



MEETING DATE: 11/7/05

ITEM NO.

10

## COUNCIL AGENDA REPORT

DATE: November 1, 2005

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER

A handwritten signature in black ink, likely belonging to Debra J. Figone, the Town Manager.

SUBJECT: ADOPT RESOLUTION AUTHORIZING TOWN MANAGER TO EXECUTE MODIFIED COMMUNITY BENEFIT AGREEMENT TO THE LOS GATOS GATEWAY PLANNED DEVELOPMENT (LIGHT RAIL SHUTTLE)

### RECOMMENDATION:

1. Determine if Sobrato Development's obligations under Section 1 of the Community Benefit Agreement have been satisfied.
2. Adopt a resolution authorizing the Town Manager to execute the modified Community Benefit Agreement reflecting Council's decision.

### BACKGROUND:

On April 2004, the Town Council approved a modification to an approved Planned Development at 14300 Winchester Boulevard by Sobrato Development. The approved project includes 160,000 square feet of office/R&D and 290 apartments, 51 of which are BMP units.

The first phase of the project with the 80,000 square foot Netflix headquarters building is nearing completion. Netflix intends to occupy the building in late December. The residential portion of the development is also under construction. Netflix is considering the lease of the second office building within the next few months.

A number of community benefits were offered as part of the development proposal including a shuttle link between the Campbell light rail station and the project, a gateway art feature, riparian improvements and funds for traffic and circulation improvements (see Attachment 1). The Planned Development Ordinance includes a condition requiring Council approval of a Community Benefit Agreement (CBA).

Council reviewed the draft CBA on November 1, 2004 (Attachment 2). Council approved the CBA

PREPARED BY: BUD N. LORTZ   
DIRECTOR OF COMMUNITY DEVELOPMENT

Reviewed by: FSJ Assistant Town Manager OK Attorney \_\_\_\_\_ Clerk \_\_\_\_\_ Finance \_\_\_\_\_  
PT Community Development Revised: 11/3/05 4:20 pm

but modified Section 1 pertaining to a light rail shuttle between the Sobrato project and the Winchester Light Rail Station. Council required that the details of the shuttle operation be returned to Council for approval prior to occupancy of the project. The final CBA is included as Attachment 3.

At that time, the Valley Transportation Authority had just begun to consider a Community Bus System (CBS) for Los Gatos and no details on the frequency, hours, or routes were available. Sobrato and staff identified the possibility that the CBS could provide the transportation linkage to the Light Rail station, rather than operating a private shuttle in parallel to the public system. Several Council members were concerned with this approach given the lack of details on the CBS and the possibility that the connection to Light Rail would not be timely or efficient.

The Sobrato site is located along the CBS' Route 48. Between the Sobrato site and the Winchester Light Rail Station, the route travels around the Los Gatos Community Hospital and returns to Winchester Boulevard. The travel time between the two locations is between eight and 11 minutes, depending on time of day and direction.

Council should note that the lease agreement between Sobrato and Netflix transfers the responsibility for satisfying Section 1 of the CBA to Netflix. However, Sobrato recognizes that the CBA is between the Town and Sobrato and has taken the lead in discussions with the Town.

#### DISCUSSION:

##### Sobrato's Position:

Sobrato asserts that the provisions of Section 1 of the CBA have been satisfied with the commencement of the CBS, based on the following language in the Section: "...Owner's obligation shall terminate if and when light rail service or other public transportation is available to the Project." Sobrato believes that the Community Bus which runs in front of the project satisfies the project's connection to the Winchester Station (Attachment 4).

The shuttle requirement on the Sobrato project fulfilled two obligations. First, it satisfied Section V.P.5.1 of the General Plan which states that no change in zoning will be allowed in the Vasona Junction area until the Light Rail is "planned and funded." Since funding was only available to construct light rail to the Winchester Station, a transit bridge from the project to the Light Rail Station was required. Second, Sobrato offered the shuttle to partially meet the Community Benefit requirements of the Town's Traffic Policy and In-fill Policy. Staff notes that the current operation of the CBS is successful from a ridership standpoint (nearly 30,000 riders per month); however, this does not guarantee its continued operation in perpetuity.

##### Alternative Community Benefits:

Although Sobrato believes the requirements of Section 1 have been met, they have offered to convey

to the Town any property obtained by Sobrato from the Santa Clara Valley Water District (SCVWD) as compensation for providing an access easement across Sobrato property to SCVWD lands. The value of the easement has been appraised at more than \$1,000,000. The Town could use this land to support the completion of the Vasona Light Rail line to Los Gatos. VTA has indicated that this land would be used for a park and ride lot or transfer facility.

