

ORDINANCE NO. 28154

**AN ORDINANCE OF THE CITY OF SAN JOSE APPROVING
A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF
SAN JOSE AND NOVELLUS SYSTEMS, INC. RELATIVE TO
THE DEVELOPMENT OF CERTAIN PROPERTY LOCATED
WITHIN THE CITY OF SAN JOSE, CALIFORNIA**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

SECTION 1. This Ordinance is adopted under the authority of Government Code Sections 65864 *et seq.* and pursuant to the provisions of City of San José Ordinance No. 24297, which ordinance establishes procedures and requirements for consideration of development agreements within the City of San José (hereinafter the "ENABLING ORDINANCE").

SECTION 2. This Ordinance incorporates by reference as though fully set forth herein that certain form of a Development Agreement by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY") and NOVELLUS SYSTEMS, INC., a California corporation (hereinafter "NOVELLUS") attached hereto as EXHIBIT "A" (hereinafter "DEVELOPMENT AGREEMENT").

SECTION 3. The NOVELLUS project described within the DEVELOPMENT AGREEMENT and the terms of this DEVELOPMENT AGREEMENT are within the subject of an Environmental Impact Report ("EIR") prepared in conformance with the California Environmental Quality Act of 1970, together with State Guidelines and the provisions of Title 21 of the San José Municipal Code (collectively, "CEQA"), all as amended from time to time; the EIR was found by the Planning Commission of CITY to be completed in compliance with CEQA and to represent the independent judgment of CITY on June 21, 2005; the City Council of CITY considered and approved the information and conclusions contained in the EIR and adopted findings and a Mitigation Monitoring Program in connection therewith prior to approving this Ordinance; CITY's Director of Planning, Building and Code Enforcement prepared an Addendum to the EIR

pursuant to CEQA in further analysis of the NOVELLUS project, which Addendum is dated and approved as of September 19, 2007, and which Addendum was considered by the Planning Commission on September 26, 2007, all of which has not been protested or appealed under the provisions of Title 21 of the San José Municipal Code.

SECTION 4. The Council of CITY finds that the following are the relevant facts concerning the proposed DEVELOPMENT AGREEMENT:

1. The General Plan designations for the areas subject to this proposed DEVELOPMENT AGREEMENT are as described within the DEVELOPMENT AGREEMENT.
2. NOVELLUS proposes to develop or to facilitate the development, consistent with the General Plan and the Development Approvals as set forth in the DEVELOPMENT AGREEMENT, projects consisting of **PDC07-054** (a Planned Development Rezoning from the (IP) Industrial Park Zoning District to the A(PD) Planned Development Zoning District to allow up to 444 attached residential units on a 12.1 gross acre site); and **PDC07-055** (a Planned Development Rezoning from the IP Industrial Park Zoning District to the A(PD) Planned Development Zoning District to allow up to 554 attached residential units and a 1-acre park on a 8.7 gross acre site); and **H07-035** (a Master Site Development Permit for additional development of up to 870,000 square feet of Industrial Park uses, including transfer of up to 270,251 square feet of floor area credits, on a 27 gross acre site), all on those certain real properties more particularly described in the DEVELOPMENT AGREEMENT and all as more specifically set forth in the DEVELOPMENT AGREEMENT (the "PROPERTIES").
3. NOVELLUS requests a DEVELOPMENT AGREEMENT to enable and assure phased and orderly development of the PROPERTIES all in a manner consistent with the provisions set forth in the DEVELOPMENT AGREEMENT.

