



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: May 25, 2021

Approved

Date

05/25/21

SUPPLEMENTAL

SUBJECT: AGREEMENT BETWEEN THE CITY, SHARKS SPORTS & ENTERTAINMENT AND GOOGLE/DOWNTOWN WEST

REASON FOR SUPPLEMENTAL MEMORANDUM

This Supplemental Memorandum describes the proposed changes to the project approvals for the Downtown West Project based upon a proposed settlement agreement among the City of San José (City), Sharks Sports & Entertainment (SSE), and Google, LLC (Google). Staff recommends the City Council approve the changes summarized in Exhibits A and B to this Supplemental Memorandum as part of the project approvals for the project.

BACKGROUND

The City values its relationship with the San Jose Sharks, and the team is a source of pride and excitement for San José. Governing the relationship between the City and SSE, the owner of the Sharks and operator of the SAP Center, the Arena Management Agreement (AMA) between the City and SSE set out the mutual obligations of the parties. The City, Google, and SSE have been coordinating regularly regarding the proposed Downtown West project and City's Diridon Station Area Plan (DSAP) amendment since 2018. A number of changes to both the proposed Downtown West project approvals and the City's DSAP Amendment were incorporated based on SSE requests.

Since the publication of the Development Agreement and proposed Downtown West project approvals, SSE has submitted several letters to the Planning Commission and City relating to the EIR, requests for modifications on the project approvals, as well as other concerns. Since the Planning Commission hearing on April 28, 2021, approximately eight (8) additional modifications were made to the Downtown West project approvals for City Council consideration, as articulated in the City's responses to recent SSE letters (included in Appendix E of the May 17, 2021 Supplemental Memo at

<https://sanjose.legistar.com/View.ashx?M=F&ID=9418095&GUID=7B4FA339-C7BB-48BB-B89F-D642D4CC33AC>).

During the week of May 17, 2021, SSE submitted three additional letters requesting clarifications and assurances the proposed project approvals would not impact the existing AMA.

ANALYSIS

City, Google, and SSE have continued to coordinate to resolve outstanding concerns. This memo summarizes additional clarifications and changes to planning documents and/or other agreements, including a proposed limited-scope amendment to the AMA and the Settlement Agreement itself.

Revisions to Downtown West Project Documents

- Revise the Zoning Ordinance to clarify that it, the GDP, and the PD Permit will allow SSE to continue to use Lots ABC, in keeping with the Arena Management Agreement (AMA).
- Clarify that:
 - Nothing in the Development Agreement is intended to affect provisions of the Option/Negotiation Rights Agreement between City and Google pertaining to Lots ABC dated December 4, 2018 (Option Agreement); and
 - The Development Agreement only applies to participating development parcels; Lots ABC are potentially participating parcels, unless and until Google completes the purchase contemplated in that Option/Negotiation Rights Agreement.
- Revise Exhibit K of the Development Agreement to further clarify provisions related to the AMA and associated parking requirements.
- Add three items to the Conformance Review process, as part of the City Council action:
 - Verification that the number of commercial/publicly-accessible parking spaces satisfies the Required Parking Ratio
 - Demonstration that at least 2,850 Available parking spaces remain within the Project boundary and 1/3-mile of the south entrance of the Arena
 - The project sponsor will meet and confer with SSE during the schematic design phase of the parking facilities to discuss operational efficiencies.

Language for these items is generally contained within Exhibits A and B attached. Each of the revisions contained in Exhibits A and B shall automatically become effective at such time as the City Council has approved the AMA amendments referenced in the Settlement Agreement.

Issues Resolved in Other Documents

While the following is intended and stated in the Project documents, the City and Google hereby further clarify the proposed configuration of West Santa Clara Street and Barack Obama Boulevard near the SAP Center. As depicted in the Downtown West Vesting Tentative Map and Downtown West Design Guidelines and Standards, no reductions in general traffic through lanes are being proposed or approved as part of the Downtown West project along West Santa Clara Street. Per the proposed Amended Diridon Station Area Plan, the City and Valley Transportation Authority (VTA) are exploring potential public service lane configurations to maintain reliable transit and emergency vehicle service; this is a separate effort from Downtown West and will continue to be coordinated with area stakeholders, including SSE.