Although not included in their written statement, Sobrato has verbally stated they would consider installation and maintenance of a bus shelter at the Sobrato project. In addition, Sobrato and Netflix could use their corporate influence to lobby for completion of the Vasona line. In a related matter, Sobrato has indicated that the Sobrato Foundation will commit \$200,000 to support projects that benefit Los Gatos residents or youth. Sobrato will not make the commitment as part of the CBA; rather, it should be considered a separate commitment from their charitable foundation.

#### CONCLUSION:

Staff concurs that Sobrato's obligations under Section 1 of the CBA appear to be fulfilled with operation of the Community Bus System. Staff recommends that Council take the following actions:

1. Determine that Sobrato's obligations under Section 1 are met,
2. Accept the alternative community benefits outlined above, and
3. Adopt the attached resolution authorizing the Town Manager to execute a modification to the CBA to memorialize Council's decision. The Foundation commitment would not be included in the CBA. Staff would request that the Foundation outline this commitment in a separate letter.

Staff recognizes this is an important issue for Council and is committed to achieving an agreeable solution for the Town, Sobrato, and Netflix. Should Council not agree with the recommendation, Council may determine that Sobrato has not met its obligations and is still required to provide assistance for the shuttle service.

#### ENVIRONMENTAL ASSESSMENT:

An Environmental Impact Report (EIR) was prepared for the project and was certified by the Council on February 4, 2002. An Addendum to the EIR was accepted by Council on April 23, 2004. No further environmental analysis is required for the Community Benefit Agreement.

#### FISCAL IMPACT:

There are no direct costs to the Town associated with this item. There are financial elements associated with the offerings presented by Sobrato which could be advantageous to the Town.

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MAYOR AND TOWN COUNCIL

SUBJECT: 14300 WINCHESTER BOULEVARD

*November 2, 2005*

Attachments:

1. Letter from John R. Schenk dated received May 14, 2003
2. Staff Report for meeting of November 1, 2004
3. Community Benefit Agreement
4. E-mail from John Schenk dated October 18, 2005
5. Resolution of the Town Council of the Town of Los Gatos Authorizing Town Manager to Execute a Modification to a Community Benefit Agreement for a Planned Development at 14300 Winchester Boulevard

Distribution:

John Schenk, Sobrato Development, 10600 N. DeAnza Boulevard, Suite 200, Cupertino, CA 95014

David Hyman, Netflix, Inc., 970 University Avenue, Los Gatos, CA, 95032

Randy Tsuda, Assistant Community Development Director

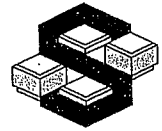
Suzanne Davis, Associate Planner

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RECEIVED

MAY 14 2003

TOWN OF LOS GATOS  
COMMUNITY DEVELOPMENT



**SOBRATO**

| DEVELOPMENT COMPANIES

May 13, 2003

Mr. Bud Lortz, Director  
Community Development  
Town of Los Gatos  
110 East Main Street  
Los Gatos, CA 95030

RE: 14300-14350 Winchester Boulevard  
Letter of Justification for PD Zoning Modification

Dear Mr. Lortz:

We hereby request a modification to the existing Planned Development Zoning Ordinance for the Los Gatos Gateway project at 14300-14350 Winchester Boulevard. On February 2, 2002 the Town Council approved our Planned Development Zoning application for the mixed use, transit-oriented development at 14300-14350 Winchester Boulevard. The approved project includes 288,000 square feet of Office/R&D and 135 apartments, of which 34 units are affordable. Then on August 14, 2002 the Town approved the Architecture and Site application as well as the Tentative Map for the approved project. We appreciate the Town's support in approving the project and hold this entitlement recognizing its significant value. We will continue to work with you to maintain the vested development rights associated with approved project as we process this application.

Since the project was approved, the Office/R&D market has seen a sharp and unprecedented decline. Given that there is an estimated 50 million square feet of commercial space on the market today and numerous already constructed corporate campuses available, we do not foresee demand for new Office/R&D development for years. While the residential market continues to have some strength the extensive onsite and offsite infrastructure requirements for the project make the development of only 135 apartments not financially feasible. Given the above, we have delayed our process and taken advantage of the opportunity to reevaluate the mix of uses within the project to see if there is a more optimal and desirable project we could propose to the Town. After much study we are proud to present a modified plan with a greater emphasis on the residential component while maintaining the overall character and architecture we all worked so hard to perfect.