4. Consistent with the information set forth in the RECITALS of the DEVELOPMENT AGREEMENT:
- a. Development of the PROPERTIES as set forth in the DEVELOPMENT AGREEMENT for the proposed project is consistent with CITY's General Plan and all applicable specific and area plans and policies, as amended to date; and
 - b. Development of the proposed project as described in the DEVELOPMENT AGREEMENT should be encouraged because it will help meet important economic, social, environmental and planning goals of CITY, including but not limited to: the CITY's Economic Development Strategy, Strategic Initiative #5 Creating an Entrepreneurial Environment – Support the Growth of Local Businesses, Small and Large in Tech as well as Non-tech Fields, locating of jobs near housing to reduce commutes for San Jose residents, facilitating San Jose as a viable and desirable location for development of new technologies and innovations and associated industrial job opportunities, redeveloping underutilized property near transit investment with jobs and housing so as to encourage use of transit, dedicating park space to CITY for use by San José residents, and facilitating increases in sales and property tax revenues necessary to provide services to San José residents; and
 - c. The DEVELOPMENT AGREEMENT will facilitate the development of the project in the manner proposed in the DEVELOPMENT AGREEMENT for the further reasons set forth in the recitals of the DEVELOPMENT AGREEMENT; and
 - d. NOVELLUS will incur unusually substantial costs in order to provide public improvements, facilities and services from which the public will benefit, including substantial financial contribution towards the construction and maintenance of parklands in the North San José Area, all as set forth in more detail in the DEVELOPMENT AGREEMENT and (ii) NOVELLUS has made commitments to a very high standard of quality for the projects proposed in the DEVELOPMENT AGREEMENT and has agreed to development limitations beyond that required by the existing CITY zoning code, as set forth in the project description and project-included mitigation measures in the EIR and in the Development Approvals described in the DEVELOPMENT AGREEMENT; and
 - e. Additionally, development of the project on the PROPERTIES also will make a substantial contribution to the economic development of San Jose in that it will have office uses as a component of the project and

will assist in the retention of NOVELLUS in the City of San José, which business employs approximately 1,200 employees.

SECTION 5. This Council, based upon analysis of the facts set forth above, finds and concludes that NOVELLUS's proposed development, as described in the DEVELOPMENT AGREEMENT, will make a substantial contribution to the economic development of CITY through the creation, retention or expansion of jobs in CITY, together with the related generation of fees, revenues and taxes to CITY, will result in extraordinary public improvements and facilities from which the general public of CITY will benefit, and will result in a project of a very high standard of quality on the PROPERTIES.

SECTION 6. Based upon the foregoing facts, findings, and conclusions, and as required by Section 10 of the ENABLING ORDINANCE, the City Council hereby adopts the following as its findings:

1. The proposed NOVELLUS development is consistent with the General Plan, as amended, and all applicable specific or area plans of CITY.
2. The proposed NOVELLUS development should be encouraged in order to meet important economic, social, environmental or planning goals of CITY.
3. The proposed DEVELOPMENT AGREEMENT will facilitate the development of the PROPERTIES in the manner proposed in the DEVELOPMENT AGREEMENT.
4. The proposed NOVELLUS development will make a substantial contribution to the economic development of CITY in that:
 - a. The proposed development will have office uses as a component; and
 - b. The proposed development will create or retain a significant number of jobs in CITY; and
 - c. NOVELLUS will incur unusually substantial costs to provide public improvements and facilities, as more specifically described in the DEVELOPMENT AGREEMENT, from which the public generally will benefit, NOVELLUS has made a commitment to a very high standard of

quality in connection with its proposed project on the PROPERTIES and has agreed to development standards beyond that required by CITY's Zoning Code.

5. The proposed DEVELOPMENT AGREEMENT is consistent with the provisions of the ENABLING ORDINANCE (Ordinance No. 24297) and is in the public interest.

SECTION 7. The City Council hereby approves the proposed DEVELOPMENT AGREEMENT in substantially the form attached hereto as EXHIBIT "A" and hereby authorizes and directs the City Clerk to execute the DEVELOPMENT AGREEMENT, substantially in the form attached hereto as EXHIBIT "A," on behalf of the CITY as soon as this ordinance becomes effective.

PASSED FOR PUBLICATION of title this 16th day of October 2007, by the following vote:

AYES:	CAMPOS, CHIRCO, CHU, CONSTANT, CORTESE, LICCARDO, OLIVERIO, PYLE, WILLIAMS, REED;
NOES:	NONE
ABSENT:	NGUYEN
DISQUALIFIED:	NONE

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk