, carpooling/ridematching, taxi/ride sharing, and/or real-time	<input type="checkbox"/> Yes <input type="checkbox"/> No

	information about transit arrivals and departures to the extent transit providers make information reasonably available in an accessible format		
	Provide electronic messaging board or other means containing information about bike-share locations and bike supply/service stores within 1/4 mile of Bayer site	<input type="checkbox"/> Yes	<input type="checkbox"/> No
On-site Amenities	Provide on-site eating facilities for employees within Bayer campus	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Provide on-site fields, sport courts, pedestrian and bicycle trails, and/or outdoor eating areas within Bayer campus.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Four (4) percent of new parking spaces associated with new or renovated buildings shall be designated/marked for car-pooling and/or car sharing.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Telecommute Program	Incorporate a telecommute program	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Bicycle Measures	New bicycle parking spaces located at secure locations within perimeter security fencing near each entrances to new or renovated building subject to application.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Ten (10) percent of new bicycle parking spaces include access to electric outlets for e-bikes.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Maintain one bicycle repair station per five hundred (500) employees	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Include changing rooms with showers and lockers for employees using alternative transportation as noted above.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Offer employees bicycle-related urban riding classes, bicycle-related repair clinic, and memberships to local bicycle organizations	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Promotion of biking to work	<input type="checkbox"/> Yes	<input type="checkbox"/> No

EXHIBIT I
Copy of Existing Ordinances

[TO BE PROVIDED IN FINAL DEVELOPMENT AGREEMENT]

DRAFT CEQA Findings
PLANNING COMMISSION

Bayer HealthCare LLC Development Agreement Amendment Project

**Pursuant to Sections 15091 and 15093 of the
State CEQA Guidelines and Section 21081 of the Public Resources Code**

The Subsequent Environmental Impact Report (SEIR) prepared by the City of Berkeley (City) for the Bayer Healthcare LLC Development Agreement Amendment Project (project) consists of the Draft Subsequent EIR (Draft SEIR) and Final SEIR / Responses to Comments on the Draft SEIR. The City finds that the inclusion of certain mitigation measures as part of project approval will reduce all impacts to a less than significant level. As a result, there are no unavoidable significant impacts requiring overriding considerations; therefore, these CEQA Findings do not contain a Statement of Overriding Considerations.

As required by CEQA, the City, in adopting these CEQA Findings, also adopts a Mitigation Monitoring and Reporting Program (MMRP) for the project. The City finds that the MMRP, which is incorporated by reference, meets the requirements of Public Resources Code Section 21081.6 by providing for the implementation and monitoring of measures intended to mitigate potentially significant effects of the project. In accordance with CEQA and the *CEQA Guidelines*, and having received, reviewed, and considered the SEIR and other information in the Record of Proceedings, the City adopts the below findings as part of the project approval. Pursuant to Public Resources Code Section 21082.1(c)(3), the City also finds that the Subsequent EIR reflects the City’s independent judgment as the lead agency for the project.

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DRAFT CEQA FINDINGS
PLANNING COMMISSION

SECTION 1: INTRODUCTION

1.1 Statutory Requirements for Findings

Section 15091 of the *CEQA Guidelines* states that:

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.*
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.*
- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.*

In short, CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to avoid or mitigate significant environmental impacts that will otherwise occur with implementation of the project. Project mitigation or alternatives are not required, however, where they are infeasible or where the responsibility for modifying the project lies with another agency.¹

For those significant effects that cannot be mitigated to a less-than-significant level, the public agency is required to find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.² The *CEQA Guidelines* state in section 15093 that:

“If the specific economic, legal, social, technological, or other benefits of a propos[ed] project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered ‘acceptable.’”

1.2 Record of Proceedings

For purposes of CEQA and the findings set forth herein, the record of proceedings for the City’s decision on the project consists of: a) matters of common knowledge to the City, including, but not limited to, federal, State and local laws and regulations; and b) the following documents which are in the custody of the City:

- Notice of Preparation and other public notices issued by the City in conjunction with the project dated October 29, 2020 (see Appendix NOP of the Draft SEIR for the Notice of Preparation);
- The Draft SEIR, which was made available for public review on May 21, 2021;
- All written and verbal comments submitted by agencies, organizations and members of the public during the public comment period and responses to those comments (see Responses to Comments on the Draft SEIR, dated October 2021), and applicant’s supplemental submissions to the City clarifying certain topics raised in the course of public comments, including without limitation applicant’s letters dated August 23, 2021 and August 26, 2021;

¹ *CEQA Guidelines*, 2019. Section 15091 (a), (b).

² Public Resources Code Section 21081(b).

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- The Mitigation Monitoring and Reporting Program;
- All findings and resolutions adopted by the City in connection with the project, and all documents cited or referred therein;
- All final reports, studies, memoranda, maps, correspondence, and all planning documents prepared by the City or consultants, or responsible or trustee agencies with respect to: a) the City's compliance with CEQA; b) development of the project site; or c) the City's action on the project;
- All documents submitted to the City by agencies, members of the public, or applicant in connection with the project; and
- The June 1991 Draft Environmental Impact Report and Final EIR for the Miles Inc./Cutter Biological Long Range Plan and associated technical appendices.

1.3 Organization / Format of Findings

Section 2 of these findings sets forth the objectives of the project and contains a summary description of the project and project alternatives. Section 3 identifies the potentially significant effects of the project which were determined to be mitigated to a less-than-significant level. All numbered references identifying specific mitigation measures refer to numbered mitigation measures found in the Initial Study or Draft SEIR and Responses to Comments document. Section 4 identifies the project's potential environmental effects that were determined not to be significant and do not require mitigation. (The SEIR did not identify any unavoidable significant impacts.) Section 5 discusses the feasibility of project alternatives.

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SECTION 2: THE BAYER HEALTHCARE LLC DEVELOPMENT AGREEMENT AMENDMENT PROJECT

This section lists the objectives of the proposed project, provides a brief description of the project, and lists the project alternatives evaluated in the Draft SEIR.

2.1 Project Objectives

The applicant's three objectives for the project are as follows:

- Maximize Bayer's ability to attract and retain top talent and partners by ensuring that the Berkeley campus facilities are at the forefront of scientific innovation, and that the campus' physical configuration and design support this goal and facilitate and enhance the site's existing and future ability to support the biotech development and manufacture of medicines that improve patient outcomes.
- Promote health of employees through wellness features, such as open green space, pedestrian and bicycle circulation, and other amenities, and create a unified campus with consistent design principles that creates a sense of place within the campus and that integrates with the surrounding community.
- 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, and ensure that: (1) there is sufficient biotech development space to develop advanced therapies that are tailored to individual patients, with development proceeding at a rate that maximizes the ability to deliver successful therapies to patients in a timely manner; (2) there is sufficient biological research and manufacturing capacity to support the production of sufficient quantities of medicine through the numerous phases of clinical trials that are required to prove safety, purity, and efficacy for human use; (3) there is sufficient space to scale up proven medicines for commercial launch in quantities sufficient to meet worldwide demand; (4) the development plan retains flexibility to take advantage of unforeseen opportunities and challenges; and (5) there is an efficient site configuration that maximizes open space needs and other amenities benefiting employees and the community.

The City's objectives for the project are as follows:

- Grant certain development and use rights in the project site to Bayer and obligate Bayer to limit its scope of development to development in accordance with the Development Agreement, which governs permitted uses, density and intensity, height, and requirements for subsequent discretionary actions, and provide additional public benefits in the form of environmental mitigations, community benefits, fees, property dedications, and public improvements.
- Create employment opportunities for Berkeley residents, encourage appropriate economic and business development, and promote the development of manufacturing and life sciences activities, in accordance with the goals and strategies established in the City of Berkeley General Plan and West Berkeley Plan.

2.2 Project Description

The Bayer Campus (project site) 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 site comprises two primary areas: 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. The Bayer campus currently develops and produces commercial biopharmaceuticals that are distributed globally. Bayer's existing 30-year Development Agreement (DA) with the City of Berkeley, covering the North Properties, was approved in 1992 and is set to expire in 2022. Because Bayer acquired the South Properties after the 1999 major amendment to the 1992 DA, the South Properties are not included in the original DA's project area.

The proposed project would include the following amendments to the existing DA:

- Extend the DA duration an additional 30 years until February 2052

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- Add the South Properties to be covered by the DA
- Allow buildout of a conceptual development plan, which proposes to rearrange 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.

The existing 30-year DA with the City of Berkeley was the subject of the 1991 Miles Inc./Cutter Biological Long Range Plan EIR, which studied the effects of proposed buildout of the full Bayer Campus as envisioned in 1991. The SEIR is a program-level document, studying the environmental effects of the 30-year conceptual development plan under the proposed Amended DA to the extent possible and consistent with CEQA. As a default and consistent with CEQA statutes, guidelines, and applicable case law addressing supplemental environmental review, the SEIR conservatively compares the effects under projected buildout of the proposed Amended DA to a baseline consisting of:

- For the North Properties, the maximum allowable development entitled under the existing 30-year DA and studied under the 1991 EIR
- For the South Properties, existing on-site development

For the specific issues of greenhouse gas emissions and vehicle miles traveled, which were not analyzed in the 1991 EIR, the SEIR conservatively evaluates these topics and conservatively adopts a baseline of existing on-site development for both the North Properties and the South Properties.

More detail about the proposed project and the SEIR baseline is included in Section 2, *Project Description*, of the Draft SEIR, incorporated herein by this reference.

2.3 Alternatives

Based on the project objectives and anticipated environmental consequences, and pursuant to Section 15126.6 of the *CEQA Guidelines*, the following project alternatives were selected for analysis:

- **Alternative 1: No Project / No Construction Alternative.** The No Project/No Construction Alternative assumes that, upon the existing DA's expiration in February 2022, the proposed amended DA would not be adopted and there would be no change to the existing configuration of the Bayer Campus. The total floor area of existing buildings is approximately 1,087,000 square feet, including 567,000 square feet on the North Properties and 520,000 square feet on the South Properties. Existing development on the project site accommodates six land uses: production, laboratories, warehouses, administration, utilities, and maintenance. Eight surface parking lots with a total of approximately 1,082 spaces are dispersed around the project site.
- **Alternative 2: No Project / Zoning Conformance Alternative.** The No Project/Zoning Conformance Alternative assumes that the proposed amended DA is not approved, in which case the existing DA would expire in February 2022 while the Use Permit for the South Properties would remain in effect. Upon expiration of the DA, future development on the Bayer Campus would be required to conform to applicable standards in the Berkeley Municipal Code for underlying zoning on the project site. The main body of the project site to the west of Seventh Street would be subject to Mixed Manufacturing (MM) zoning standards, while the remainder of the site to the east of Seventh Street (an existing parking lot) would be subject to Mixed Use-Light Industrial (MU-LI) zoning standards. This alternative does not specify an exact amount of buildout that could occur because it would depend on the number and size of individual projects that are proposed and approved. However, it is likely that, because development would occur intermittently as reviewed and approved by the City, buildout would be reduced compared to what is analyzed in the SEIR for the proposed amended DA. This analysis assumes that buildout would be further reduced under this alternative and that future discretionary projects on the Bayer Campus would be required to undergo CEQA analysis on a project-by-project or Master Use Permit basis when proposed.