The modified plan is more responsive to those voices from residents, Planning Commissioners, Council Members and others who expressed interest in increasing the amount of housing (including affordable housing) to further address numerous important Town General Plan and Housing Element Goals, Policies and Objectives.

## Summary of Request

**PD Zoning.** We are requesting a modification to the approved project to decrease the Office/R&D component and increase the housing component. Specifically, we are requesting that the mix be modified to include 120,000 square feet of Office/R&D space in two approximately 60,000 square foot buildings, 246 market rate rental apartments and townhomes, and 49 below market rate rental apartments. The modification includes an increase of 15 additional affordable apartments from the 34 in the approved project for a new total of 49.

We have taken great care to maintain the project's Winchester façade and have succeeded in keeping it the same while continuing to study the tower element. The materials for the project still consist of sloped clay tile roofs and stucco walls. The project will also improve the interface between the Creek Trail and this site by blending the new natural landscaping into the existing perimeter vegetation further emphasizing the natural character of the project. Trellises, vines and extensive landscaping will once again compliment the historical architecture. We have also succeeded in keeping the vast majority of the parking in underground garages. The residential portion of the site has been designed with a European village environment as the theme. This results in a variety of open spaces both active and passive as well as unique views and perspectives from all locations within the project.

**Architecture.** We and the Town's professional staff, Town's consulting architect and the Planning Commission spent considerable time and resources on the architectural style and design of the approved project. The Planning Commission unanimously approved the architecture for the project. We are not proposing any changes to the approved architectural style or level of quality of the project. Following approval of the modified PD Zoning we look forward to finalizing the architectural details with the Development Review Committee (DRC), the Town's professional staff and the Town's consulting architect.

**Increased Affordable Housing/Affordability.** As you may know, the Sobrato family and the Sobrato Family Foundation is keenly focused on housing and affordable housing issues in our greater neighborhood. Among other efforts and activities, the Sobrato Family Foundation has made available a \$10 million revolving line of credit to non-profit housing developers through the Community Foundation Silicon Valley to provide critical predevelopment funds to seed affordable housing projects.

We request that the Town consider the option of Sobrato partnering with a non profit housing group to retain ownership and management of the affordable units in order to further reduce rents below what is required by Town code. Sobrato would convey a parcel for the units to a non-profit developer, with buildings constructed in an architecturally integrated and seamless manner, including shared exterior amenities. Because of financing structures afforded non-profits, these organizations are in a unique position to further decrease rents to "low" and "very low" levels. Sobrato is currently partnering with a non-profit housing group in another jurisdiction utilizing the same model. The increase in the

number of affordable units and the potential to further decrease rents to "low" and "very low" levels furthers numerous Town Housing Element objectives which are difficult to achieve, as well as several Sobrato family housing, affordable housing and charitable giving objectives. If the Town does not want to pursue this approach, we will develop the required affordable units throughout the modified project.

### **Approved Project/Modification Overview**

As a result of the modified mix, key project elements will either remain the same or improve compared to the approved project. For example, the mixed use concept, level of quality, approved architectural style, applicable existing project conditions and functionally equivalent community benefits all remain the same. While distributed differently, overall setbacks, height caps, open space allocations, site coverage, floor area ratios, parking ratios, and below/above grade parking ratios, tree disposition and retention program and sustainable building techniques also all remain as approved. The office buildings' profiles from Winchester Boulevard remain constant as well.

In addition to maintaining all key project elements as approved, we sought to also improve and further enhance the project as a result of the modification to the mix. For example overall square footage decreases slightly; traffic trip generation is expected to decrease as residential generates less trips than commercial; linear mass of the approved project decreases substantially; linear mass of residential is further reduced through use of multiple buildings and articulation in the building facades; average height of the project decreases from the reduction in the commercial component; distance between the commercial and residential buildings increases; the profile of residential buildings along the creek trail decreases; the residential arrival experience is improved; and the number of shared parking spaces decreases.

At a macro level, the modified mix clearly increases the housing stock and affordable housing stock in the Town of Los Gatos. The modification also creates the opportunity for a growing Los Gatos based company to locate in one or two 60,000 square foot buildings as opposed to a single tenant user that will re-locate to Los Gatos from outside of Town to occupy the approved 288,000 square foot corporate campus.