Similarly, regarding Barack Obama Boulevard between Santa Clara and San Fernando Streets, the City retains final decision-making authority over the public right-of-way. As shown on page 16 of the Vesting Tentative Map (VTM), this portion of the roadway (curb-to-curb space) includes two options:

- A dynamic lane on one side of the roadway and two through lanes
- A through lane on one side of the roadway, one center turn lane, and a second through lane on the other side of the roadway

The first option for the portion of Barack Obama Boulevard between Santa Clara and San Fernando Streets is illustrated on page 271 of the Downtown West Design Standards and Guidelines (DWDSG, draft as of March 2021). The second option is very similar to the illustration of Barack Obama Boulevard between San Fernando and Park Avenue, as depicted on page 272 of the DWDSG. The City will determine the final configuration of the public right-of-way, including this portion of the roadway, during the Conformance Review process, including with ongoing input from SSE. This clarification will be included in the Settlement Agreement.

In addition to the above changes to the Downtown West plans and agreements, the City further commits to the following:

- Today, SSE pays for the cost of event-related Transportation and Parking Management Program (TPMP), including Off-Site Traffic Control Services; the City will identify funding sources to cover the incremental growth of the cost of TPMP, beyond the baseline (pre-COVID costs as of 2019, adjusted for inflation based on the Consumer Price Index (CPI)). The identification and selection of these potential funding sources will include consultation with Diridon Area partners like SSE and area property owners. This is proposed to be codified in a limited-scope amendment to the AMA.
- The City will create a trigger system within its new development and project review system to notify City staff when a proposed project or permit request requires a review of the AMA and/or coordination with SSE. This, as well as the following two items, will be City obligations in the Settlement Agreement.
- Additionally, as a City process improvement, the City will ensure that Construction Impact Mitigation Plans (CIMPs) for vertical and open space development are shared

with SSE for feedback prior to building permit submission to allow time for meaningful review and input.

- The City will facilitate event coordination processes for all parties near the SAP Center. Following the completion and commencement of the use of Privately-Owned Publicly Accessible Open Space and/or the event/conference center within the Project site, Google, SSE, and other area event operators shall meet on a quarterly basis, as described in Exhibit A.
- In order to maintain Arena operations, including but not limited to safety and security, changes to public sidewalks along the West Santa Clara Street and Barack Obama Boulevard Arena frontages will be reviewed and approved by SSE, whose approval must not be unreasonably withheld.

Settlement Agreement

The settlement agreement among the City, Google, and SSE resolves the vast majority of concerns raised by the parties. In this Settlement Agreement, SSE provides the City and Google a covenant not to sue in exchange for certain modifications and clarifications to the project documents as well as certain City obligations in the Settlement Agreement itself including a limited-scope amendment to the AMA. The covenant not to sue would be limited to challenges to the legality of any of the project and Amended DSAP approvals and allegations that City's adoption of any project and Amended DSAP approvals have resulted in a breach of the AMA or the Option Agreement. The Settlement Agreement covers only the present iteration of the AMA and any future amendments, aside from the limited-scope amendment described herein, would be outside its intended scope.

Moreover, the Settlement Agreement is conditioned upon Council approval of the revisions generally contained in Exhibits A and B and Council's future discretionary approval of the proposed limited-scope amendment to the AMA. These Exhibits include proposed revisions to the project documents and this Memorandum outlines additional City commitments outlined above, as well as the amendment of the AMA incorporating both the changes reflecting that SSE will not incur any incremental costs of TPMP beyond inflationary adjustments (the source of those funds is yet to be identified and selected).

While the revisions stated in this Supplemental Memorandum compromise the bulk of the issues that have been resolved, not every issue by each party could be addressed in the Settlement Agreement. Likewise, it is reasonable to anticipate that further issues may arise that will not be covered by the proposed Settlement Agreement. For such issues, the parties will continue to meet and confer in good faith to find amenable resolutions to both outstanding and forthcoming issues.