- **Alternative 3: Reduced Parking Alternative.** The Reduced Parking Alternative assumes that the parking structure planned on the property between Dwight Way, Seventh Street, Parker Street, and Eighth Street would not be constructed. The planned parking structure east of Seventh Street is expected to accommodate 925 of the 1,825 parking spaces contemplated in the proposed project for the whole Bayer Campus. Under this alternative, the property east of Seventh Street would remain a surface parking lot with 250 parking spaces. This alternative would not add more parking spaces than proposed on the rest of the Bayer Campus. As a result, the Bayer Campus would have 675 fewer parking spaces. Except for the proposed parking garage east of Seventh Street, this alternative would allow for the same buildout of program space as compared to the proposed project.

Refer to Chapter 6, *Alternatives*, of the Draft SEIR for the complete alternatives analysis.

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SECTION 3: EFFECTS DETERMINED TO BE MITIGATED TO LESS-THAN-SIGNIFICANT LEVELS

The Initial Study and Draft SEIR identified certain potentially significant effects that could be mitigated to less-than-significant-levels. The City finds for each of the significant or potentially significant impacts identified in this section (Section 3) that based upon substantial evidence in the record, changes or alterations have been required or incorporated into the project which avoid or substantially lessen the significant effects as identified in the Initial Study and Draft SEIR,³ and discussed in further detail below, and, thus, that adoption of the mitigation measures set forth below will reduce these significant or potentially significant effects to less-than-significant levels. Adoption of the mitigation measures will effectively make the mitigation measures part of the project. In addition, City Conditions of Approval and compliance with City and other regulations will further reduce project impacts.

Therefore, the City finds that based upon substantial evidence in the record, changes or alterations have been required or incorporated into the project which avoid or substantially lessen the significant effects as identified in the Initial Study and Draft SEIR⁴.

For all of the topics below, cumulative impacts were analyzed in the Draft SEIR. For all topics discussed in this section, any impacts, including cumulative impacts, which were determined to have a less than significant effect without mitigation are not the discussed or not discussed at length in these findings consistent with applicable law. A full discussion and analysis of all environment impacts, including those found to be less than significant, are located in Chapter 4 of the Draft SEIR and the associated facts and conclusions are incorporated herein by this reference.

3.1 Aesthetics (Initial Study)

The proposed amended DA includes a proposed parking structure to the south of Dwight Way between Seventh Street and Eighth Street which could present a massive and unvaried façade to the land uses on the east side of Eighth Street. Therefore, this component of the proposed amended DA would have a potentially significant impact on visual quality. However, Mitigation Measure AES-1 would reduce impacts on visual quality to a less than significant level.

Mitigation Measure AES-1: Parking Structure Design (Updated 1991 EIR MM).

The proposed parking structure between Dwight Way, Seventh Street, Eighth Street, and Parker Street shall be designed to maximize visual compatibility with the low-rise, low intensity uses to the north and east, in terms of the parking structure's massing, color, and adjacent landscaping. The Eighth Street façade of the garage shall be articulated to add texture and depth to the structure. A setback as well as landscape and streetscape amenities shall be provided on the perimeter of the parking structure. Stepbacks shall also be provided along Eighth Street.

Pages 5C-14 and 5C-22 of the 1991 EIR find that glass windows on new buildings along the western property line could generate glare that is hazardous to motorists on I-80 and annoying to users of Aquatic Park. While the project would largely maintain existing buildings along the western property line, it would still involve the construction of new or renovated buildings in this area. Therefore, it could introduce significant new sources of glare near the western property line and result in potentially significant impacts related to glare. However, Mitigation measure AES-2 would reduce impacts on glare to a less than significant level.

Mitigation Measure AES-1: Glare Reduction (Updated 1991 EIR MM).

For new and renovated buildings along and visible from the western property line, the use of reflective glass or other glazing or highly reflective exterior materials that would cause glare as the sun sets shall be prohibited.

3.2 Air Quality (Subsequent EIR)

Construction activities under the proposed amended DA would result in the temporary generation of criteria air pollutants, which would affect local air quality. However, Mitigation Measures AQ-1 and AQ-2 would ensure construction emissions would not exceed applicable BAAQMD thresholds and reduce impacts on air quality to a less than significant level.

CEQA Guidelines, 2012. Section 15091.

⁴ *CEQA Guidelines*, 2019. Section 15091

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Mitigation Measure AQ-1: Construction Emissions Measures.

Demolition, grading and construction activities shall comply with the current Bay Area Air Quality Management District's basic control measures for reducing construction emissions (Table 8-2, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the May 2017 BAAQMD CEQA Guidelines or equivalent as updated by BAAQMD).

Mitigation Measure AQ-2: Tier 4 Construction Equipment.

Demolition, grading and construction activities shall utilize at least 90 percent Tier 4 equipment (or better) through 2032 and all Tier 4 equipment (or better) after 2032. If the use of such equipment is not commercially available, the applicant shall prepare a project-specific air quality assessment to evaluate construction-related criteria air pollutants. If the project-specific air quality assessment finds that construction emissions would exceed any of the applicable BAAQMD thresholds, the air quality assessment shall identify emission reduction measures to reduce emissions below the thresholds and the applicant shall implement the measures. Measures may include, but would not be limited to, some or all of the following, as necessary:

- Equip construction equipment with Tier 3 or Tier 4 certified engines or CARB-certified Level 3 diesel particulate filters. All diesel particulate filters shall be kept in working order and maintained in operable condition according to manufacturer's specifications.
- Minimize the idling time of diesel-powered construction equipment to two minutes.
- Use late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.
- Use low-sulfur fuel or other non-diesel for stationary construction equipment.
- Use low-emission on-site stationary equipment.
- Use alternatively-fueled construction equipment (e.g., natural gas, electric).
- Schedule soil import and/or export to reduce the number of daily haul truck trips.
- Phase construction activities to reduce daily equipment use.
- Limit the simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time to reduce the amount of disturbed ground surfaces at any one time.

3.3 Biological Resources (Initial Study)

The project site is located in an urbanized part of Berkeley. However, the Bayer Campus includes some trees in landscaped strips around buildings and parking lots that could potentially provide habitat for migratory birds protected by the California Fish and Game Code, serving as nesting sites. Buildout under the proposed amended DA would involve vegetation removal as part of redevelopment of the Bayer Campus over the 30-year period of the amended DA. Impacts to protected nesting birds could occur if active nests are present in vegetation to be removed, or if birds in the vicinity are disturbed. However, Mitigation Measure BIO-1 would reduce impacts on nesting birds to a less than significant level.

Mitigation Measure BIO-1: Nesting Bird Surveys and Avoidance.

Demolition, grading, construction and tree removal activities shall be conducted outside of the migratory bird nesting season (February 1 through August 31) to reduce any potentially significant impact to birds that may be nesting in the project site. If construction and tree removal activities must occur during the migratory bird nesting season, an avian nesting survey of the project site shall be conducted for active nests of protected migratory birds. The avian nesting survey of areas that would be affected by construction and tree removal activities shall be performed by a qualified wildlife biologist within seven days prior to the start of ground or vegetation disturbance or building demolition activities. If an active bird nest is found, the nest shall be flagged and mapped on the construction plans, along with an appropriate

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no disturbance or protection buffer based on site conditions, which shall be determined by the biologist based on the species sensitivity to disturbance (generally, standard buffers can be 50-250 feet for passerines and 250-500 feet for raptors and special-status species, but site- and species-specific adjustments can be made within the discretion of the biologist, with different buffers established with respect to different levels of disturbance). Work within the nest avoidance buffer shall be prohibited or otherwise restricted per requirements determined by the biologist until the juveniles have fledged. The nest buffer shall be demarcated in the field with flagging and stakes or construction fencing.

Potential buildout under the proposed amended DA would also allow the construction of new multi-story buildings that can cause injury or mortality in birds. Although the project would maintain the existing DA's overall height limit of 80 feet, new multi-story buildings allowed under this height limit could cause "bird strikes." This refers to birds in flight mistaking reflective glass for open air and colliding with windows, resulting in injury or death. Furthermore, the project site's proximity to important bird habitats like the Eastshore Wetlands (100 feet east of site) increases the likelihood of bird strikes. However, Mitigation Measure BIO-2 would reduce impacts of bird strikes to a less than significant level.

Mitigation Measure BIO-2: Bird Strike Avoidance.

New structures or structures undergoing exterior renovations shall include the following:

- One hundred (100) percent of the window area of the west-facing façades of new, expanded, and renovated buildings adjacent to or directly visible from Aquatic Park shall consist of verified bird-safe glazing products, e.g., American Bird Conservancy-endorsed products such as Arnold Glass Ornlux Mikado, Acopian Birdsavers, Bendheim Channel Glass, GlasPro Bird Safe Glass, Guardian Glass SunGuard SN68, Viracon, or others. Alternatively, the reflective or transparent surface area visible to the west-facing frontage of the property shall employ bird-safe glazing treatments, including fritting, netting, permanent stencils, frosted glass, exterior screens, physical grids placed on the exterior of glazing or UV patterns visible to birds. To qualify as bird-safe glazing treatment, vertical elements of the window patterns shall be at least 1/4-inch wide at a maximum spacing of 4 inches, or have horizontal elements at least 1/8-inch wide at a maximum spacing of 2 inches.
- Automatic shades shall be installed on windows and shall be programmed to operate between 10:00 p.m. and sunrise on new building facades facing the western boundary of the project site. Non-emergency exterior lighting shall be shielded to minimize light emission.
- Transparent glass shall not be allowed on rooftops of new, expanded, and renovated buildings, including in conjunction with green roofs.
- The cumulative area of glass façades for newly constructed or expanded buildings facing the project site's westerly boundary shall not exceed 2,250 square feet.

Prior to issuance of a building permit, Bayer shall provide to the City site plans or specifications demonstrating compliance with the above bird-safe construction requirements.

In addition to Mitigation Measure BIO-2, the City also recognizes that under the "Building Color/Materials" Design Guidelines of Exhibit C to the proposed amended DA of the proposed project, for all other portions of the project site not addressed by Mitigation Measure BIO-2, Bayer shall target for new and renovated facilities 100% bird-safe glass or similar treatments unless inclusion of such would compromise the ability of a given facility to meet or exceed Title 24 standards.

3.4 Cultural Resources (Subsequent EIR)

The proposed amended DA would involve renovation of Building B83, which is a historical resource under CEQA. Moreover, there is potential for additional properties which are older than 40 years old to be altered and demolished under the terms of the 30-year DA. However, Mitigation Measures CR-1 and CR-2 would identify historical resources and avoid impacts to the greatest extent feasible, resulting in a less than significant impact to historical resources, and ensuring that impacts to historic resources would not be cumulatively considerable.

Mitigation Measure CR-1: Architectural History Evaluation.

Demolition or alteration of a building or structure that is at least 40 years old at the time of permit application and has not previously been evaluated for demolition or renovation within the last five years from the time demolition or alternation is proposed shall be subject to review at the request of the City by a qualified architectural historian who meets the Secretary of the Interior's Professional Qualifications Standards (PQS) in architectural history or history. The qualified architectural historian or historian shall

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conduct an intensive-level evaluation in accordance with the guidelines and best practices recommended by the State Office of Historic Preservation to identify if the building or structure proposed for demolition or alteration qualifies as a historical resource under CEQA guidelines. Buildings and structures shall be evaluated within their historic context and documented in a technical report and on Department of Parks and Recreation Series 523 forms. The report shall be submitted to the City for review and approval prior to the issuance of a building permit. If no historic resources are identified, no further analysis is warranted. If historic resources are identified, the applicant shall be required to implement Mitigation Measure CR-2.

Mitigation Measure CR-2: Architectural History Evaluation.

For renovations involving Building B83 or historical resources identified through the process described in the architectural history evaluation mitigation measure (CR-1), project activities shall comply with the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (Standards). During the project planning phase (prior to any construction activities), input shall be sought from a qualified architectural historian or historic architect meeting the *Secretary of the Interior's Professional Qualifications Standards* to ensure project compliance with the Standards for Rehabilitation. This input will ensure the avoidance of any direct/indirect physical changes to historical resources. The findings and recommendations of the architectural historian or historic architect shall be documented in a Standards Project Review Memorandum at the schematic design phase. This memorandum shall analyze all project components for compliance with the Standards for Rehabilitation. The memorandum should recommend design modifications necessary to bring projects into compliance with the Standards for Rehabilitation, which shall be incorporated into project designs to ensure compliance with the Standards. The memorandum shall be submitted to the City for review and approval prior to the issuance of a building permit.

Cultural resources records search identified twelve previously recorded cultural resources within a 0.25-mile radius of the project site, indicating that the area is archaeologically sensitive. Buried archaeological resources may exist on the project site, and ground disturbance within the site has the potential to impact archaeological resources. However, Mitigation Measures CR-3 to CR-11 would reduce impacts to archaeological resources to a less than significant impact, and ensuring that impacts to cultural resources would not be cumulatively considerable.

Mitigation Measure CR-3: Cultural Resources Desktop Analysis.

Prior to demolition, grading, new construction, or underground work such as utility installation, a cultural resources Desktop Analysis, consisting of a review of existing information regarding cultural resources on a given project site, shall be conducted. The Desktop Analysis shall include, but not be limited to, a review of the project description and extent of proposed ground disturbance, a review of recent cultural resources records on file at the California Historical Resources Information System, and a review of available historic maps and aerial photography. If a project would solely involve the refurbishment of an existing building and no ground disturbance would occur, this measure would not be required. If no resource impacts are identified, no further analysis is warranted. If potential impacts to resources are identified, the applicant shall be required to implement Mitigation Measure CR-4. If the desktop analysis identifies that an area has been subject to a Phase I cultural resources study in the previous five years, Measure CR-4 would not be required. If the Desktop Analysis identifies that no further analysis is warranted, the results will be documented in a memorandum for review and approval by the City prior to issuance of a building permit.

Mitigation Measure CR-4: Phase I Archaeological Resources Study.

If the desktop analysis described in Mitigation Measure CR-3 identifies the potential to encounter cultural resources, a Phase I cultural resources study shall be performed by a qualified professional meeting the Secretary of the Interior's (SOI) Professional Qualifications Standards (PQS) for archaeology (National Park Service 1983). The Phase I cultural resources study shall include a pedestrian survey of the project site and sufficient background research and fieldwork to determine whether archaeological resources may be present. Archival research shall include a records search of the California Historical Resources

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Information System and a Sacred Lands File search with the Native American Heritage Commission. The report will be submitted to the City for review and approval prior to the issuance of a building permit. Recommendations in the Phase I Report must be implemented prior to and/or during construction to avoid or reduce impacts on archaeological resources. Adherence to recommendations included in the Phase I report shall be documented as appropriate for verification by the City. If the Phase I identifies an archaeological site and/or a high likelihood of subsurface deposits, Measure CR-5 shall be implemented.

Mitigation Measure CR-5: Extended Phase I Testing.

For any projects proposed within 100 feet of a known archaeological site or in areas that have not been subject to previous archaeological testing, monitoring, or other subsurface investigation, as determined by the Desktop Analysis (Mitigation Measure CR-3) or Phase I Report (Mitigation Measure CR-4), the project applicant shall retain a qualified archaeologist to conduct an Extended Phase I (XPI) study to determine the presence/absence and extent of archaeological resources on the project site. If the boundaries of the archaeological site are already well understood based on previous work and are clearly interpretable as such by a qualified cultural resource professional, or if there is documentation that fill is already present to the depth of the current project, XPI testing will not be required. XPI testing shall include a series of shovel test pits and/or hand augured units and/or mechanical trenching to establish the boundaries of archaeological site(s) on the project site. All archaeological excavation shall be conducted by a qualified archaeologist(s) under the direction of a principal investigator meeting the SOI's PQS for archaeology (National Park Service 1983). The results of the XPI will be documented in a technical report and submitted to the City for review and approval prior to the issuance of a building permit. If the archaeological resource(s) of concern are Native American in origin, the qualified archaeologist shall confer with local California Native American Tribe(s) and, if applicable, a Native American monitor shall be present in accordance with Mitigation Measure TCR-2. Recommendations in the XPI Report shall be implemented for all ground disturbance activities and documented as appropriate for verification by the City.

Mitigation Measure CR-6: Archaeological Site Avoidance.

Avoidance will be the preferred treatment measure for an archaeological site identified on the Bayer campus. Any identified archaeological sites will be avoided by project-related construction activities, to the maximum extent feasible to still be able to fulfill the project objectives as determined by Bayer and confirmed by the City. The determination of feasibility will include an assessment of project redesign options, including but not limited to relocation of a proposed building, realignment of utilities, redesign of building plans to build above the existing ground surface and/or to minimize the proposed depth of disturbance, or other options as appropriate for a given project. A barrier (temporary fencing) and flagging will be placed between the work location and any resources within 60 feet of a work location to minimize the potential for inadvertent impacts. The 60-foot avoidance buffer may be reduced as appropriate if recommended by the qualified archaeologist. If the feasibility of avoidance of an archaeological resource of Native American origin is not immediately apparent, Bayer and the City of Berkeley shall contact consulting Tribes to discuss appropriate treatment of the resource, including the implementation of MM CR-7 and CR-8. If, after a good faith effort at resolution, the City, Bayer, and consulting Tribe conclude that agreement is not possible, MM CR-7 shall be implemented.

Mitigation Measure CR-7: Phase II Site Evaluation.

If the results of the Phase I Report and/or XPI indicate the presence of archaeological resources that cannot be avoided by the project and that have not been adequately evaluated for CRHR listing at the project site, the project applicant shall retain a qualified archaeologist to conduct a Phase II investigation to determine if intact deposits are present and if they may be eligible for the CRHR or qualify as unique archaeological resources. A Phase II evaluation shall include necessary archival research to identify significant historical associations and mapping of surface artifacts, collection of functionally or temporally diagnostic tools and debris, and excavation of a sample of the cultural deposit. The sample excavation will characterize the nature of the site, define the artifact and feature contents, determine horizontal and vertical boundaries, and retrieve representative samples of artifacts and other remains.

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If the archeologist and, if applicable, a Native American monitor or other interested tribal representative from a locally affiliated Tribe as listed by the Native American Heritage Commission determine it is appropriate, cultural materials collected from the site shall be processed and analyzed in a laboratory according to standard archaeological procedures. The age of the materials shall be determined using radiocarbon dating and/or other appropriate procedures; lithic artifacts, faunal remains, and other cultural materials shall be identified and analyzed according to current professional standards. The significance of the sites shall be evaluated according to the criteria of the CRHR. The results of the investigations shall be presented in a technical report following the standards of the California Office of Historic Preservation publication "Archaeological Resource Management Reports: Recommended Content and Format (1990 or latest edition)." The report shall be submitted to the City for review and approval prior to the issuance of any building or engineering permits that could disturb identified resources. Recommendations in the Phase II report shall be implemented for all ground disturbance activities and documented as appropriate for verification by the City.

Mitigation Measure CR-8: Phase III Data Recovery.

If the Phase II site evaluation identifies resources that meet CRHR significance standards and if the resources cannot be avoided, the project applicant shall incorporate recommendations for mitigation of archaeological impacts into the final design as per CR-7 above prior to construction. If the resource is significant for its data potential and if recommended by the archaeologist and approved by consulting Tribes if appropriate, Phase III data recovery may be required, including excavation, to exhaust the data potential of significant archaeological sites, and shall be carried out by a qualified archaeologist meeting the SOI standards for archaeology according to a research design reviewed and approved by the City and prepared in advance of fieldwork and using appropriate archaeological field and laboratory methods consistent with the California Office of Historic Preservation Planning Bulletin 5, Guidelines for Archaeological Research Design (1991 or the latest edition thereof). Methods of artifact disposition may include curation for historic-era archaeological resources and reburial onsite within a tribal cultural resources easement as identified in TCR-3 for tribal cultural resources. Curation is not appropriate for tribal cultural resources unless agreed to and/or requested by consulting tribes.

The final Phase III Data Recovery reports shall be submitted to the City of Berkeley prior to issuance of any building permit for grading or construction. Recommendations contained therein shall be implemented throughout all ground disturbance activities.

Mitigation Measure CR-9: Worker's Environmental Awareness Program.

Prior to any ground disturbing activities, the project applicant shall retain an SOI qualified archaeologist to conduct a Worker's Environmental Awareness Program (WEAP) training. The WEAP training shall be focused on archaeological sensitivity and shall be provided to all construction personnel prior to the commencement of any ground-disturbing activities. The WEAP training shall include a description of the types of cultural material that may be encountered, cultural sensitivity issues, the regulatory environment, and the proper protocol for treatment of the materials in the event of a find. Attendance at the WEAP training shall be documented with a sign-in sheet to be submitted to the City for verification of adherence to this measure. This WEAP training may be presented in tandem with the training required under TCR-1.

Mitigation Measure CR-10: Archaeological Monitoring.

If recommended by the Desktop Analysis, Phase I, XPI, Phase II, or Phase III studies, the project applicant shall retain a qualified archaeologist (Monitor) to observe project-related ground-disturbing activities. The Monitor will have the authority to halt and redirect work if any archaeological resources are identified during monitoring. If archaeological resources are encountered during ground-disturbing activities, work in the immediate area must halt and the find must be evaluated for listing in the CRHR. Archaeological monitoring may be reduced or halted at the discretion of the monitors, in consultation with the lead agency, as warranted by conditions such as encountering bedrock, sediments being excavated are fill, or negative findings during the first 60 percent of ground disturbance. If monitoring is reduced to spot-checking, spot-checking shall occur when ground-disturbance activity moves to a new location

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within the project site and when ground disturbance will extend to depths not previously reached (unless those depths are within bedrock). Following the completion of monitoring, a report documenting the monitoring effort shall be prepared and submitted to the City of Berkeley and the Northwest Information Center.

Mitigation Measure CR-11: Unanticipated Discovery of Archaeological Resources.