### **General Plan Conformance**

The modification to the mix of the approved project conforms to the Town of Los Gatos General Plan Goals, Policies and Objectives as no substantial changes are proposed. General Plan Conformance for the approved project was previously outlined in the September 7, 2000 letter from Andrew L. Faber of Berliner Cohen to the Town of Los Gatos and confirmed by both the Planning Commission and Council through their respective affirmative comments and votes on the issue of conformance. The approved project's environmental impact report also details the project's conformance with the Town's General

Plan. The modified project further addresses numerous Housing Element Goals, Policies and Implementation Measures.

### **Community Benefits**

In conjunction with the modification, we plan to provide the same or functionally equivalent community benefits. A summary is below.

**Express Shuttle:** We continue to propose a daily express shuttle, in partnership with the VTA, providing direct service to and from the Sobrato site to the then current terminus of the Vasona Light Rail line in downtown Campbell. This link addresses the interim period and makes Light Rail to the site immediate from day one. The express shuttle is not required as part of the project and is a significant community benefit because the shuttle is available to other surrounding employers, employees and residents, not just employees or residents of the project. Equally important, this creative, effective and innovative approach that can be a model for public/private partnerships and future Town shuttles.

**Transit for Livable Communities Funds:** With the approval of the project the Town is eligible for up to \$1 million in Transit for Livable Communities (TLC) funds for a variety of improvements in and around the project. We will commit to providing technical assistance to the Town and identify, select and fund a grant writer, if necessary, working in partnership with the Town to apply for and receive these monies.

**Increased Affordable Housing:** A total of 49 (20%) affordable units are proposed, an increase of 15 units from 34 in the approved project. This is a 44% increase in the number of affordable units. While 20% is required by the Town, the 15 additional units could not be realized in the approved project and can only be achieved through the modification. We recommend that seven of those units continue to be available for Los Gatos teachers. The additional affordable units are a tremendous community benefit for those local employees who want to live and work in Los Gatos.

**Increased Affordability.** The option of Sobrato partnering with a non-profit housing group to further reduce rents and achieve greater affordability addresses several General Plan and Housing Element Goals, Policies and Objectives.

**Los Gatos Creek Trail Improvements:** We plan to provide \$20,000 for Los Gatos Creek Trail improvements adjacent to the project, beyond what may be required as part of the project. Improving the Creek Trail within



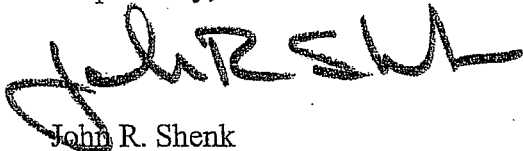
the Town of Los Gatos creates a tremendous community benefit for all Los Gatos residents.

**Gateway Art Feature:** We plan to continue to provide \$100,000 for a gateway art feature to enhance the visual and cultural character of this northern entrance to Town.

**Traffic and Other Public Improvements.** Sobrato will implement a variety of traffic and other public improvements through substantial additional fees associated with the modified project that could not have been realized through the approved project.

Over the past several months, we have reviewed, analyzed and modified our plans in a way that creates the opportunity to further address the Goals and Policies of the Town of Los Gatos, the VTA, TOD standards, and further improve the approved project while balancing our objectives. On behalf of Sobrato Development Companies I look forward to working with you on the modification to the mix of the approved project.

Respectfully,

A handwritten signature in black ink, appearing to read "John R. Shenk", with a stylized flourish at the end.

John R. Shenk  
Senior Vice President  
jshenk@sobrato.com






MEETING DATE: 11/01/04  
ITEM NO.

## COUNCIL AGENDA REPORT

DATE: October 29, 2004

TO: MAYOR AND TOWN COUNCIL

FROM: TOWN MANAGER 

SUBJECT: A. REVIEW OF DRAFT COMMUNITY BENEFIT AGREEMENT FOR THE LOS GATOS GATEWAY PLANNED DEVELOPMENT. APN 424-32-068. PROPERTY LOCATION: 14300 WINCHESTER BLVD. FILE #PD-04-1. PROPERTY OWNER/APPLICANT: SOBRATO DEVELOPMENT COMPANIES.

B. ADOPT RESOLUTION AUTHORIZING TOWN MANAGER TO EXECUTE FINAL COMMUNITY BENEFIT AGREEMENT FOR THE LOS GATOS GATEWAY PLANNED DEVELOPMENT.

