

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
Total			33,100,000

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

- 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.

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

Figure 1

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**

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.

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 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%)

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.

- 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. 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. 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.
 - f. To the extent feasible and consistent with the terms of the Agreement, the parties shall establish the grant committee within six (6) months of the Effective Date, and in no event later than 60 days prior to the first required Community Benefits payment.

- g. Grants funded by monies under this Section IV.A shall be awarded by the grant committee by August 1 and disbursed by Bayer to grantees by September 1 in each calendar year during the term of the Agreement for purposes consistent with the terms of this Section IV.A and consistent with the terms of the Agreement.
 - h. The foregoing grant committee shall not be dissolved prior to the end of the term set forth in the Agreement unless Bayer and the City mutually consent to dissolution in writing, and have agreed on alternative procedures for awarding grants under this Section IV.A.
 - i. The grant committee shall award grants with at least a five-year (5-year) term to eligible recipients with grant review of performance annually, and with an option to extend any awarded grants according to criteria and performance standards established pursuant to this Section IV.A.
3. By mutual agreement, the City and Bayer may authorize the committee to use (A) a portion of first year funding, not to exceed thirteen percent (13%) of the first year allocation of funds under this Section IV.A, to create a framework for program outcomes, selection process, and outcomes monitoring, and (B) a portion of each subsequent year's funding, not to exceed five percent (5%) of that year's allocation, to assist with implementation of the framework and other administrative expenses, including third-party consultants. Otherwise, all monies allocated must be allocated to grantees.

B. West Berkeley Fund Committee

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

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.