If archaeological resources are encountered during ground-disturbing activities, whether or not an archaeological monitor is present, work within 60 feet shall be halted. The project applicant shall notify the City and retain an archaeologist meeting the SOI's Professional Qualification Standards for archaeology (National Park Service 1983) to evaluate the find. If necessary, the evaluation may require preparation of a treatment plan and archaeological testing for CRHR eligibility. If the discovery proves to be eligible for the CRHR and impacts cannot be avoided, data recovery excavation may be required. Reports prepared to document and/or evaluate unanticipated discoveries and their treatment shall be submitted to the City of Berkeley for review and approval. Recommendations contained therein shall be implemented throughout the remainder of ground disturbance activities.

3.5 Geology and Soils (Initial Study)

The West Berkeley Project EIR found that no paleontological resources are known to exist in West Berkeley, and no documentation suggests that they occur on the South or North Properties. It is anticipated that most ground disturbance on the North and South Properties during buildout of the amended DA would occur in already disturbed areas that were graded for earlier development on the Bayer Campus or for historic industrial uses, where it is unlikely that intact fossil resources would be encountered. However, construction activities could potentially uncover and disturb paleontological resources beneath the surface. Therefore, Mitigation measure GEO-1 would ensure the protection of fossil discoveries if unearthed during ground-disturbing activities, and reduce impacts to geology and soils to a less than significant level.

Mitigation Measure GEO-1: Discovery of Paleontological Resources.

If a project would solely involve the refurbishment of an existing building and no ground disturbance would occur, this measure would not be required. Prior to ground-disturbing activities, the project applicant shall retain a qualified paleontologist to provide on-call services in the event of an unanticipated discovery. A qualified paleontologist is defined by the Society of Vertebrate Paleontology (SVP) standards as an individual preferably with an M.S. or Ph.D. in paleontology or geology who is experienced with paleontological procedures and techniques, who is knowledgeable in the geology of California, and who has worked as a paleontological mitigation project supervisor for a least two years (SVP 2010). Prior to the start of construction, the qualified paleontologist shall conduct a Paleontological Worker Environmental Awareness Program (WEAP), a training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff. The WEAP shall be fulfilled at the time of a preconstruction meeting at which a Qualified Paleontologist shall attend.

In accordance with SVP (2010) guidelines, all work shall halt in the immediate vicinity of a find and the qualified paleontologist shall evaluate the discovery. The qualified paleontologist shall determine the significance of the discovery and identify whether additional mitigation or treatment is warranted. Measures may include testing, data recovery, reburial, archival review and/or transfer to the appropriate museum or educational institution, such as the University of California Museum of Paleontology. All testing, data recovery, reburial, archival review or transfer to research institutions related to monitoring discoveries shall be determined by the qualified paleontologist and shall be reported to the City. Work in the area of the discovery may resume after the find is properly documented and authorization is given to resume construction work.

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3.6 Greenhouse Gases (Subsequent EIR)

The project's construction and operation would generate temporary and long-term increases in GHG emissions. Construction GHG emissions mainly derive from site preparation and grading; Operational GHG emissions associated with land use development mainly derive from electricity and natural gas usage, mobile sources, solid waste disposal, water usage, wastewater generation, and landscaping equipment; Operational GHG emissions associated with stationary sources mainly derive from emergency generators and boilers. The project's use of 100 percent carbon-free electricity is consistent with Bayer's 2030 Sustainability Initiative and natural gas usage is expected to decrease due to BMC Chapter 12.80, which would prohibit the installation of natural gas infrastructure in the new administration, production, maintenance, and warehouse buildings. Implementation of Mitigation Measure GHG-1 would reduce GHG emissions associated with the land use development component of the project below existing conditions, thus not exceeding the de minimis threshold of 0 MT of CO₂e per year, resulting in less than significant impacts.

Mitigation Measure GHG-1: Renewable Electricity Sources.

Electricity used at the site shall be sourced from 100 percent renewable energy resources by 2030. Bayer shall submit documentation showing as such to the City every five years, or at intervals required by the City, to ensure compliance.

3.7 Hazards and Hazardous Materials (Subsequent EIR)

There are known releases of hazardous substances within and adjacent to the project site with potentially localized contamination or concentrations of hazardous substances. Additionally, there are several historical uses of the property and adjacent properties that may have resulted in the presence of hazardous materials or wastes in onsite soil, soil vapor, and/or groundwater. Although the project would be required to comply with existing regulations related to known hazardous materials and wastes, unanticipated hazardous materials and wastes could be disturbed during demolition, grading, and other soil or groundwater disturbance under the proposed amended DA, and expose workers to hazardous materials during construction activities. However, Mitigation Measures HAZ-1 to HAZ-4 would ensure identification of potential hazards associated with demolition, grading (soil and groundwater disturbance), and construction; access of potential or known presence of contaminants; involvement of regulatory agency for oversight of UST or underground feature removal, soil, soil vapor and groundwater assessment, and remediation; identification and management of potential safety issues during demolition, grading and construction. Implementation of these Mitigation Measures would reduce impacts on hazards and hazardous materials to a less than significant level and ensure that the project would not contribute to a cumulative hazards or hazardous materials impact.

Mitigation Measure HAZ-1: Property Assessment – Phase I and Phase II Environmental Site Assessments (ESA).

The project applicant shall prepare a site-specific Phase I ESA for each development area / Block, in accordance with standard ASTM methodologies, to assess the land use history of the project site. Phase II ESAs (i.e., soil, groundwater, soil vapor subsurface investigations) shall be completed where a building is proposed south of Carleton Street or based on the results of the Phase I ESAs. Specifically, if the Phase I ESAs identify recognized environmental conditions or potential concern areas, a Phase II ESA would be conducted to determine whether the soil, groundwater, and/or soil vapor has concentrations exceeding regulatory screening levels for commercial/industrial land uses.

If the Phase II ESA concludes that the site is or may be impacted and could affect the planned development, then an assessment, remediation, or corrective action (e.g., removal of contaminated soil, in-situ treatment, capping, engineering controls) shall be conducted prior to or during construction under the oversight of federal, state, and/or local agencies (e.g., USEPA, DTSC, SFB RWQCB, City of Berkeley TMD, Alameda County DEH) and in full compliance with current and applicable federal and state laws and regulations. Additionally, Voluntary Cleanup Agreements may be used for parcels where remediation or long-term monitoring is necessary.

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Mitigation Measure HAZ-2: Regulatory Agency UST Involvement – City of Berkeley TMD and SFB RWQCB.

Because the project site and immediately adjacent properties are associated with open and closed LUST and Cleanup Program cases overseen by the SFB RWQCB, the project applicant shall notify the SFB RWQCB of the following:

- Development plans for each Block located south of Carleton Street and for Block B North east of Fourth Street
- Completion of subsequent Phase I ESAs
- Identification of unanticipated stained or odorous soils during demolition, grading, and/or construction activity
- Identification of additional underground tanks and associated piping, or other underground features such as railroad spurs or ties, unknown piping, cisterns, wells, waste/burn pits, etc., if encountered

Additionally, all onsite UST removals and associated assessment work shall be completed under the direction of the City of Berkeley TMD and/or the SFB RWQCB. To the extent there are any pending LUST and Cleanup Program cases on the project site, the UST closure and agency approval documents shall be reviewed and approved by the City of Berkeley TMD and/or the SFB RWQCB prior to issuance of building permits for grading or any other ground disturbance.

Upon identification of stained soil, odorous soil, USTs, or other underground features onsite, City of Berkeley TMD and/or SFB RWQCB could require actions such as: preparation of removal action workplans; obtaining permits for removal of USTs or other underground features; excavation and offsite disposal of soil; assessment of soil and/or groundwater beneath the excavation; and/or completion of UST removal reports or case closure documents.

Mitigation Measure HAZ-3: Regulatory Agency Subsurface Involvement – ACPWA, SFB RWQCB and City of Berkeley.

The City of Berkeley TMD and the SFB RWQCB shall continue to provide agency oversight of assessment and remediation of the open Cleanup Program case (case #01S0045) on the project site. Additionally, the applicant shall notify the City of Berkeley and SFB RWQCB Cleanup Program project manager of the following:

- Development plans for Block B North east of Fourth Street and development south of Carleton Street
- Onsite use of 14 hydraulic elevators that may have contained oils containing PCBs (Farallon, 2020)
- Onsite use of above-ground storage tanks used to store diesel for generators (Farallon, 2020)
- Other regulatory UST case listings (City of Berkeley and SFB RWQCB) and assessment work that will be completed under the direction of other regulatory agencies
- All former environmental documents completed for the site of development disturbance, including this SEIR

Upon notification of the information listed above, the City of Berkeley and the SFB RWQCB could require actions such as: preparation of subsurface investigation workplans; completion of soil, soil vapor, and/or groundwater subsurface investigations; installation of soil vapor or groundwater monitoring wells; excavation and offsite disposal of soil; completion of human health risk assessments; and/or completion of remediation reports or case closure documents.

If groundwater wells or soil vapor monitoring probes are identified within the construction area during demolition, subsurface demolition, or construction at the project site, they will be abandoned/destroyed under permit from the Alameda County Public Works Agency (ACPWA). Demolition activities will be documented in a letter report submitted to the ACPWA and SFB RWQCB within 60 days of the

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completion of abandonment activities. Abandonment of sub-slab vapor points will be completed with SFB RWQCB approval and demolition activities will be documented in a letter report to SFB RWQCB. The SFB RWQCB non-objection, concurrence, no further action, closure, and/or agency approval documents shall be delivered to and reviewed by the City of Berkeley prior to issuance of any building permit authorizing grading or construction on the site. The SFB RWQCB may determine that City of Berkeley TMD or DTSC may be best suited to perform the lead agency duties for assessment and/or remediation at the project site, in which case this and other mitigation measures will still apply.

Mitigation Measure HAZ-4: Soil and Groundwater Management Plan.

The project applicant shall implement the recommendations of the Soil and Groundwater Management Plan (SGMP) prepared by Farallon Consulting LLC dated December 28, 2020. The SGMP shall be reviewed by the City of Berkeley Toxics Management Division prior to issuance of permits for grading or other ground disturbance and the report shall be updated if needed. The SGMP recommendations are related to:

- Management of Unanticipated Subsurface Conditions
- Health and Safety Requirements
- Onsite Soil Management
- Groundwater Management
- Stormwater Management
- Soil and Groundwater Management Plan Reporting Requirements

Construction workers shall be informed about environmental conditions and measures to mitigate potential risks to the environment, construction workers, and other nearby receptors from potential exposure to hazardous substances that may be associated with unknown conditions or unexpected underground structures, and known contaminated soil or groundwater encountered during construction activities.

The SGMP shall be updated and the updated recommendations shall be implemented in the following cases:

- A change in project site uses;
- Receipt of additional information pertaining to project site environmental conditions;
- Updated chemical toxicity information for contaminants detected at the project site based on revised regulatory screening levels; or,
- New legal or regulatory soil or groundwater management requirements applicable to the project site.