### RECOMMENDATION:

1. Review the draft Community Benefit Agreement for the Sobrato Development project and provide direction to staff regarding any desired changes.
2. Adopt resolution authorizing the Town Manager to execute the final Community Benefit Agreement.

### BACKGROUND:

On April 23, 2004, the Town Council approved a modification to an approved Planned Development at 14300 Winchester Boulevard by Sobrato Development. The approved project now includes 160,000 square feet of office/R&D and 290 apartments, 51 of which are BMP units. A number of community benefits were offered as part of the development proposal including a shuttle link between the Campbell light rail station and the project, a gateway art feature, riparian improvements and funds for traffic and circulation improvements. The Planned Development Ordinance adopted on May 3, 2004 includes a condition requiring Council approval of a Community Benefit Agreement (CBA). The applicant has submitted a draft agreement for the Council's consideration (see Attachment).

PREPARED BY:

  
BUD N. LORTZ,

DIRECTOR OF COMMUNITY DEVELOPMENT

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Reviewed by: ☒ Assistant Town Manager ☒ Town Attorney ☐ Clerk ☐ Finance  
☒ Community Development

Revised: 10/29/04 9:23 am

Reformatted: 5/30/02

Attachment 2

PAGE 2

MAYOR AND TOWN COUNCIL

SUBJECT: 14300 WINCHESTER BOULEVARD/FILE #PD-04-1

October 29, 2004

DISCUSSION:

For several months, staff has negotiated with the applicant on numerous provisions of this agreement in order to incorporate the community benefits adopted by Council in granting the Planned Development. The applicant's latest draft of the agreement is attached and includes all of the benefits referenced in the Planned Development. The following are sections of the agreement requiring Council review and direction:

1. Light Rail Shuttle

Section 1 of the draft agreement contains language stating that the headways and hours of operation will be approved by the Director of Community Development in consultation with VTA. The applicant will consult with VTA to determine the appropriate times and frequency for the shuttle. In addition, it has not been determined if the shuttle will be a public (through VTA) or private system. The preferred method is to work the shuttle into the community bus service currently under development by the VTA, so that it is a public system. A preliminary meeting was recently held between the applicant, VTA and Town staff. A public system is probable through a partnership between the applicant and VTA. The shuttle will be available to employees and residents of the project at no charge.

2. Riparian Improvements

Section 4 of the draft agreement states that two drinking fountains will be provided if permitted by the appropriate regulatory authority, Santa Clara Valley Water District (SCVWD). Staff recommends that language be added to the agreement stating that in the event that if SCVWD does not allow the water fountains to be installed alongside the creek trail, the fountains will be installed on the applicant's property near the two trail connections to the creek trail. The applicant has verbally agreed to this.

3. Traffic Improvements/Art/Sports Fields

As contained in the agreement, the applicant offers to provide a total of \$150,000 in community benefit funds--\$50,000 for traffic improvements and \$100,000 for public art located on the property (see Sections 5 and 6). The traffic funds could potentially be used for improvements to the Knowles Drive/Winchester Blvd./A Street intersection or for an arterial study planned for Fiscal Year 2006-07.

At Staff's request, the agreement includes a provision granting Council the flexibility to reallocate all or a portion of the \$150,000 in community benefit funds for use on sport facilities (see Item B on Page 1). Traffic Impact Mitigation fees may be used for the arterial study and/or intersection improvements if the community benefit funds are used for sports facilities. Staff will return to Council for direction on use of these funds prior to encumbering the funds.

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MAYOR AND TOWN COUNCIL

SUBJECT: 14300 WINCHESTER BOULEVARD/FILE #PD-04-1

October 29, 2004

CONCLUSION:

A condition of the Planned Development requires the Community Benefit Agreement to be approved by the Council prior to issuance of building permits (excluding the grading and parking garage). Construction is already underway, with the building shell permit expected to be issued shortly. In order for the project construction to continue on schedule, the Community Benefit Agreement needs to be approved as written or with modifications as agreed on by the Council. If the matter is continued, the building permit for the office building will be delayed. Staff recommends that the Council authorize the Town Manager to execute the agreement with the following change:

Add the following at the end of section 4, Riparian Corridor: *In the event that the regulatory agency does not allow the water fountains to be installed alongside the creek trail, the fountains will be installed on the applicant's property near the two trail connections to the creek trail.*

ENVIRONMENTAL REVIEW:

An environmental Impact Report (EIR) was prepared for the project and was certified by the Council on February 4, 2002. An Addendum to the EIR was accepted by Council on April 23, 2004. No further environmental analysis is required for the Community Benefit Agreement.