HONORABLE MAYOR AND CITY COUNCIL

May 25, 2021

Subject: Agreement between the City, Sharks Sports & Entertainment, and Downtown West

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CONCLUSION

As summarized in this memo, the City, Google, and SSE have continued to coordinate to resolve outstanding concerns. As described in this Supplemental Memorandum, City staff recommends that the additional clarifications and changes to planning documents and/or other agreements be included for consideration with the underlying Memorandum and agenda item(s).

/s/

Nanci Klein

Director of Economic Development

For questions, please contact Nanci Klein at (408) 535-8184.

Attachment

Exhibit A

Exhibit A to Supplemental Memorandum

a. Ordinance Rezoning the Property to the DC (PD) Planned Development Zoning District (“PD Zoning Ordinance”)

i. Section 6, paragraph B of the PD Zoning Ordinance has been revised to include language acknowledging that the City does not intend to prohibit any uses and/or structure the City is obligated to allow under the AMA and that any non-conforming use limitations established under Chapter 20.150 of the San Jose Municipal Code do not apply to Lots ABC to the extent necessary to allow uses or structures the City is obligated to allow under the AMA. Section 6, paragraph B of the PD Zoning Ordinance has been modified to read as follows:

Existing Uses and Structures. The City Council does not intend to prohibit any uses and/or structures the City is obligated to allow on Lots ABC pursuant to the Arena Management Agreement by and between the City of San José and San José Arena Management, LLC as amended through December 4, 2018 (the “AMA”). The uses the City is required to allow on such property under the AMA, which include parking and supporting entertainment uses, are consistent with the General Plan as amended through the effective date of this ordinance, including the applicable Downtown and Commercial Downtown land use designations. The requirements of this ordinance, the GDP, the PD Permit, and Municipal Code chapter 20.150 shall not apply to Lots ABC (and Lots ABC shall retain their existing Industrial / Heavy Industrial zoning) until such time as the Project Sponsor acquires fee title or any other legal or equitable interest that includes a right to possession of Lots ABC.

b. Development Agreement.

i. Sections 3.3 and 14.6 of the Development Agreement have been revised to incorporate SSE's requested edits in its letter dated May 17, 2021, to clarify Developer's rights and obligations with respect Development Parcels, as follows:

Section 3.3 revision: Developer may pursue approval of Final Maps for Development Parcels in phases that include only portions of the associated Tentative Map.

Section 14.6 revision (now 14.7 due to addition of provision noted below): Developer shall exercise full dominion and control over the Development Parcels ~~Project Site~~, subject only to the limitations and obligations of Developer contained in this Agreement.

ii. A new Section 14.2 has been added to the Development Agreement (and the subsequent provisions of Section 14 renumbered accordingly) to include the following clarification:

Relationship to Option Agreement. Nothing in this Agreement is intended, nor shall be interpreted to affect, eliminate, or modify the provisions of or the City's rights under the Option/Negotiation Rights Agreement between the City of San José, a California municipal corporation, and Google LLC, a Delaware limited liability company, dated December 4, 2018, for the property referred to as "Lots A-C," and more particularly described in Exhibit A to that Agreement, located in the City of San José, California.

c. Exhibit K to Development Agreement, Downtown West Parking Requirements. Exhibit K has been revised to clarify that (i) the parking spaces to be provided by the Project will be located within 1/3-mile of the south entrance to the SAP Center, (ii) 2,850 commercial parking spaces within the Project Site boundary and within 1/3-mile of the south entrance to the SAP Center will remain "Available," as defined in the Exhibit, and (iii) to make other clarifying edits all as shown in Exhibit B to this Supplemental Memo.

d. Conformance Review Implementation Guide. Section II (Vertical Conformance Review Application Submittal Requirements) of the Conformance Review Implementation Guide has been revised to incorporate SSE's requested edits in its letter dated May 17, 2021, to establish a meet and confer process with SSE on select parking-related vertical improvements. A new subsection (m) has been added under Section II.B.1 as follows:

(m) Meet and Confer with Sharks Sports & Entertainment (SSE) on Select Parking-Related Vertical Improvements. At least seven (7) business days before submitting a Conformance Review Application for Vertical Improvements (schematic level of design) that includes replacement parking facilities proposed by the project sponsor to be made available to SSE, the project sponsor shall provide written notice to up to three SSE representatives, as identified by SSE, of the anticipated Conformance Review Application. If within seven (7) business days of receiving such notice, SSE requests a meet and confer meeting ("Meet and Confer") with the project sponsor and the City regarding the Conformance Review Application, then the project sponsor shall provide SSE with a copy of the project sponsor's Conformance Review Application concurrent with its application submittal to the City. The project sponsor and city shall use commercially reasonable efforts to schedule and conduct the Meet and Confer with SSE within seven (7) business days following Conformance Review Application submittal. At the Meet and Confer, SSE may provide the project sponsor with comments on the applicable Conformance Review Application, which comments shall be (1) limited to the design and function of those parking facilities proposed to be publicly accessible, including for SSE and its patrons; and (2) focused on industry best practices relating to the design and function of such parking facilities. The City may in its discretion consider comments provided by SSE during the Meet and Confer as part of the City's review of the Conformance Review Application pursuant to the timelines set forth in Section IV.B.

e. Conformance Review Implementation Guide. Appendix A (Downtown West Planned Development Zoning District Vertical and Open Space Conformance Review Approval Form) of the Conformance Review Implementation Guide has been revised to clarify that compliance with Exhibit K parking requirements will be reviewed as part of the Conformance Review process. The following clarifications were added such that Section B (Consistency Determination), subsection 2(e) of Appendix A reads as follows:

(e) If a Vertical Conformance Review Application includes office development, the development proposal described in the Application complies with the requirements of Exhibit K to the Development Agreement, as follows:

(1) The number of commercial/public parking spaces satisfies the Required Parking Ratio.

Yes

No

(2) The project sponsor has demonstrated that at least 2,850 “Available” parking spaces will be maintained in the aggregate within the Project boundary and within one-third (1/3)-mile radius of the south entrance to SAP Center (which radius shall be defined to include the entirety of the parking garage proposed to be located on Parcel F, as such Parcel is depicted in the DWDSG). A publicly-accessible parking space is “Available” if it is unoccupied and accessible to SAP Center customers on weekends and after 6:30 PM on weekdays, on SAP Center event days.

Yes

No

Exhibit B

Exhibit K

Downtown West Parking Requirements

Recitals:

- A. This Exhibit is intended to ensure that sufficient parking is publicly-accessible within the Project site, for the Project uses, and ~~also that those publicly-accessible spaces will provide sufficient "Available" parking (as defined below)~~ for the SAP Center, to help ensure consistency with the City's obligations under the Arena Management Agreement.
- B. Today, approximately 2,850 Available surface parking spaces exist on property that will be redeveloped as part of the Downtown West project. Developer and the City anticipate the replacement of ~~approximately 2,850 existing available surface parking spaces on property that will be redeveloped as part of the Downtown West project~~ that parking, and the development of at least 1,150 additional spaces (for a total of at least 4,000 publicly-accessible parking spaces) at full buildout of office space within the Downtown West project. ~~This would ensure the long-term sustainability of the SAP Center. These parking, which spaces do not~~ will all be located within 1/3 mile of the south entrance to the Arena (which radius shall be defined to include the entirety of the parking garage proposed to be located on Parcel F, as such Parcel is depicted in the DWDSG). These 4,000 parking spaces include the parking spaces existing on the property known as "Lots ABC" adjacent to the SAP Center, which currently contain 1,422 "Available" parking spaces, but exclude the up to 2,360 residential parking spaces to be included in the project. ~~Terms~~
- C. The project will target 85% of said 4,000 publicly-accessible parking spaces (3,400 at full buildout) to be "Available" as defined below. This would help ensure the long-term sustainability of the SAP Center.
- A-D. Unless otherwise indicated, terms that are used but not defined in this Exhibit shall have the meanings given to such terms in the body of the Development Agreement to which this Exhibit is attached. For purposes of this Exhibit K, a publicly-accessible parking space is "Available" if it is unoccupied and accessible to SAP Center customers on weekends and after 6:30 PM on weekdays, on SAP Center event days.

Parking Requirements:

1. Overall Requirements: Over the course of the development of the Project, Developer shall be required to provide publicly-accessible off-street parking spaces serving new office development at a cumulative ratio between 0.5 and 0.645 spaces for each 1,000 square feet of Floor Area (which shall mean eighty-five percent (85%) of the total gross floor area) of such office buildings (the "Required Parking Ratio"). At the point of full build out of office space within the Downtown West project, the Required Parking Ratio shall be 0.645 spaces, and the project shall provide at least 4,000 publicly-accessible spaces. ~~within 1/3 mile of the south entrance to the Arena (which radius shall be defined to include the entirety of the parking garage proposed to be located on Parcel F, as such Parcel is depicted in the~~

Exhibit B

DWDSG).

- a. Once 4,000 publicly-accessible parking spaces are operational and in compliance with these terms, the Required Parking Ratio will no longer apply provided that the 4,000 publicly-accessible spaces shall be maintained as described herein.
- b. Developer may construct up to 4,800 publicly-accessible parking spaces at its discretion; this parking would be reviewed as part of the Conformance Review process.
- c. The Required Parking Ratio represents a reduction from standard City parking requirements, which would require as many as 15,500 spaces at Downtown Commercial parking ratios (2.5 spaces per 1,000 square feet of Floor Area), or 6,600 spaces with application of available standard parking reductions (1.06 spaces per 1,000 square feet of Floor Area). ~~The~~The City Council has determined that a Required Parking Ratio of 0.645 spaces per 1,000 square feet of Floor Area is warranted given the area's rich transit and mixed-use environment, sustainability and air quality imperatives, traffic reduction and City's multimodal goals, the fact that this parking is available to the public, and transportation demand management requirements.
- d. The Required Parking Ratio is critical to serve the needs of the Project, as well as to replace parking currently utilized by transit riders and SAP Center patrons. -With this in mind, the commercial parking spaces will be publicly-accessible and priced to allow for maximum efficiency to support the SAP Center, as well as the multimodal goals of the City and Project.
 - i. At 4,000 publicly-accessible commercial parking spaces, the ~~project targets~~Developer will target at least 85% of such spaces (3,400) to be Available for SAP Center event use.
- e. If, over the course of the Development Agreement, some parking is found to be no longer warranted, the Director of PBCE may, in its sole discretion, reduce the Required Parking Ratio and/or overall amount without requiring an amendment to the Development Agreement or to this Exhibit.
- f. ~~The~~Notwithstanding any reduction in the Required Parking Ratio approved by the Director as described above, the parking requirement must be satisfied in part through at least 2,850 publicly-accessible commercial spaces within the Project Site, including existing parking.
- g. As an option to satisfy the requirement for the 2,851 to 4,000 publicly-accessible parking spaces set forth above (Section 1), Developer may deliver this parking either within the 1/3-mile radius of the south entrance to the SAP Center (which radius shall be defined to include the entirety of the parking garage proposed to be located on Parcel F, as such Parcel is depicted in the DWDSG) or through an Alternative Parking Arrangement.
 - i. Alternative Parking Arrangement: If Developer determines that it will not provide any number of the remaining required parking spaces within the Project Site, then, in order to meet the Required Parking Ratio, the City shall

Exhibit B

have the right to designate additional land owned by the City and within ½ of a mile of the south entrance to the SAP Center (the "Additional Parking Property") for Developer to build additional parking spaces; Developer would then be required to build additional spaces on the Additional Parking Property, subject to obtaining appropriate environmental clearance and any discretionary approvals, as well as ensuring compliance with any contractual obligations of the City; provided, however, in no event would Developer be required to build parking spaces on the Additional Parking Property that, when aggregated with the publicly-accessible spaces located within the Project boundary, would exceed the Required Parking Ratio or 4,000 total spaces, as described above.¶

- ii. In the event the Alternative Parking Arrangement results in designation by the City of "Lot E" certain parcels located at St. John and N. Montgomery Streets north of the Arena (known as "Lot E") for the development of additional parking by Developer, subject to any necessary environmental clearance, nothing in this Exhibit shall preclude the City from complying with its obligations under the Arena Management Agreement with respect to Lot E, ~~including regarding parking priority being provided for SAP Center event related parking at least until June 30, 2025, which entity would manage the parking,~~ and/or any option agreements to purchase that property.
 - h. The City's Department of Transportation will review the design of parking facilities as part of a Vertical Conformance Review Application and may require one or more future Focused Local Transportation Analysis (Focused LTAs) to provide building-specific analysis as defined in the Conformance Review Implementation Guide.
 - i. Developer and SSE shall meet and confer regarding parking facility design during the schematic design and development process.
2. Phasing:- The requirements below are to ensure that sufficient parking exists, at any given specific time, for the continued operational needs of the SAP Center, as well as the multimodal goals of the City and Project.
- a. Compliance with this requirement shall be evaluated during the Conformance Review process for each office Building, and verified prior to issuance of Building Permits for each office Building.
 - i. Proposed parking spaces included as part of a previously approved Conformance Determination shall be counted to determine whether the Required Parking Ratio will be satisfied upon construction of the office building that is the subject of a Conformance Review. Surface parking spaces in the Project also shall be counted during the Conformance Review process to determine whether the Required Parking Ratio will be satisfied. For clarity, this means that, to determine whether the Required Parking Ratio will be satisfied, each Conformance Review for an office building shall account for (i) surface parking spaces in the Project, (ii) proposed parking spaces included in a previously approved Conformance Determination that have not yet been constructed, (iii) parking spaces

Exhibit B

already constructed as part of the Project, and (iv) the parking spaces included in the subject Conformance Review application. In the event a proposed office building or buildings would result in the elimination of existing surface parking spaces, the Conformance Review Application for that building shall not be denied for the temporary failure to satisfy the Required Parking Ratio during construction of the building or buildings if the Project would continue to provide a ratio of 0.5 spaces for each 1,000 square feet of Floor Area, and so long as the Required Parking Ratio is satisfied upon issuance of a Certificate of Occupancy for that office building or buildings.

- ii. During the Conformance Review process, the Project will be required to confirm that at least 2,850 “Available” parking spaces will be maintained in aggregate within the Project boundary and within one-third (1/3)-mile radius of the south entrance to the SAP Center.
- b. If the Project will result in a temporary failure to satisfy the Required Parking Ratio, as described in Section 2.a.i, for a single period that will exceed three (3) years, the City shall verify that its parking obligations to ensure a certain number of available parking spaces pursuant to the Arena Management Agreement continue to be met. If the City's obligations continue to be met, then the temporary failure of the project to satisfy the Required Parking Ratio may continue for another two (2) years, for a maximum of (5) years. After (5) years, Developer shall develop and obtain agreement from the City for one or more interim parking management strategies as part of the Parking Delivery Plan during construction. If, however, it is determined after the initial 3-year period that the City will not meet its parking obligations under the Arena Management Agreement due to temporary failure of the project to satisfy the Required Parking Ratio, Developer shall develop and obtain agreement from the City for one or more interim parking management strategies at that time.
- e.—To the extent the Option Agreement for Lots A/B/C is exercised prior to 2040, the Developer must be in compliance with the Required Parking Ratio, subject to Section 2(a)(i), prior to beginning vertical development on Lots A/B/C. -To the extent the existing Second Amended and Restated Arena Management Agreement between the City and San José Arena Management, LLC is terminated earlier than 2040 or at its scheduled expiration in 2040, Section 1d.i. and Section 2a.ii shall no longer apply.

c.

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