Implementation of the proposed amended DA would include operation of Laboratory, Production, Storage, and manufacturing buildings that could involve the use, storage, disposal, or transportation of hazardous materials, including biohazardous and chemical materials. Upset or accident conditions at the project site could involve the release of hazardous materials into the environment. However, the proposed amended DA includes numerous use restrictions under Exhibit G that further ensure biosafety-related risks are minimal and less-than-significant, as discussed and further clarified in the Responses to Comments on the Draft SEIR, dated October 2021, and Bayer's table of clarifying information in response to Public Comments, delivered to the City on August 26, 2021, which are incorporated herein by this reference. Furthermore, adherence to existing federal, state, and local regulations and implementation of Mitigation Measure HAZ-5, as documented in the administrative record of proceedings, would reduce impacts concerning hazardous materials during construction activities to a less than significant level and ensure that the project would not contribute to a cumulative hazards or hazardous materials impact.

Mitigation Measure HAZ-5: Hazards Materials Safety Plan (Updated 1991 EIR MM).

The project applicant shall prepare a Hazardous Materials Safety Plan to address potential issues that

may be encountered during project operation involving the use, storage, transport, and disposal of biohazardous and chemical materials. The Hazardous Materials Safety Plan shall be updated annually and reviewed by Berkeley's Toxics Management Division. The Plan shall include, but not be limited to, the following information and measures:

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- Documentation of ongoing compliance with all applicable federal, state, and local regulations related to biohazardous safety, storage, transport, and disposal procedures, and emergency response preparedness, including biosafety guidelines published by the NIH and CDC.
- Documentation that current and future operations would prohibit the use of biohazardous agents within Risk Groups 3 and 4.
- Documentation of ongoing coordination for emergency preparedness with the City of Berkeley, including preparation of an emergency response plan and an emergency disaster procedures manual for release of hazardous biological materials. The disaster preparedness plan shall include annual training for and coordination with City of Berkeley emergency responders as to the nature of hazards on site, types of organisms likely to be encountered, where to take exposed persons to receive appropriate treatment, and staging semi-annual mock disaster drills.
- Updates to and continued compliance with the site's Risk Management Prevention Plan (RMPP) for the use of ammonia. The RMPP shall be subject to review and approval by the USEPA.
- Updates to and continued compliance with the Hazardous Materials Release Response Plan and inventory and Risk Management and Prevention program required by CalEPA.

3.8 Hydrology and Water Quality (Initial Study)

The proposed amended DA would allow for construction activities on the Bayer Campus that have the potential to cause soil erosion from exposed soil, an accidental release of hazardous materials used for equipment such as vehicle fuels and lubricant, or temporary siltation from storm water runoff. Soil disturbance would occur during excavation for proposed building foundations, demolition of existing buildings, and grading activity. If uncontrolled during construction, soil erosion and water pollutants could have adverse offsite effects on water quality, for instance at nearby wetlands in Aquatic Park. However, future development on the project site would be required to comply with state and local water quality regulations designed to control erosion and protect water quality during construction. This includes compliance with the requirements of the State Water Resources Control Board (SWRCB) Construction General Permit, which requires preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP) and Best Management Practices (BMPs) for projects that disturb one acre or more of land. Construction activity therefore would not result in the degradation of water quality in receiving waters, resulting in less than significant impacts on construction-related water quality.

New development under buildout of the project would be subject to continuing water quality requirements included in the proposed amended DA, which establish a Surface Water Run-off Program that requires quarterly sampling of surface water discharge prior to entering the City's storm drain system, to ensure that waste from the Bayer Campus does not discharge into the system. In addition, it requires that Bayer use BMPs in accordance with NPDES guidelines to reduce contamination of surface waters. Sampling of surface water discharge must demonstrate no contribution to degradation of surface waters at Aquatic Park. New development on the project site also would be subject to the requirements of the currently applicable Municipal Regional Stormwater NPDES Permit issued by the San Francisco Bay Regional Water Quality Control Board (SFBRWQCB). This permit regulates the City of Berkeley's stormwater discharges to San Francisco Bay.

Water quality in stormwater runoff is also regulated locally by the City. Provision C.3 of MRP2 or similar provisions in the applicable NPDES Permit addresses post-construction stormwater requirements for new development and redevelopment projects that add and/or replace 10,000 square feet or more of impervious area or special land use categories that create and/or replace 5,000 square feet of impervious surfaces. These "regulated" projects are required to meet certain criteria: 1) incorporate site design, source control, and stormwater treatment measures into the project design; 2) minimize the discharge of pollutants in stormwater runoff and non-stormwater discharge; and 3) minimize increases in runoff flows as compared to pre-development conditions. Additionally, projects in Berkeley that drain to a natural water body must also construct and maintain hydromodification measures to ensure that estimated post-project runoff peaks and durations do not exceed estimated pre-project peaks and duration. Compliance with the applicable state, local,

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and DA requirements described above would increase infiltration of stormwater, decrease stormwater runoff, promote capture and use, and would reduce the risk of water contamination within the project site from operation of new and existing activities on the site to the maximum extent practicable. However, Mitigation Measures from the 1991 EIR would continue to apply to the proposed project to avoid adverse impacts on surface water quality from stormwater runoff.

Mitigation Measure HWQ-1: Best Management Practices (Updated 1991 EIR MM).

The project applicant shall prepare documentation of Best Management Practices to minimize the potential for water pollution. Typical elements of such a document would include addressing the possibility of substituting less toxic compounds in manufacturing and research and development and proper handling of those toxic compounds used.

Mitigation Measure HWQ-2: Source Control (Updated 1991 EIR MM).

The project applicant shall manage pollutants on the project site such that they are not easily mobilized and discharged into stormwater runoff. This shall involve configuring fuel storage under roofed areas and preventing on-site runoff from flowing through these areas. Hazardous materials stored in uncovered areas shall be fully contained or covered such that they do not come into contact with rainfall.

Mitigation Measure HWQ-3: Water Quality Monitoring (Updated 1991 EIR MM).

The project applicant shall perform sampling and testing of stormwater runoff from the project site four times per year. The extent and location of this monitoring will be based upon the degree of source runoff controls implemented. Monitoring shall be used primarily to ensure source controls are working and to detect any additional or accidental pollutants in stormwater runoff.

Mitigation Measure HWQ-4: Pollutant Removal (Updated 1991 EIR MM).

The project applicant shall install systems to remove pollutants before stormwater runoff leaves the project site. This may involve physical removal or chemical or biological treatment depending on the type of pollutants that would be present. Uncovered parking areas shall receive street sweeping monthly to remove pollutants, oils, and greases before they are mobilized by runoff. Storm drains downstream of hazardous materials storage areas shall be equipped with manual shut-off valves. In the event of a spill, these valves shall be immediately closed, and shall remain closed until clean-up has been completed.

Mitigation Measure HWQ-5: Management of Underground Tanks (Updated 1991 EIR MM).

The project applicant shall protect from damage existing wells that monitor potential releases of pollutants from underground tanks and may be required to relocate them if they would be affected by construction. Remediation or excavation of soil contaminated by underground tank releases, if necessary, shall be completed before construction of permanent foundations.

Mitigation Measure HWQ-6: Monitoring and Remediation of Seepage into Aquatic Park (Updated 1991 EIR MM).

The project applicant shall contribute to the funding of (as determined by the City) or perform periodic groundwater sampling and monitoring where groundwater seeps from the 10- to 12-foot-high embankment along the western edge of the Southern Pacific Railroad. If the City determines that the Bayer Campus' use of hazardous material has contributed to contamination of groundwater seepage which supports the narrow freshwater wetland between the main lagoon at Aquatic Park and the railroad, Bayer shall contribute to the funding of such remediation, if necessary. If the City determines that contamination of groundwater seepage originates from properties outside the Bayer Campus, then the project applicant shall not be responsible for funding remediation of such contamination.

Mitigation Measure HWQ-7: Source Control for Groundwater Contamination (Updated 1991 EIR MM).

The project applicant shall implement standard safeguards, monitoring, and contingency measures to minimize the potential for future contamination of the local groundwater. Such measures include roofing

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and/or berming of storage areas, lining storage areas to prevent infiltration, and/or installing shutoff valves in downslope storm drain lines.

3.9 Noise (Subsequent EIR)

During implementation of the proposed amended DA, residences and businesses located adjacent and nearby to new development would be exposed to temporary construction and demolition noise during phased development implementation of the North and South Properties. Demolition of existing buildings and construction of new buildings under the amended DA would be expected to require the use of heavy construction equipment, such as scrapers, bulldozers, water trucks, haul trucks, and pickup trucks. Noise levels during construction and demolition was modelled for closest noise sensitive receptors situated north, east, south, and west of the North and South Properties. The modelled noise levels would exceed the City's most conservative weekday and weekend thresholds of 60 dBA and 50 dBA $L_{eq(h)}$ for R-1 residential zone receivers and exceed the City's thresholds of 70 dBA and 60 dBA $L_{eq(h)}$ for receiving commercial/industrial zone receivers. Modeled construction and demolition noise would also exceed the City's daytime interior noise level standard of 45 dBA L_{eq} at noise sensitive receivers adjacent to Bayer Campus. In addition, maximum and hourly average construction noise levels would result in temporary increases in ambient noise levels in the project vicinity. However, Mitigation Measure N-1 would reduce construction-related noise impacts to a less than significant level and ensure compliance with the City's exterior and interior noise thresholds.

Mitigation Measure N-1: Construction-Related Noise Reduction Measures (Updated 1991 EIR MM).

The following measures shall be implemented during construction for the purpose of reducing construction-related noise impacts:

- **Neighbor Notification.** At least two weeks prior to initiating construction activities requiring the use of two or more pieces of heavy construction equipment at the project site, the applicant shall provide an ongoing website of on-site construction activities and written notice to businesses and residents within 500 feet of the project site construction areas, including: (1) a description of the Project; (2) a description of construction activities; (3) a daily construction schedule (i.e., time of day) and expected duration (number of weeks or months); (4) the name and phone number of the "Noise Management Individual" for the Project; (5) a commitment to notify neighbors at least four days in advance of any authorized extended work hours and the reason for extended hours; (6) notice that construction work is about to commence; and (7) the designated "Disturbance Coordinator" responsible for responding to any local complaints about construction noise. The noise manager would determine the cause of the noise complaints (e.g., starting too early, bad muffler) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval prior to issuance of a building permit.
- **Disturbance Coordinator.** The applicant shall designate a disturbance coordinator who shall be responsible for responding to any local complaints about construction noise. The noise disturbance coordinator shall determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and shall require that reasonable measures warranted to correct the problem be implemented. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site outside the gate visible to passersby (the campus is closed).
- **Noise Reduction Program.** The applicant shall develop a site-specific construction noise reduction program prepared by a qualified acoustical consultant to reduce construction related noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer or a delegate prior to issuance of a building permit. The noise reduction program shall include time limits for construction and all technically and economically feasible measures to ensure that construction complies with the City of Berkeley Municipal Code Section 13.40.070. The program shall include, but is not limited to the following available controls to reduce construction noise levels to as low as practical:
 - **Temporary Noise Barrier.** The applicant shall construct eight-foot high solid plywood fences along construction site boundaries adjacent to off-site noise sensitive residences or other noise-

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sensitive land uses (e.g., school uses) to meet applicable thresholds. These fences shall be outfitted with noise control blanket barriers where necessary to effect reductions that result in compliance with the City's quantified noise construction thresholds, as determined by the noise control plan.

- **Mufflers.** Construction equipment shall be properly maintained and all internal combustion engine driven machinery with intake and exhaust mufflers and engine shrouds, as applicable, shall be in good condition and appropriate for the equipment. During construction, all equipment, fixed or mobile, shall be operated with closed engine doors and shall be equipped with properly operating and maintained mufflers, consistent with manufacturers' standards.
- **Electrical Power.** The applicant shall utilize "quiet" models of air compressors and other stationary noise sources where technology exists. The applicant shall select hydraulically or electrically powered equipment where feasible and avoid pneumatically powered equipment where feasible.
- **Equipment Staging.** All stationary noise-generating equipment shall be located as far as possible from sensitive receivers when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
- **Equipment Idling.** Unnecessary idling of internal combustion engines shall be prohibited. Construction equipment that would not be used for more than five minutes should be turned off completely.
- **Construction Vehicles.** Construction-related traffic shall be routed along major roadways and away from sensitive receivers, where feasible.
- **Workers' Radios.** All noise from workers' radios shall be controlled such that radios are not audible at sensitive receivers near construction activity.
- **Smart Back-up Alarms.** Mobile construction equipment shall have smart back-up alarms that automatically adjust the sound level of the alarm in response to ambient noise levels. Alternatively, back-up alarms shall be disabled and replaced with human spotters to ensure safety when mobile construction equipment is moving in the reverse direction.
- **Additional Noise Attenuation Techniques.** For development on the portion of the site east of Seventh Street, implement the measures set forth in the Noise Reduction Program and either: (1) erect temporary noise control blanket barriers, where necessary, along building facades facing construction sites; (2) restrict construction to weekdays; or (3) implement other noise reductions alternatives that could feasibly reduce noise to achieve the City's quantified noise construction thresholds.

3.10 Public Services (Initial Study)

Buildout of the Bayer Campus under baseline conditions would total 1,866,000 square feet. The project would involve a net reduction of 128,000 square feet in buildout relative to baseline conditions. Because the project would not allow for an increase in development potential, the 1991 EIR's finding that buildout of the existing DA would not necessitate additional employees and equipment, with adherence to proper security precautions, would continue to apply. However, Mitigation Measure PS-1 in the 1991 EIR would still be necessary to reduce the risk of on-site crime that requires police protection services, and reduce impacts on police protection to a less than significant level.

Mitigation Measure PS-1: Security Measures (Updated 1991 EIR MM).

The project applicant shall continue implementing the following measures recommended by the Berkeley Police Department including but not limited to:

- Prepare a Crime Prevention Evaluation Analysis Report in coordination with the Police Department;
- Employ a highly visible security guard;

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- Provide adequate lighting in parking areas and around buildings in use in the evenings; and
- Utilize solid walls, burglar alarms, and/or safety glazing on the windows for buildings containing pharmaceuticals.

3.11 Recreation (Initial Study)

The proposed project would result in an estimated 2,000 employees by 2052. This represents a net increase of 108 employees beyond baseline conditions, or 5.7 percent more employees on the Bayer Campus. By increasing the number of employees on-site, the project would increase demand for recreational facilities in Berkeley. Additional employees who reside in the Berkeley area could use City parks outside of work hours. However, park use by 108 additional employees would have a marginal effect on overall use of City parks and would not substantially contribute to physical deterioration of park facilities. Furthermore, the project would add at least nine acres of open space in the form of fields, sports courts, pedestrian trails, bicycle trails, outdoor eating areas, and landscaping only open to Bayer employees. The proposed expansion of recreational space serving employees on the Bayer Campus would reduce demand for off-site parks including Aquatic Park during work hours. However, it is expected that some Bayer employees would continue to use Aquatic Park, resulting in the physical deterioration of the park. Implementation of Mitigation Measure REC-1 would ensure continued funding for park maintenance and improvements, which would reduce impacts on existing parks and facilities to a less than significant level.

Mitigation Measure REC-1: Aquatic Park Funding (Updated 1991 EIR MM).

The project applicant shall contribute to park maintenance and improvements related to Aquatic Park through an upfront payment of \$385,000. The contribution shall be paid to the City of Berkeley Parks, Recreation, and Waterfront Department by February 25, 2022.

3.12 Transportation (Subsequent EIR)

The proposed amended DA would not conflict with applicable policies addressing transit, bicycle and pedestrian facilities, as detailed in Section 4.6 of the DEIR, and further clarified in the Responses to Comments on the Draft SEIR, dated October 2021, and applicant's August 23, 2021 Letter to the City of Berkeley in Response to Traffic-Related Public Comments on the Draft SEIR, incorporated herein by this reference. The proposed project would be consistent with the City's General Plan and West Berkeley Plan goals and policies, which generally promote non-automobile trips over automobile trips. Under the existing entitlement, Bayer is required to implement a Transportation Demand Management (TDM) Program to reduce single-occupant automobile trips generated by the project site. As part of the TDM Program, Bayer is required to continue to provide funding for the West Berkeley Shuttle, which provides free shuttle service between the project site and the Ashby BART station. Without continued implementation of the TDM Program, operation under the amended DA may conflict with General Plan and West Berkeley Plan policies that encourage vehicle trip reduction and increased transit use, including General Plan Policies T-7 and T-10 and West Berkeley Plan Policy 1.7, and General Plan Policy T-2, which calls for local efforts to maintain and enhance public transportation services. However, Mitigation Measure T-1 would require the continued implementation of the TDM Program which would ensure consistencies with programs, plans, ordinances or policies addressing the circulation system.

Mitigation Measure T-1: Transportation Demand Management Program (Updated 1991 EIR MM).

The project applicant shall continue to implement and update the Transportation Demand Management (TDM) Program to reduce single-occupant automobile trips generated by the project site. The TDM Program shall be reviewed and approved by the City of Berkeley prior to issuance of building permits for development allowed under the amended DA. In addition, the TDM Program shall be updated by Bayer and approved by the City every five years, or at intervals required by the City, to ensure that services are consistent with best practices to reduce the use of single-occupant automobile trips to and from the project site.

The TDM Program may include, but not be limited to, the following information and measures:

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- Continued funding and implementation of the West Berkeley Shuttle with regular service and expansion to meet demand;
- Pre-tax commuter benefits;
- Travel coordination, via a Transportation Coordinator and regularly disseminated transportation and commute information;
- On-site amenities such as eating and recreation facilities;
- Telecommute program; and,
- Bicycle parking, repair stations and education, as well as employee showers, changing facilities and lockers.

3.13 Tribal Cultural Resources (Subsequent EIR)

Based on the results of AB 52 consultation, there are no known tribal cultural resources located within the project site. However, the project site is considered highly sensitive for archaeological resources that may later be recommended as a tribal cultural resource by tribal organizations. Implementation of TCR-1 to TCR-3 would reduce impacts on tribal cultural resources to a less than significant level, and ensure no cumulatively considerable impacts related to cultural resources.

Mitigation Measure TCR-1: Worker's Environmental Awareness Program.

Prior to ground disturbing activities, the project applicant will retain a locally affiliated tribal member who represents a tribal organization that was contacted as part of Assembly Bill 52 outreach to conduct a Worker's Environmental Awareness Program (WEAP) training. The WEAP training shall be provided to all construction personnel (in conjunction with the cultural resources WEAP) prior to the commencement of ground-disturbing activities. The WEAP training shall include a description of the types of materials that may constitute Tribal Cultural Resources, the reasons for their traditional cultural significance and importance to tribal members, the stop work authority of the Native American monitor, and the proper protocol for the respectful treatment of the resource in the event of an unanticipated discovery. Attendance at the WEAP training shall be documented with a sign-in sheet for submittal to the City for verification of adherence to this measure. This WEAP training may be presented in tandem with the training required under CR-9.

Mitigation Measure TCR-2: Native American Monitoring.

If recommended by the Desktop Analysis, Phase I, Extended Phase I (XPI), Phase II, or Phase III studies required under Mitigation Measures CR-1 through CR-8, the project applicant shall retain a qualified local Native American monitor to observe all ground disturbance, including archaeological excavation, associated with development facilitated by the project. Native American monitoring shall be provided by a locally affiliated tribal member. Monitors will have the authority to halt and redirect work if tribal cultural resources are identified during monitoring. If tribal cultural resources are encountered during ground-disturbing activities, work within 60 feet must halt and the find must be evaluated. Native American monitoring may be reduced or halted at the discretion of the monitors, in consultation with the lead agency, as warranted by conditions such as encountering bedrock, sediments being excavated are fill, or negative findings during the first 60 percent of ground disturbance. If monitoring is reduced to spot-checking, spot-checking shall occur when ground-disturbance moves to a new location within the project site and when ground disturbance will extend to depths not previously reached (unless those depths are within bedrock). Following the completion of monitoring, a report documenting the monitoring effort shall be prepared and submitted to the City of Berkeley and the Northwest Information Center.

Mitigation Measure TCR-3: Cultural Resources Open Space Easement.

The project applicant will set aside an area that could be used as a Tribal Cultural Resources Open Space Easement in the event that tribal cultural resources are encountered during construction activities and are unable to be avoided. The purpose of the Cultural Resources Open Space Easement will be to provide an onsite location for reinterment of sensitive Native American cultural resources and/or human remains, as well as other associated funerary objects. If said remains are encountered, a Cultural

Resource Open Space Easement will be developed and granted by the project applicant in consultation

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with the identified Most Likely Descendant(s), and other affiliated tribes identified by the NAHC as applicable. Should an easement be necessary, the following actions would be prohibited on the land subject to said easement, except as required for the reburial of sensitive cultural resources: grading; excavation; placement of soil, sand, rock, gravel or other material; clearing of vegetation with machinery; construction; erection or placement of a building or structure; vehicular activities; trash dumping; installation of wet or dry infrastructure, such as irrigation systems; or for a purpose other than as open space for tribal use only.

Exceptions include the following:

- Placement and reburial of sensitive Native American cultural resources or human remains.
- Access shall be provided for identified Most Likely Descendant(s), and other affiliated tribes identified by the NAHC in perpetuity.
- Selective clearing of vegetation by hand if required by fire authorities for the purpose of reducing an identified fire hazard or the removal of vegetation using chemicals for vector control purposes where required by the Department of Environmental Health.
- The installation of a bench, marker, or other amenity if desired by the consulting Tribe(s).

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SECTION 4: EFFECTS DETERMINED TO BE LESS THAN SIGNIFICANT OR NOT SIGNIFICANT

The City finds that, based upon substantial evidence in the record, as discussed below, the following impacts associated with the project are not significant or are less than significant. In addition, the City finds there would be no new or substantially more severe impacts to the following issue areas than what was analyzed in the 1991 EIR. The Supplemental Initial Study included as Appendix A of the Draft SEIR provides a detailed analysis of the less-than-significant impacts of the proposed project for all issue areas below.

4.1 Agricultural and Forest Resources (Initial Study)

The project site is located in an urban area in the city of Berkeley. There are no agricultural resources, Williamson Act-contracted land, or forest land located on or near the project site. The project would not allow for conversion of agricultural land to non-agricultural uses or result in the loss of forest land or conversion of forest land to non-forest use. Therefore, the project would result in *no impacts* to agricultural for forest resources.

4.2 Energy (Initial Study)

Construction activities would result in short-term consumption of energy. However, energy use during construction would be temporary, and construction equipment used would be typical of similar-sized construction projects in the region. In addition, construction contractors would be required to comply with the provisions of California Code of Regulations Title 13 Sections 2449 and 2485 and the U.S. EPA Construction Equipment Fuel Efficiency Standard, which would also minimize inefficient, wasteful, or unnecessary fuel consumption. In addition, per applicable regulatory requirements such as 2019 California Green Building Standards Code, the project would comply with construction waste management practices to divert a minimum of 65 percent of construction and demolition debris. These practices would result in efficient use of energy necessary to construct the project. Therefore, project construction would not result in potentially significant environmental effects due to the wasteful, inefficient, or unnecessary consumption of energy, and impacts would be *less than significant*.

Operation of the proposed project would require energy use in the form of electricity, natural gas, and gasoline and diesel fuel consumption. However, given compliance with existing state and local regulations, including California Building Code (CBC) Title 24, CALGreen (as codified in CCR Title 24, Part 11), and BMC Chapter 19.37, project operation would not result in potentially significant environmental effects due to the wasteful, inefficient, or unnecessary consumption of energy. Furthermore, the proposed amended DA would implement a TDM program that would include continued funding of the West Berkeley Bart Shuttle from Bayer to the Ashby BART station. In the event that demand increases under the proposed DA, Bayer would either increase shuttle capacity, increase service frequency, or both, which would reduce vehicle trips (and related energy consumption) associated with the proposed DA. This would incentivize the use of public transit, active transportation, and fuel-efficient vehicles for accessing the project site. Therefore, energy impacts on operational phase would be *less than significant*.

4.3 Land Use and Planning (Initial Study)

The Bayer Campus would be located in an urban area with a fully developed street grid. The project would not include elements that would physically divide established communities in West Berkeley. The North and South Properties would be closed to public access and would remain so. Therefore, no land use impact related to the physical division of an established community would occur as a result of the proposed project.

The project would also be consistent with the Berkeley Municipal Code, the Berkeley General Plan and the West Berkeley Plan, which were adopted to avoid or mitigate environmental effects. Therefore, impacts on land use and planning would be *less than significant*.

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4.4 Mineral Resources (Initial Study)

The project site is in a fully urbanized area that is incompatible with mineral resource extraction. The City of Berkeley has no active mineral extraction industry, and therefore the project would not result in the loss of availability of valuable mineral resources or mineral resource recovery sites. There would be *no impacts*.

4.5 Population and Housing (Initial Study)

The project would not allow for construction of new residences but would facilitate growth in employees. Currently the Bayer Campus has approximately 1,000 employees. Under baseline conditions, it is estimated that the proposed project would result in an estimated 2,000 employees by 2052. The 1991 EIR assumed that approximately 21 percent of new employees would seek housing in Berkeley, based on an estimate by the City's Office of Economic Development (Berkeley 1991). Applying the same rate, the projected net increase of 108 employees would result in an increase of 23 households in Berkeley. Based on the current average household size of 2.26 in Berkeley, it is estimated that additional employees and their households would increase the citywide population by 52 people. Table 22 in the Initial Study showed that the estimated population increase of 52 people would represent less than 0.1 percent of total citywide population in 2040. Therefore, the project would result in a *less than significant impact* related to population.

The project would involve redevelopment of Bayer's existing campus on the North and South Properties, which lack any housing units. Therefore, the project would not displace existing people or housing. *No impact* would occur.

4.6 Utilities and Service Systems (Subsequent EIR)

Buildout of the Bayer Campus under the amended DA would result in a net reduction of 29,594 gallons of wastewater generation per day (0.03 mgd) compared to baseline conditions (existing DA). Furthermore, the project would be required to comply with the City of Berkeley's current Private Sewer Lateral (PSL) Ordinance (BMC Chapter 17.24), which is consistent with the requirements of EBMUD's Regional Private Sewer Lateral Ordinance and includes regulations for the inspection, testing, repair, replacement, and ongoing maintenance of private sewer laterals. Under the PSL Ordinance, the project applicant would be required to upgrade or verify the condition of private sewer laterals within the project site before approval of project building permits. The Ordinance would also require that the project eliminate wet-weather infiltration and inflow to avoid impacts related to significant increases in wastewater flow during storms. Therefore, given compliance with existing regulations, the project would result in *less than significant* impacts related to wastewater treatment capacity and wastewater conveyance systems.

Buildout under the proposed amended DA would demand roughly the same amount of water as existing uses within the project site. With the implementation of Demand Management Measures required by EBMUD, existing and projected water supply would be adequate to serve the proposed project. The proposed amended DA would not require the construction of new or expanded water treatment facilities. Therefore, impacts related to water supply and water infrastructure would be *less than significant*.

Buildout under the proposed DA amendment would result in additional employees within the project site compared to buildout under current entitlements, which would increase the amount of solid waste generated within the project site by 94 tons per year, or 68 cubic yards per year, compared to baseline conditions. This amount would equate to 2,015 cubic yards over the 30-year implementation period of the DA Amendment. The total need for waste disposal would represent approximately 0.003 percent of the current total remaining landfill capacity for the Altamont Landfill. Moreover, continued compliance with applicable regulations listed in the Solid Waste Regulatory Setting would ensure that the development within the site complies with federal, state, and local statutes and regulations related to solid waste and would lead to increased recycling and waste diversion. Therefore, impacts related to solid waste and disposal facilities would be *less than significant*.

Buildout under the proposed DA amendment would not result in the relocation or construction of electricity, natural gas, or telecommunications facilities. Under the full buildout of the proposed DA in Year 30, the project

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would result in a net increase of 3 GWh of electricity and approximately 113,301 MMBtu of natural gas per year compared to baseline conditions. This represents approximately 0.001% of the total 2019 state-wide electricity usage and 0.03% of Alameda County electricity usage, and 0.0086% of state-wide natural gas consumption and 0.29% of Alameda County natural gas consumption. The estimated electricity and natural gas consumption rate is not substantial compared to the 2019 countywide usage as well as Alameda County consumption. Therefore, impacts related to electricity, natural gas, or telecommunications facilities would be *less than significant*.

4.7 Vehicle Miles Traveled (Subsequent EIR)

Analysis of Vehicle Miles Traveled (VMT) per worker under 2020 conditions demonstrates that VMT per worker for the project would be 11.5, which is less than the threshold of significance, 15.4 (the Bay Area Region Average for VMT minus 15%). The analysis of VMT per worker under 2040 conditions estimates VMT per worker to be 11.6, which is less than the threshold of significance, 15.5 (the Bay Area Region Average for VMT minus 15%). The analysis demonstrates that the project's VMT in 2052 would be similar to 2040 VMT, which is substantially less than the 15.5 VMT threshold of significance. Therefore, impacts through the project's horizon year (2052) would remain *less than significant*.

4.8 Wildfire (Initial Study)

The project site is not located near a Very High Fire Hazard Severity Zone (VHFHSZ). It is approximately 2.2 miles away from the nearest such zone, which is in the eastern margins of the city in the Berkeley Hills. It is also outside the City's Wildland-Urban Interface Fire Area. Therefore, the project would not impair an adopted emergency response or evacuation plan related to wildfire; exacerbate wildfire risks; or expose people to post-fire risks related to runoff, flooding, or landslides. *No impact* would occur.

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SECTION 5: FEASIBILITY OF PROJECT ALTERNATIVES

5.1 Project Alternatives

The Subsequent EIR included three alternatives:

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

The City hereby concludes that the SEIR sets forth a reasonable range of alternatives to the Bayer Healthcare LLC Development Agreement Amendment Project that address the significant impacts of the project, so as to foster informed public participation and informed decision making. The City notes that the Bayer Healthcare LLC Development Agreement Amendment Project, with incorporation of the mitigations outlined in Section 3 of these findings, will have no significant impacts. As such, the City is not required to make specific findings regarding the infeasibility of the alternatives set forth in the SEIR. Nevertheless, the City finds that the alternatives identified and described in the Final EIR were considered and further finds them to be infeasible for the specific economic, social, or other considerations set forth below pursuant to Public Resources Code section 21081(c).

5.1.1 Alternative 1: No Project / No Construction Alternative. The No Project/No Construction Alternative assumes that upon the existing DA's expiration in February 2022 the proposed amended DA would not be adopted and there would be no change to the existing configuration of the Bayer Campus. The total floor area of existing buildings is approximately 1,087,000 square feet, including 567,000 square feet on the North Properties and 520,000 square feet on the South Properties. Existing development on the project site accommodates six land uses: production, laboratories, warehouses, administration, utilities, and maintenance. Eight surface parking lots with a total of approximately 1,082 spaces are dispersed around the project site.

Findings: Under Alternative 1, impacts to air quality, cultural resources, GHG emissions, energy, hazards and hazardous materials, noise, transportation, or utilities and service systems may be reduced as construction would not take place, and new mitigation measures in the SEIR would not be required. However, this alternative would maintain existing buildings and mechanical equipment on the Bayer Campus that are less energy-efficient than planned facilities under the proposed project. Furthermore, since no unavoidable significant impacts were identified in the SEIR, Alternative 1 would not avoid a potentially significant impact.

The City rejects the No Project / No Construction Alternative because it would not achieve any of the objectives of the proposed project, as expressed above.

5.1.2 Alternative 2: No Project / Zoning Conformance Alternative. The No Project/Zoning Conformance Alternative assumes that the proposed amended DA is not approved, in which case the existing DA would expire in February 2022 while the Use Permit for the South Properties would remain in effect. Upon expiration of the DA, future development on the Bayer Campus would be required to conform to applicable standards in the Berkeley Municipal Code for underlying zoning on the project site. The main body of the project site to the west of Seventh Street would be subject to Mixed Manufacturing (MM) zoning standards, while the remainder of the site to the east of Seventh Street would be subject to Mixed Use-Light Industrial (MU-LI) zoning standards. Under Alternative 2, compliance of future development with the height limit of 45 feet in the MM and MU-LI zoning districts would reduce potential buildout at the Bayer Campus. Buildout under the No Project/Zoning Conformance Alternative would depend on the size of individual projects on the Bayer Campus that conform to zoning standards and are approved by the City. This alternative does not specify an exact amount of buildout that could occur because it would depend on the number and size of individual projects that are proposed and approved. However, it is likely that, because development would occur intermittently as reviewed and approved by the City, buildout would be reduced compared to what is analyzed in the SEIR for the proposed amended DA. The SEIR assumes that buildout would be further reduced under this alternative and that future discretionary projects on the Bayer Campus would be required to undergo CEQA analysis on a project-by-project or Master Use Permit basis when proposed.

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Findings: Under Alternative 2, since buildout would be reduced, there would be less impacts to air quality and toxic air contaminants (TACs) since it would involve less construction activity and there would be fewer vehicle trip and mobile emissions compared to the proposed project, reducing Vehicle Miles Travelled (VMT) and meeting air quality standards.

Impacts to cultural resources would be similar for Alternative 2 and the proposed project as both would involve the renovation of building B83, a historical resource under CEQA. Future projects under Alternative 2 could also disturb archaeologically sensitive resources and would need mitigation measures to ensure impacts remain less than significant.

Impacts to greenhouse gases would remain less than significant for Alternative 2 since future development on the Bayer Campus would be required to attain the latest iteration of green building practices in CALGreen and the California Energy Code and Reach Code.

Impacts to hazards and hazardous materials would be similar to the proposed project, as Alternative 2 would allow for future construction that could result in disturbance of unanticipated hazardous materials during demolition and grading, and existing use of biohazards and chemical hazards for pharmaceutical research and production would continue on the project site. Although both options would be required to comply with the latest biosafety guidelines adopted by the NIH and the Centers for Disease Control and Prevention (CDC) as well as all building, fire, and safety codes, mitigation measures would be needed to ensure impacts remain less than significant.

Similar to the proposed project, future development under Alternative 2 would require the use of heavy construction equipment. Since this alternative would not include the proposed prohibition on the use of pile drivers (which generate the highest noise levels during construction) that is proposed as part of the amended DA, it could result in higher noise levels than the proposed project. The use of pile drivers could also generate stronger vibration levels than anticipated and would require mitigation under this alternative.

Impacts to transportation and traffic would be similar to the proposed project, as Alternative 2 could still conflict with General Plan and West Berkeley Plan policies that encourage vehicle trip reduction and increased transit use, unless Bayer continues to implement its Transportation Demand Management (TDM) Program, and mitigation may be required during CEQA analysis for future projects to ensure Bayer continues to implement and update the TDM program. New development under Alternative 2 would also be located in a Low VMT area, thus impacts related to VMT would remain less than significant. Similar to the proposed project, future roadway modifications would be limited to new driveways and enhancements to pedestrian facilities, and Bayer would also continue to operate its own emergency vehicles and equipment to respond to emergency needs on site, resulting in less than significant impacts to traffic hazards and emergency access.

Similar to the proposed project, future projects involving ground disturbance on the Bayer Campus could encounter tribal cultural resources that may later be recommended as tribal cultural resources by tribal organizations. Mitigation measures would be required to ensure impacts remain less than significant.

Reducing buildout under Alternative 2 would result in less water use, wastewater generation, and solid waste compared to the proposed project, and would not result in the relocation or construction of electricity, natural gas, or telecommunication facilities.

The City rejects Alternative 2 because this alternative would not achieve all the applicant's project objectives to configure and design facilities to attract talent and partners; to promote employee wellness through open green space and pedestrian and bicycle circulation; and to maximize the productive utilization of the site. Further, the lower height limit and discretionary review process could also interfere with achieving the business goals of speedy deployment and flexible development. In addition, Alternative 2 would not meet the City's objective to create employment opportunities, encourage appropriate economic and business development, and promote development of manufacturing and life sciences activities.

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5.1.2 Alternative 3: Reduced Parking Alternative. Alternative 3 assumes that the parking structure planned on the property between Dwight Way, Seventh Street, Parker Street, and Eighth Street would not be constructed. The planned parking structure east of Seventh Street is expected to accommodate 925 of the 1,825 parking spaces contemplated in the proposed project for the whole Bayer Campus. Under this alternative, the property east of Seventh Street would remain a surface parking lot with 250 parking spaces. This alternative would not add more parking spaces than proposed on the rest of the Bayer Campus. As a result, the Bayer Campus would have 675 fewer parking spaces. Except for the proposed parking garage east of Seventh Street, this alternative would allow for the same buildout of program space as compared to the proposed project.

Findings: Under Alternative 3, there would be 675 fewer parking spaces than the proposed project, which would lead to fewer new vehicle trips and mobile emissions during the operation phase, and result in less than significant impact to consistency with air quality plans. Since the planned buildout would be the same under this alternative, construction would result in a similar scale of construction-related emissions and TACs, and mitigation measures would be required to reduce construction impacts to a less than significant level.

Similar to the proposed project, Alternative 3 would involve the renovation of building B83, a historical resource under CEQA. Mitigation measures would apply to reduce impacts on historical resources to a less than significant level. By retaining the surface parking lot to the east of Seventh Street, this alternative would involve less ground disturbance than proposed. However, the project site and its vicinity are archaeologically sensitive and buried archaeological resources may exist on-site. Construction under this alternative could also disturb buried resources, and mitigation measures would also be required to study, test, avoid, evaluate, recover, and monitor archaeological resources and human remains and reduce impacts to a less than significant level.

Alternative 3 would not alter the planned buildout of the Bayer Campus, so greenhouse gas emissions from the construction of new facilities would remain the same. However, since the alternative provides 675 fewer parking spaces, it would result in a greater net decrease in greenhouse gas emissions than the proposed project.

Similar to the proposed project, Alternative 3 would allow for construction that could result in the disturbance of unanticipated hazardous materials and wastes during demolition and grading activity. It would also involve the use, storage, disposal, and transportation of similar quantities of hazardous materials relative to the proposed project. Although both options would comply with the latest biosafety guidelines adopted by the NIH and the CDC as well with all building, fire, and safety codes, mitigation measures would still be required to reduce impacts on hazards and hazardous materials to a less than significant level.

Alternative 3 would not alter the planned buildout of the Bayer Campus, and would allow for a similar scale of construction activity relative to the proposed project, resulting in similar construction noise. Because this alternative would not include the planned parking structure east of Seventh Street, noise-sensitive residences along Dwight Way would be exposed to less construction noise. However, construction on Bayer Campus could generate temporary noise levels exceeding the City's thresholds at sensitive receptors near the Bayer Campus, and mitigation measures would still be required to minimize construction noise to the extent feasible. 675 fewer parking spots under Alternative 3 would reduce the number of vehicle trips during operation of the Bayer Campus, which would result in a smaller effect on traffic noise relative to the proposed project. On-site operational noise from stationary equipment would remain the same. Vibration levels would also be similar in both the proposed project and this alternative since pile drivers would be prohibited and both options would result in the similar use of vibration-generating construction equipment.

Alternative 3 would result in fewer vehicle trips and greater transit use than the proposed project since there are fewer parking spaces. The reduction in parking spaces would be consistent with General Plan and West Berkeley Plan policies that encourage vehicle trip reduction and increased transit use. However, mitigation measures would still be required to ensure the continued implementation and update of the TDM Program. Similar to the proposed project, new development under Alternative 3 would be located in a Low VMT Area. By

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limiting on-site supply of parking, this alternative would further reduce vehicle travel resulting in less than significant impacts on VMT. Under Alternative 3, future roadway modifications would be limited to new driveways and enhancements to pedestrian facilities, and Bayer would also continue to operate its own emergency vehicles and equipment to respond to most emergency needs within the project site. Therefore, impacts to traffic hazards and emergency access would be less than significant.

By retaining the surface parking lot to the east of Seventh Street instead of converting it to a parking structure, this alternative would involve less ground disturbance than proposed. However, similar to the proposed project, it is possible that ground disturbance under this alternative would encounter tribal cultural resources that may later be recommended as tribal cultural resources by tribal organizations. Mitigation measures would still be required under Alternative 3 to reduce impacts on tribal cultural resources to a less than significant level.

Alternative 3 would not alter the planned buildout of the Bayer Campus, and would result in less than significant impacts related to water supplies, wastewater facilities, and solid waste. The City further notes that under Section 3.4(D) of Exhibit C to the proposed amended DA of the proposed project, the City may approve adjustments the required amount of parking for new developments, in response to reductions in parking demand. Similar to the proposed project, buildout of this alternative would not result in the relocation or construction of electricity, natural gas, or telecommunication facilities. Therefore, the impact related to relocating or constructing such facilities would remain less than significant.

The City rejects Alternative 3 because although this alternative would generally meet all three project objectives, it would provide fewer parking spaces than planned which could conflict with the project objective to maximize Bayer's ability to attract and retain top talent and partners. This alternative may also conflict with the City's goals to create employment opportunities for Berkeley residents and encourage appropriate economic and business development. Furthermore, the reduction of parking spaces under Alternative 3 could be accomplished under the proposed project using Section 3.4(D) of Exhibit C to the proposed amended DA of the proposed project, which grants the City discretion to reduce the required amount of parking for new developments in response to reductions in parking demand on the campus.

5.2 Environmentally Superior Alternative

Section 15126.6(e)(2) of the CEQA Guidelines requires that an environmentally superior alternative be identified among the selected alternatives. However, since the City has found that all significant environmental effects of the Project will be substantially lessened with mitigation, such that the Project will have no significant environmental effects, the City need not make findings that the environmentally superior alternative is infeasible.

While the No Project Alternative would be the overall environmentally superior alternative since it would avoid all project impacts, the No Project Alternative would not achieve the basic project objectives. Among the development options, Alternative 3 would be the environmentally superior alternative. The Reduced Parking Alternative would result in fewer vehicle trips, which would reduce the proposed project's impacts related to air quality, GHG emissions, noise, and transportation. These impacts would remain less than significant with mitigation incorporated. Nonetheless, because the proposed project would not have any significant and unavoidable impacts, the alternative would not be required to avoid such impacts. While the alternative would largely meet the project objectives, the limited parking supply with planned buildout could conflict with the objective to maximize Bayer's ability to attract and retain top talent and partners.

SECTION 6: ENVIRONMENTAL REVIEW PROCESS AND CONTENTS OF THE SEIR**6.1 Preparation of the EIR**

Having reviewed the SEIR and the Record of Proceedings, the City finds and determines there was procedural compliance with the mandates of CEQA and that the SEIR provides adequate, good faith, and reasoned responses to all comments raising significant environmental issues.

6.2 Absence of Significant New Information

Section 15088.5 of the CEQA Guidelines requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR, but before certification of the Final EIR. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement.

The City recognizes that the Final EIR includes minor text revisions to the Draft SEIR to correct errors or omissions or clarify information presented in the Draft SEIR in response to comments received during the public review period. These revisions include specific changes to the language of Mitigation Measure REC-1, Table 4.1-6, Table 4.1-7, Table 4.1-8 and Mitigation Measure T-1.

With respect to this information, the City finds that the minor text revisions do not create any new substantial adverse environmental effect of the Project or deprive the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. Therefore, the City finds that the minor text revisions do not constitute significant new information requiring recirculation.

SECTION 7: CERTIFICATION OF THE FINAL EIR

The Subsequent Environmental Impact Report (SEIR) prepared by the City of Berkeley (City) for the Bayer Healthcare LLC Development Agreement Amendment Project (project) consists of the Draft Subsequent EIR (Draft SEIR) and Final SEIR / Responses to Comments on the Draft SEIR. The SEIR comprises a program-level analysis containing the environmental review evaluating the impacts of approval of the proposed Bayer Healthcare LLC Development Agreement Amendment Project.

The City hereby certifies as follows:

1. That it has been presented with the SEIR, including both the Draft Subsequent EIR (Draft SEIR) and Final SEIR / Responses to Comments on the Draft SEIR and that it has reviewed and considered the information contained in the SEIR, as well as the Record of Proceedings, prior to making this certification and the findings in Sections 1-6 above;
2. That, pursuant to CEQA Guidelines Section 15090 (Title 14 of the California Code of Regulations, Section 15090), the Final EIR has been completed in compliance with the CEQA and the State CEQA Guidelines; and
3. That the SEIR reflects its independent judgment and analysis.