FISCAL IMPACT: None

Attachments:

1. Resolution of the Town Council of the Town of Los Gatos Approving a Community Benefit Agreement for a Planned Development at 14300 Winchester Boulevard

Distribution:

John Shenk, Sobrato Development, 10600 N. De Anza Blvd., Suite 200, Cupertino, CA 95014

BNL:RT:SD

**COMMUNITY BENEFITS AGREEMENT**

This agreement ("Agreement"), effective as of this 11 day of MAY, 2005, by and between Sobrato Land Holdings, a California limited partnership ("Owner") and the Town of Los Gatos ("Town") as follows:

**RECITALS**

Owner has been granted approvals for development of an office/research and development/residential project (the "Project") on property generally known as 14300-14350 Winchester Boulevard in the Town (the "Property"). Said approvals include a rezoning of the Property to the CM:PD (Controlled Manufacturing/Planned Development) zone, approved by Ordinance No. 2130, adopted on May 5, 2004, as well as Architectural and Site approval, approved by Resolution No. S-04-47 dated August 17, 2004. These approvals, as well as others that will be obtained from the Town are collectively called the "Approvals."

During the process of obtaining the Approvals, Owner represented that it was willing to provide certain benefits to the Town as an incident of development of the Project. Some of such benefits were required as conditions of the Approvals. These various benefits are collectively called herein the "Community Benefits."

Town and Owner desire to enter into this Agreement in order to further specify the scope of the Community Benefits, to avoid uncertainty in the development of the Project, and to memorialize the obligations that Owner has undertaken as part of the development of the Project.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and conditions contained herein, Town and Owner hereby agree as follows:

1. Light Rail Shuttle. The Town desires Owner to assist the Town in its efforts to bring Light Rail Service to Los Gatos. Owner shall contribute funds to facilitate the operation of a shuttle or equivalent service ("Shuttle Service") between the Winchester Station in Campbell and the Project. The Shuttle Service shall commence operation upon the later of (i) the beginning of light rail service to the Winchester Station in Campbell or (ii) the Town's issuance of a Final Certificate of Occupancy for the first building in the Project and Owner's obligations shall terminate if and when light rail service or other public transportation is available to the Project. The Town Council recognizes the evolving circumstances of the VTA Community Bus Program and grants Town staff the authority to issue all required building permits for the project. Occupancy of the project shall be withheld until such time as the Town and Owner agree to the specific terms of the light rail shuttle. Staff will return to the Council with a specific agreement on the light rail shuttle prior to final occupancy for the project.
2. Transit for Livable Communities. If the Town intends to apply for grant funds for the Transit for Livable Communities ("TLC") program. Following issuance of the first final certificate of occupancy for the residential portion of the Project, Owner shall help the Town in its formulation of such a program by providing technical assistance through the services of a grant writer designated by the Town and reasonably acceptable to Owner. Such assistance shall not exceed a total of forty (40) hours of consultant's time, which shall be at no cost to the Town.

3. Affordable Housing Units. Pursuant to Section II (1) in Ordinance 2130, Owner has coordinated with the Director of Community Development and has designated fifty one (51) of the residential units as below market rate units. Pursuant to Section V (5) of Ordinance 2130, these units shall be subject to the Town's Below Market Price Program in place at the time Ordinance 2130 was adopted by the Town, and Owner shall record a deed restriction prior to the Town granting the first final certificate of occupancy on a residential building within the Project.

4. Riparian Improvements. Prior to issuance of the first final certificate of occupancy for the Project, Owner shall either have installed, or shall have provided bonds or other adequate security for the installation of, Twenty Thousand Dollars (\$20,000) of landscape improvements along the edge of the Los Gatos Creek Trail adjacent to the Property. This work will include two drinking fountains at the two access locations from the property to the Creek Trail so long as such work is permitted by the appropriate regulatory authority. In the event that the regulatory agency does not allow the water fountains to be installed alongside the creek trail, the fountains will be installed on the applicant's property near the two trail connections to the creek trail.

5. Public Art. Owner shall provide a contribution toward a gateway art feature to be located on the Property in the amount of One Hundred Thousand Dollars (\$100,000). Owner shall propose the public art and shall seek input from the Arts Commission of the Town prior to submitting the art to the Director of Community Development for approval. Owner shall have contributed or shall have provided bonds or other adequate security for the payment toward the public art prior to the Town granting the first final certificate of occupancy for the Project.

6. Traffic and Other Public Improvement. Owner shall pay to the Town the sum of Fifty Thousand Dollars (\$50,000) to be used for traffic and other public improvements (the "Traffic Contribution"). The amount of the Traffic Contribution shall be prorated between office/R&D and residential space on a square footage basis. The portion of the Traffic Contribution applicable to office/R&D space shall be paid prior to the issuance of the first final certificate of occupancy for the office/R&D space in the Project. The portion of the Traffic Contribution applicable to the residential space shall be payable at the issuance of the final certificate of occupancy for the residential dwellings in the Project. A portion of this fee will be used by the Town to improve the intersections of Knowles and A Street and Knowles and Winchester (e.g. enhanced crosswalk pavement/markings, signal coordination, painting of signs and posts, asphalt repair at the railroad tracks, etc.) to improve its function for both pedestrians and vehicles as soon as practical.

Owner is willing to allow the Town to redistribute the funds allocated to item #5 above, and the community benefit described in this section, to a sports facility so long as appropriate recognition is given to Owner for its contributions and so long as the traffic improvements required under this section are completed.

7. Traffic Demand Management Plan. From and after the date this Agreement is signed by Owner and the Town, Owner shall include in any lease of commercial space within the Project a provision whereby the commercial tenant agrees to develop and implement a Traffic Demand Management ("TDM") plan to the reasonable satisfaction of the Director of Community Development of the Town.

8. Police Communications Infrastructure. Following issuance of all certificates of occupancy for the buildings to be constructed as part of the Project, Owner will provide rooftop space for a small antenna at the Property (at a location to be mutually determined by Owner and Town) for the exclusive use of the Los Gatos Police Department in its efforts to increase public safety. Such antenna shall be installed and maintained by the Town at the Town's sole expense, and any damage to the Property and improvements thereon resulting from the installation, use or maintenance of such antenna shall be promptly repaired by the Town at the Town's sole expense. Owner shall have no liability to the Town in the event of damage to the antenna from any cause, including without limitation acts or omissions of Owner, and the Town shall be solely responsible for any repairs to the antenna at the Town's sole cost. Before entering onto the Property pursuant to this Section 8, the Town shall indemnify, defend with counsel reasonably acceptable to Owner pursuant to a comprehensive indemnity agreement to be mutually agreed upon by the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the year and date first above written.

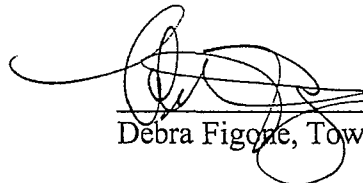
RECOMMENDED BY:

  
BUD LORTZ, COMMUNITY DEVELOPMENT  
DIRECTOR

TOWN:

TOWN OF LOS GATOS, a municipal  
corporation

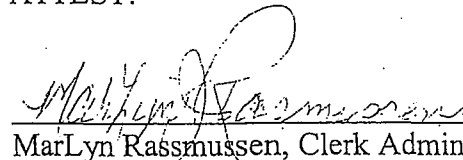
By:

  
Debra Figone, Town Manager

APPROVED AS TO FORM:

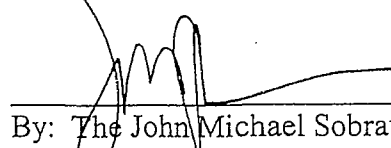
  
Orry P. Korb, Town Attorney

ATTEST:

  
MarLyn Rassmussen, Clerk Administrator

OWNER:

SOBRATO LAND HOLDINGS, a  
California limited partnership.

  
By: The John Michael Sobrato 1985  
Separate Property Trust, Its General Partner  
By: John Michael Sobrato, Trustee



**From:** "John R. Shenk" <jshenk@sobrato.com>  
**To:** Randy Tsuda <rtsuda@losgatosca.gov>  
**Date:** 10/18/2005 5:47:11 PM  
**Subject:** DRAFT 2 - Los Gatos Gateway Update

Bud and Randy, I want to put "pen to paper" in an effort to clearly convey our position on the status of the community benefits agreement.

I will run through each of the benefits in the agreement:

**#1 - Light Rail Shuttle.**

At the time we offered this benefit there was not "a shuttle or equivalent service". We had all envisioned a day when a shuttle service was in place throughout Town and we hoped that this project would provide the momentum necessary to bring about an appropriate shuttle system. We are very pleased that this has happened and is so successful. The Town also wanted a way to incentivise Sobrato to work with the Town to lobby for the full extension of the Vasona LRT. We have done so over the past years and continue to do so in many ways.

Our obligation "shall terminate if and when light rail service or other public transportation is available to the the Project." To accurately document our discussion regarding the Community Shuttle Program the language in this Benefit went on to say "The Town Council recognizes the evolving circumstances of the VTA Community Bus Program...". With the existence of the VTA Bus program the condition required to release the obligation has been met.

This is a great accomplishment for all involved. We have worked together to bring about the Community Bus service and we continue to work together to achieve our final goal of getting the Light Rail system to Los Gatos. Netflix looks forward to moving into this project and utilizing the Community Bus for easy connection to the downtown as well as to the LRT in Campbell.

**#2 - Transit for Livable Communities.**

This benefit is to implemented after the first final certificate of occupancy of the residential portion.

**#3 - Affordable Housing units.**

We did agree to these additional affordable units and have identified them as directed by the Council. We will work on the deed restriction prior to the first certificate of occupancy for the residential portion.

**#4. - Riparian Improvements.**

We will post a letter of credit or bond as directed by the Town for this \$20,000 of landscape improvements (to include 2 drinking fountains) prior to the final certificate of occupancy for the Netflix building. We will work with the Town to identify this work as we work on the Creek Trail side of the property and work through issues with the SCVWD.

**#5 - Public Art.**

We will post a letter of credit or bond as directed by the Town for

this \$100,000 toward Art prior to the final certificate of occupancy for the Netflix building. We did offer to allow the Council to redirect these funds and those in #6 to a sports facility (\$150,000 toward a sports need.) I have not heard a decision from the Council.

#6 - Traffic Improvements

We will pay the appropriate portion prior to the final certificate of occupancy for the Netflix building. The Town should have developed a plan to improve the Knowles and Winchester intersection by now so that these dollars can be put to use ASAP as agreed to in the benefit.

#7 - Traffic Demand Management Plan

We did include the required language in the lease with Netflix. Netflix is working with the Town on its TDM plan.

#8 - Police Communications Infrastructure

I understand this to no longer be required.

To wrap up, we all worked many long days and nights over a period of years to bring this project about. Its purpose was to provide a mixed use transit oriented development that would augment the Town's office space by providing a level of quality and size not previously available in Town. We have achieved all of these goals. The greater community looks favorably on Los Gatos' proven commitment to public transportation and livable communities. Netflix has been retained by the Town because a facility meeting their needs has been provided to the Los Gatos market. We look forward to additional successes as the residential project opens for occupancy and the second office building gets built and occupied.

Also, please remember that Sobrato has offered to work with the Town to find a way to deliver a significant portion of the adjoining SCVWD property to the Town (valued at more than \$1,000,000) so that it may be offered to the VTA as a further enticement and an additional point of leverage and showing of commitment to facilitating the extension. The land is identified by the VTA as a park and ride lot.

Please let me know if there are any specific questions I can answer or areas I can elaborate on. Thanks, John

John R. Shenk  
Senior Vice President  
Sobrato Development Companies  
408.446.0700

**RESOLUTION NO.**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AUTHORIZING TOWN MANAGER TO EXECUTE A MODIFICATION TO A  
COMMUNITY BENEFIT AGREEMENT FOR A PLANNED DEVELOPMENT AT 14300  
WINCHESTER BOULEVARD**

**WHEREAS**, the Town of Los Gatos approved Ordinance 2130 approving an amendment to a Planned Development at 14300 Winchester Boulevard, and

**WHEREAS**, Ordinance 2130 requires the applicant to provide specified community benefits, and

**WHEREAS**, the Town and applicant have entered into a Community Benefit Agreement, and

**WHEREAS**, the Town and applicant desire to modify the current Community Benefit;

**THEREFORE BE IT RESOLVED:** The Town Council hereby directs that the Community Benefit Agreement be modified as specified by Council at their meeting November 7, 2005. A copy of the approved minutes of the meeting of the Town Council of November 7, 2005 is attached hereto as Exhibit A and incorporated herein by reference.

**FURTHER RESOLVED :** The Town Manager is authorized to execute said modification to the Community Benefit Agreement.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 7<sup>th</sup> day of November 2005 by the following vote:

**COUNCIL MEMBERS:**

**AYES:**

**NAYS:**

**ABSENT:**

**ABSTAIN:**

**SIGNED:**

**MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA**

**ATTEST:**

**CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA**