

**From:** [Phan, Johnny](#)  
**To:** [Downtown West Project](#)  
**Subject:** FW: Google - DW - DA exhibits and DISC provision  
**Date:** Tuesday, April 6, 2021 2:43:40 PM  
**Attachments:** [Google - DW - Community Benefits Adjustment Provision-c.docx](#)  
[Google - DW - Exhibits F2 and F3 3.3.21-c.docx](#)  
[Exhibit F3 Figures 1-5 3.3.21-c.pdf](#)  
[Redline Google - DW - City comments to F2 and F3 - Google - DW - Exhibits F2 and F3 3.3-c.pdf](#)  
[DA - Exhibit L List of Approvals Google 3.3.21-c.docx](#)  
[Redline DA - Exhibit L City Comments - DA - Exhibit L List of Approvals Google 3.3-c.pdf](#)  
[DA - Exhibit N Notice of Completion and Termination Google 3.3.21-c.docx](#)  
[Redline DA - City Comments to Exhibit N Notice of Completion and Termination - DA - Exhibit N Notice of Completion and Termination Google 3.3-c.pdf](#)  
[DA - Exhibit K Parking Google 3.3.21-c.docx](#)  
[Redline DA - City comments to Exhibit K Parking - DA - Exhibit K Parking Google 3.3-c.pdf](#)  
[DA Exhibit J Microgrid Google 3.3.21-c.docx](#)  
[Redline City Comments to Exhibit J Microgrid - DA Exhibit J Microgrid Google 3.3-c.pdf](#)

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**From:** Straka, Stephanie <SStraka@coblentzlaw.com>  
**Sent:** Wednesday, March 3, 2021 7:20 PM  
**To:** Phan, Johnny <Johnny.Phan@sanjoseca.gov>  
**Cc:** Miller, Gregg <gmiller@coblentzlaw.com>  
**Subject:** Google - DW - DA exhibits and DISC provision

[External Email]

Johnny, Attaching the following DA exhibits and a DISC-related provision for review, and redlines against your earlier comments to the exhibits:

- Community Benefits Adjustment/DISC provisions (this is a provision to go into the DA; not sent previously so no redline)
- Exhibits F2 and F3
  - Figures 1-5 to same
- Exhibit J Microgrid
- Exhibit K Parking
- Exhibit L List of Approvals
- Exhibit N Notice of Termination

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#### 4.2 Community Benefits Adjustments.

4.2.1 Definition. "Community Benefits Adjustment" [PENDING NEGOTIATION] shall mean an adjustment or modification to the total acreage, units, amount, configuration, or Completion or delivery schedule, or other elements of a Community Benefit, as permitted by the Downtown West Planned Development Zoning District, General Development Plan, Downtown West Design Standards and Guidelines, or Downtown West Improvement Standards and Conceptual Infrastructure Plan Sheets, and subject to the applicable review and/or approval processes set forth therein, that is necessitated by (i) any subsequent proceedings initiated by any of the DISC Partner Agencies to acquire any portion of the Project Site in connection with DISC or other transit project(s), if such acquisition results in a reduction in the development program as established by the Project Approvals; and/or (ii) reconfiguration and/or redesign necessitated by the Developer being prohibited from building, or unable to viably build to the maximum heights reflected in the DWDSG as a result of City's adoption of a construction crane policy that prohibits or impacts Developer's ability to construct to such maximum heights, if such reconfiguration and/or redesign results in a reduction in the development program as established by the Project Approvals.

4.2.2 Community Benefits Adjustments Due to Acquisition by DISC Partner Agencies. [PENDING NEGOTIATIONS]

(a) The Parties agree and have established an estimated area of the Project Site located in proximity to a proposed transit alignment, referred to as the "Transit Project Buffer Zone" and depicted in Exhibit \_\_\_\_. In the event a DISC Partner Agency acquires any portion of the Project Site located within that Transit Project Buffer Zone, through eminent domain or other proceedings, the Parties agree and understand that such acquisition would result in impacts

to the Project development program and specifically reductions to office yield; any reduction to office yield shall require a commensurate Community Benefits Adjustment to those Community Benefits associated with that reduced office square footage.

(b) It is further understood by the Parties that acquisition of any amount or portion of the Project Site in addition to or beyond the Transit Project Buffer Zone that impacts office development would constitute a substantial reduction in the Project's development program and, due to the fixed infrastructure costs of the Project, such acquisition would directly affect the overall feasibility of the Project. In this instance, if a DISC Partner Agency(ies) acquires the affected portion of the Project Site for a price that exceeds the fair market value of the acquired land by \$XX per square foot of that acquired land (subject to escalation based on the Engineering News Record Construction Cost Index), then Developer shall have been compensated for the increased infrastructure costs to the remaining development program, and Developer shall also receive a Community Benefits Adjustment commensurate with the reduction in the development program as described in Paragraph (a).

(c) In the event a DISC Partner Agency(ies) does not acquire the affected portion of the Project Site for a price that exceeds Developer's fair market value, as described in Paragraph (b) above, (i) a Community Benefits Adjustment commensurate with the reduction in the development program as described in Paragraph (a) shall be required, and (ii) the Community Benefits shall be adjusted by an amount equal to the lost development program multiplied by the per square foot infrastructure costs, less the proceeds above market value for the land ("Net Value Loss"), according to following formula (subject to escalation based on the Engineering News Record Construction Cost Index):

$$(\text{Lost Program} * \text{PSF Infra Costs}) - \text{Proceeds Above Market Value for Land} = \text{Net Value Loss}$$

#### 4.2.3 Community Benefits Adjustment Due to Construction Crane Policy.

[PENDING NEGOTIATIONS] In the event the City adopts a construction Crane Policy that prohibits or impacts Developer's ability to construct to the maximum heights reflected in the DWDSG, the Parties understand that a reconfiguration and reduction of the development program as established by the Project Approvals may be required. If such a reduction of the development program is required, a Community Benefits Adjustment shall also be required by an amount equal to the lost program multiplied by per square foot infrastructure costs (subject to escalation based on the Engineering News Record Construction Cost Index). Alternatively, if the aggregate fees owed or costs incurred across the Project pursuant to the Crane Policy exceed one hundred thousand dollars (\$100,000), Developer shall receive a Community Benefits Adjustment in an amount equal to one dollar for every dollar over \$100,000 that is owed or incurred.

## **Exhibit F2**

### **Rules Regarding Public Access**

#### **1. Hours of Operation**

Except as set forth in Section 2 herein, each of the Privately-Owned Publicly Accessible Open Spaces, excluding the Los Gatos Creek Riparian Corridor, shall be open to the general public every day from sunrise until midnight (12:00 a.m.), except that The Meander shall be open to the general public every day from Sunrise until 10:00 p.m.

#### **2. Scope of Permissible Park Use**

The public is welcome to access the Privately-Owned Publicly Accessible Open Spaces for the following general uses:

- to enjoy the park during the hours of operation ("park hours")
- to enjoy open spaces during park hours, other than those times reserved for private events or necessary closing
- to engage in commercial activity and revenue generating activities with permission of the Developer/owner
- to enjoy and participate in public, community curated events that do not require payment, which will happen a minimum 6 times annually
- to enjoy the gardens, naturalized areas, and landscaping without entering flowerbeds or damaging vegetation
- to sit on a park chair or one seat on a bench designed for sharing
- to deposit waste in trash or recycling receptacles
- to walk dogs on a leash so long as the person walking the dog cleans up after the dog and deposits waste into appropriate receptacles

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- to take souvenir photos; commercial photography by Developer/owner permission only
- to apply to the Developer/owner to host private events, i.e., corporate events, protests, or other special events

### **Exhibit F3**

#### **Rules Regarding Public Events, Private Events, and Temporary Closures**

“Public event” and “private event” shall have the meaning set forth in the General Development Plan. Excluding semi-public open space (as defined in the DWDSG) under lease by a business, the Los Gatos Creek Riparian Corridor, and limited-access mid-block passages (as defined in the DWDSG), all spaces are publicly accessible, subject to the following limitations:

- a. All public events and private events require prior Developer/owner permission, and Developer/owner has the authority in its sole discretion to determine whether an event is permitted, consistent with the rules and limitations for public events, private events and/or temporary closures set forth in this Exhibit F3.
- b. All public events and private events permitted by this Exhibit F3 are permitted without any further authorization, permits, or approvals from the Director of PBCE or any other City department, except to the extent a permit is required under the San Jose Municipal Fire Code (Fire Code) or the event includes amplified noise that exceeds [60] decibels (dBA), which permit processes and requirements are set forth in the General Development Plan.
- c. Notwithstanding the limitations regarding partial closures set forth below, each individual Privately-Owned Publicly Accessible Open Space may be closed in its entirety (inclusive of the reservable areas) for a private event a maximum of six (6) times per year, not to exceed eight (8) hours in any month, except as permitted by Paragraph (p). Except for closures described in Paragraph (p), Developer or Owner shall provide notice to the City of each planned closure for a large private event as allowed under this paragraph at least seven (7) days in advance of the closure, and shall

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- post notice at the entrance to the subject Open Space least forty-eight (48) hours in advance of such closure to inform the public.
- d. No more than one entire Privately-Owned Publicly Accessible Open Space's reservable area may be reserved for a private event at any one time, except for five (5) days per year, when all Privately-Owned Publicly Accessible Open Space reservable areas may be reserved for no more than five (5) consecutive days, provided that prior notification to the general public via posted signage, and written notification to the City Department of Parks, Recreation & Neighborhood Services (“PRNS”) and other stakeholders. During such closures, public access to all City-Dedicated Park spaces and trails shall be provided unless closure of such City-Dedicated Park space is expressly approved in writing by PRNS.
  - e. Private events held in Privately-Owned Publicly Accessible Open Space reservable areas shall be limited to no more than five (5) consecutive days in one location.
  - f. Events shall be assigned to specific venues within the Privately-Owned Publicly Accessible Open Space network appropriate to the size and nature of the event and where the event will impose the least impact to the level of service on the Privately-Owned Publicly Accessible Open Space or the public's use therefore, as determined by Developer/owner in its sole discretion.
  - g. Non-reservable event areas shall remain open and accessible to the public during private events.
  - h. Events shall maintain a clear public path of travel around the event and through the Privately-Owned Publicly Accessible Open Space, including a safe path of travel marked in accordance with ADA standards shall be maintained.

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- i. Private events held during business hours Monday through Thursday shall be encouraged to avoid high public use hours, as determined by Developer/owner.
- j. Private events held during evenings, weekends, and holidays and other hours of high public use should be limited, as determined by Developer/owner, in order to avoid high public use hours, as determined by Developer/owner.
- k. Private events held on weekends shall be limited to one weekend per month per Privately-Owned Publicly Accessible Open Space. As much as possible, as determined by Developer/owner, the event should allow the public to hear, see, or otherwise appreciate the event.
- l. Unless otherwise approved by Developer/owner, event support structures and furnishings shall be located on hardscape areas and shall be selected and arranged with a high regard for the visual and aesthetic quality of the Privately-Owned Publicly Accessible Open Space.
- m. Events involving animal acts, petting zoos, carnival rides, hot air balloons, or helicopter landings shall not be permitted.
- n. Vehicle access through the Privately-Owned Publicly Accessible Open Spaces is prohibited, except that vehicle access for the limited purpose of setting up or dismantling furnishings, decor, or other items associated with a public or private event may be permitted with prior approval of Developer/owner.
- o. Special Events, as defined in the General Development Plans, are permitted with prior Developer/owner permission. Special Events are permitted pursuant to the requirements specified in the Downtown West Planned Development Zoning District and General Development Plan.

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- p. Notwithstanding any provision in this Exhibit to the contrary, Privately-Owned Publicly Accessible Open Spaces may be closed, at Developer/owner's reasonable discretion, on short-notice or at any time for security or safety needs, and for maintenance or repair. Any security or safety-related closure lasting longer than seven (7) days shall require written approval from City, a request for which shall be responded to within twenty-four (24) hours of receipt, and the approval of which shall not be unreasonably withheld.

Each of the following Privately-Owned Publicly Accessible Open Spaces may be partially closed for private events as described below (by percentage of total open space, and duration), subject to the rules and conditions above:

- a. Los Gatos Creek Park: A maximum of twenty-five percent (25%) of Los Gatos Creek Park is reservable by the public for private event use for each event zone depicted on Figure 1 for up to fifty-four (54) days per year (15%) from Sunrise to 12am. The same is reservable by Developer for private event use for each event zone depicted on Figure 1 for up to seventy-three (73) days per year (20%) from Sunrise to 12am.
- b. The Meander: A maximum of fifty-five percent (55%) of the total Privately-Owned Publicly Accessible Open Space within The Meander is reservable by the public for event use for each event zone depicted on Figure 2 for up to fifty-four (54) days per year (15%) from Sunrise to 10 pm. The same is reservable by Developer for private event use for each event zone depicted on Figure 2 for up to seventy-three (73) days per year (20%) from Sunrise to 12:00 am.
- c. Creekside Walk at South Autumn Street: A maximum of thirty-five percent (35%) of the total Privately-Owned Publicly Accessible Open Space within Creekside Walk at

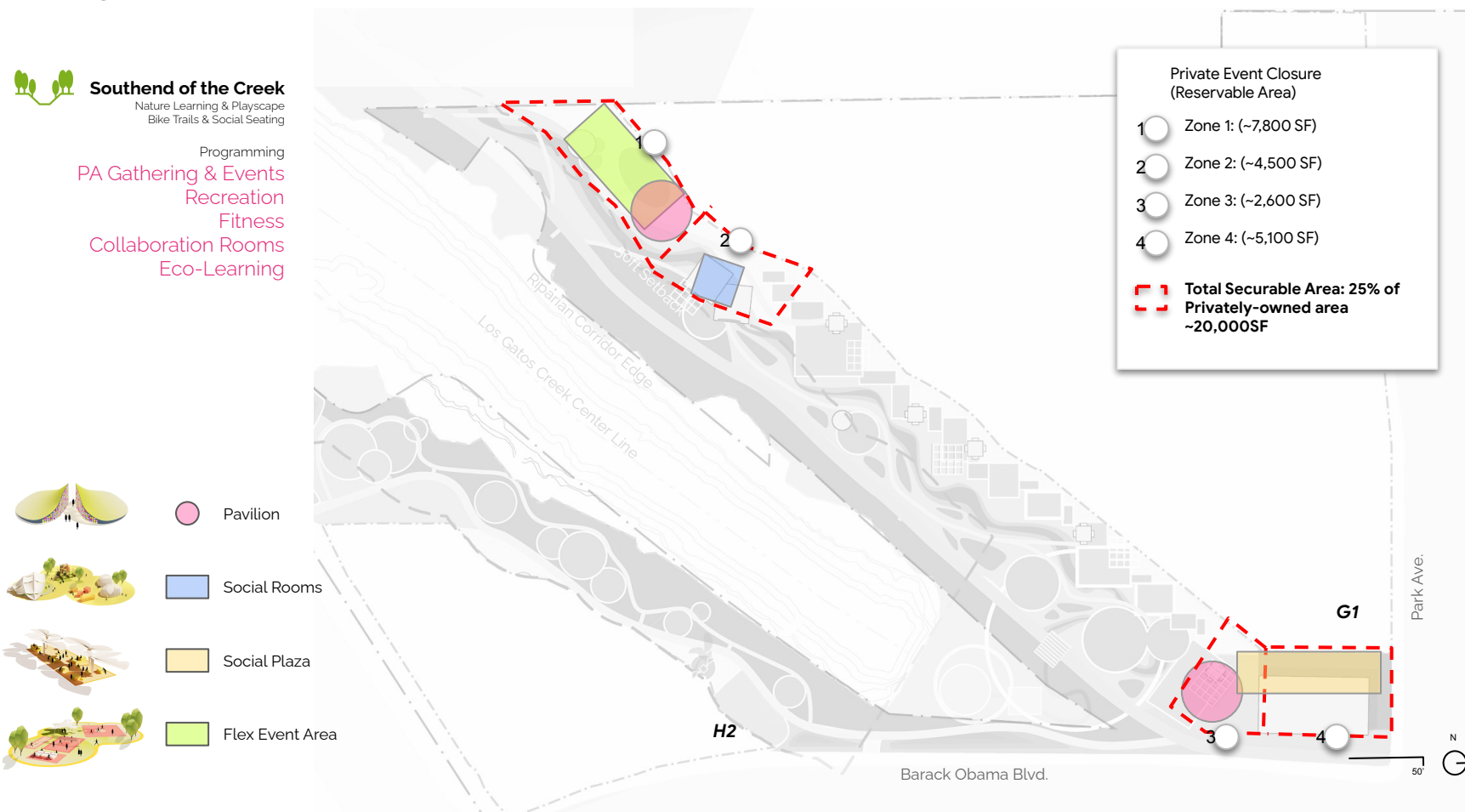
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- South Autumn Street is reservable by the public for event use for each event zone up depicted on Figure 3 for up to fifty-four (54) days per year (15%) from Sunrise to 12:00 am. The same is reservable by Developer for private event use for each event zone depicted on Figure 3 for up to one hundred twenty-seven (127) days per year (35%) from Sunrise to 12:00 am.
- d. The Gateway and Los Gatos Creek East: A maximum of thirty-five percent (35%) of the total Privately-Owned Publicly Accessible Open Space within the Gateway and Los Gatos Creek East is reservable by the public for event use for each event zone depicted on Figure 4 for up to fifty-four (54) days per year (15%) from Sunrise to 2:00 am. The same is reservable by Developer for private event use for each event zone depicted on Figure 4 for up to seventy-three (73) days per year (20%) from Sunrise to 2:00 am.
- e. Northend Park: A maximum of fifty percent (50%) of the total Privately-Owned Open Space within Northend Park is reservable by the public for event use for each event zone depicted on Figure 5 for up to fifty-four (54) days per year (15%) from Sunrise to 10 pm. The same is reservable by Developer for private event use for each event zone depicted on Figure 5 for up to seventy-three (73) days per year (20%) from Sunrise to 12am.

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**Figures 1 through 5** *[separate pdf]*

# Figure 1: Conceptual Reservable Event Zones for Los Gatos Creek Park



# Figure 2: Conceptual Reservable Event Zones for the Meander



## The Meander

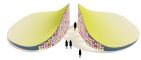
Tech Lab • Learning • Culture  
Urban Green Spine

Programming

PA Specialized Events  
Tech Talk Spill Out  
Social Catered Events  
Interactive Tech Exhibition



Kiosks



Pavilions



Social Plazas



Event / Flex Fields

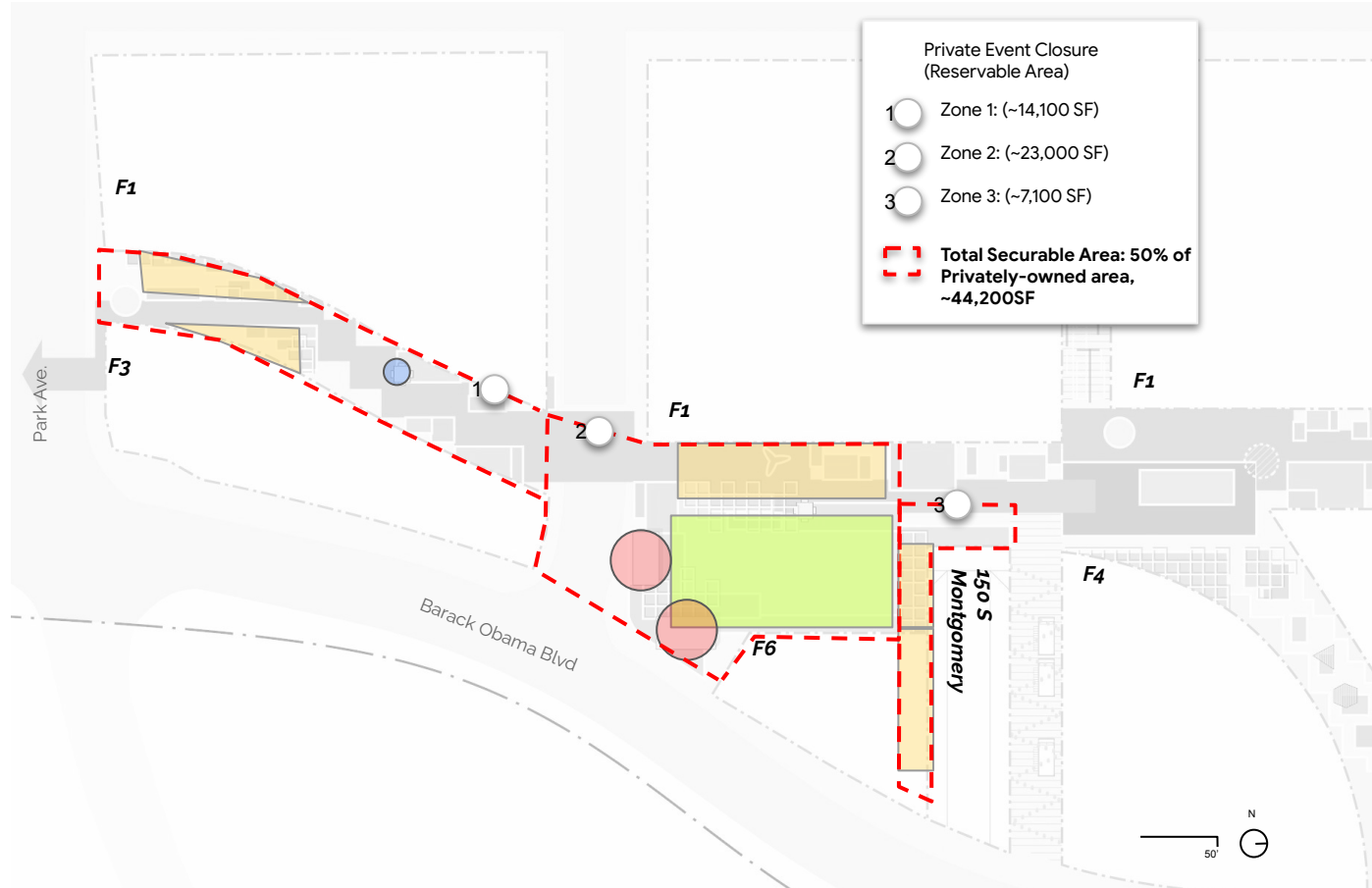
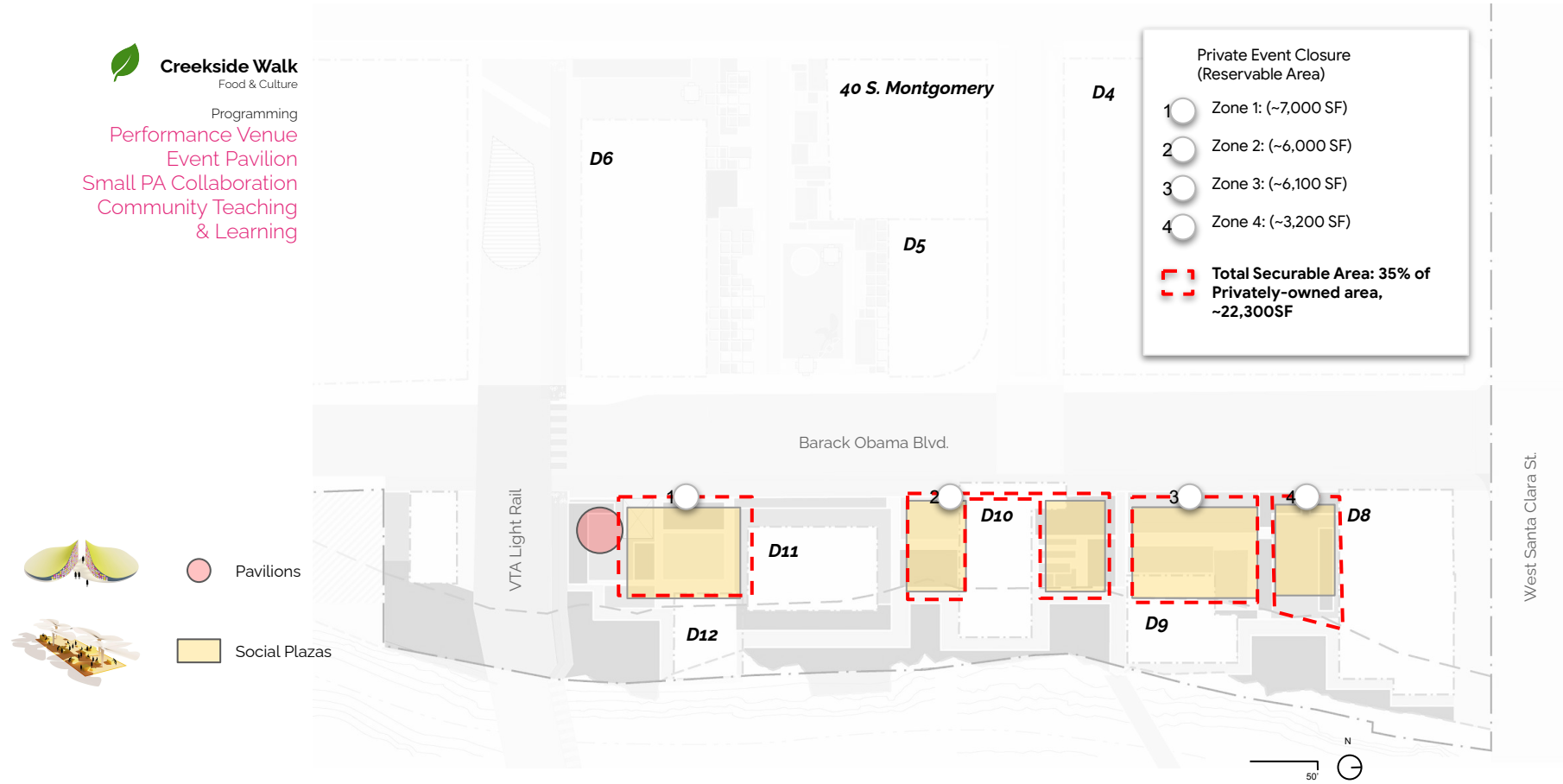


Figure 3: Conceptual Reservable Event Zones for Creekside Walk

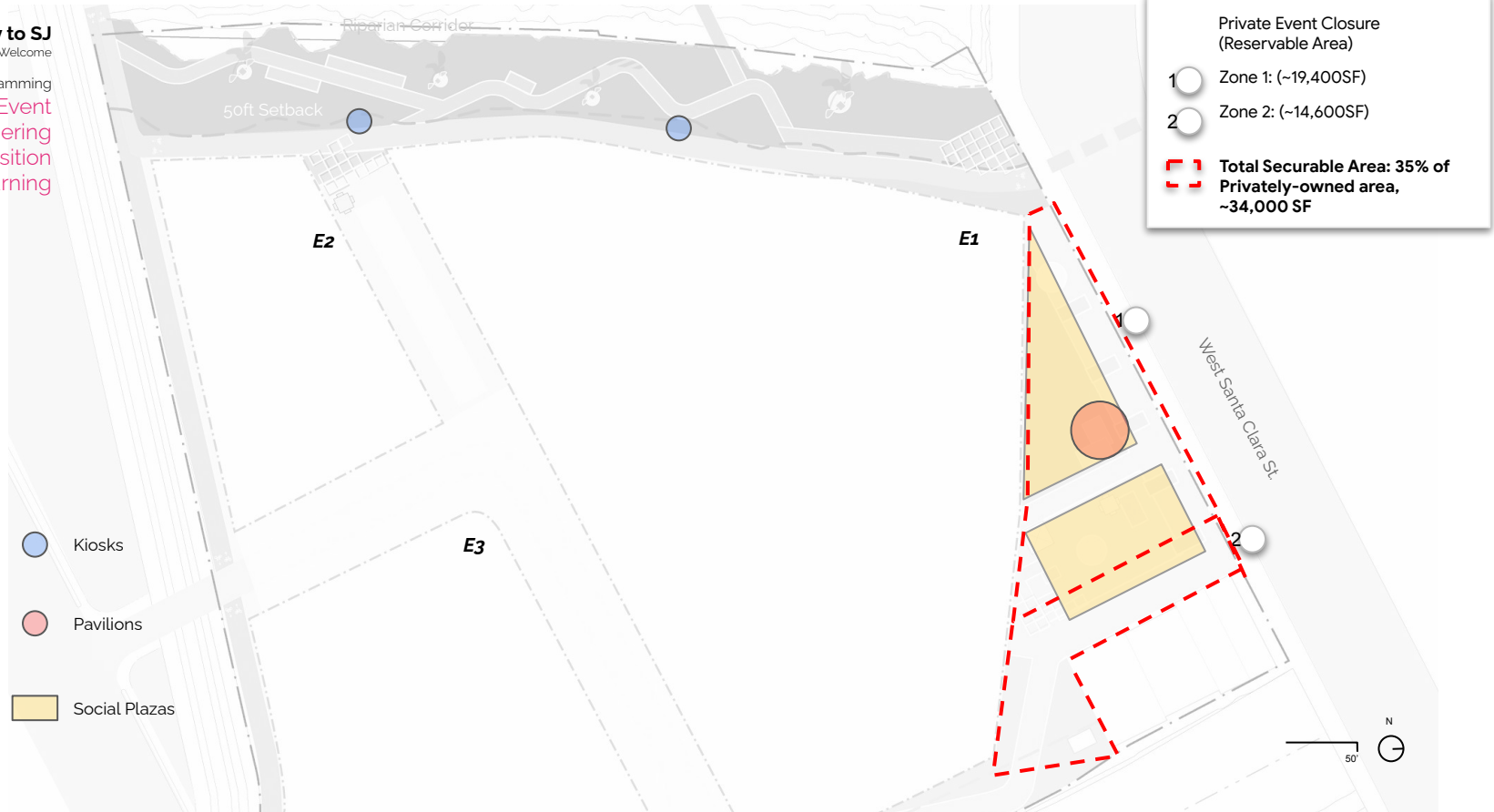




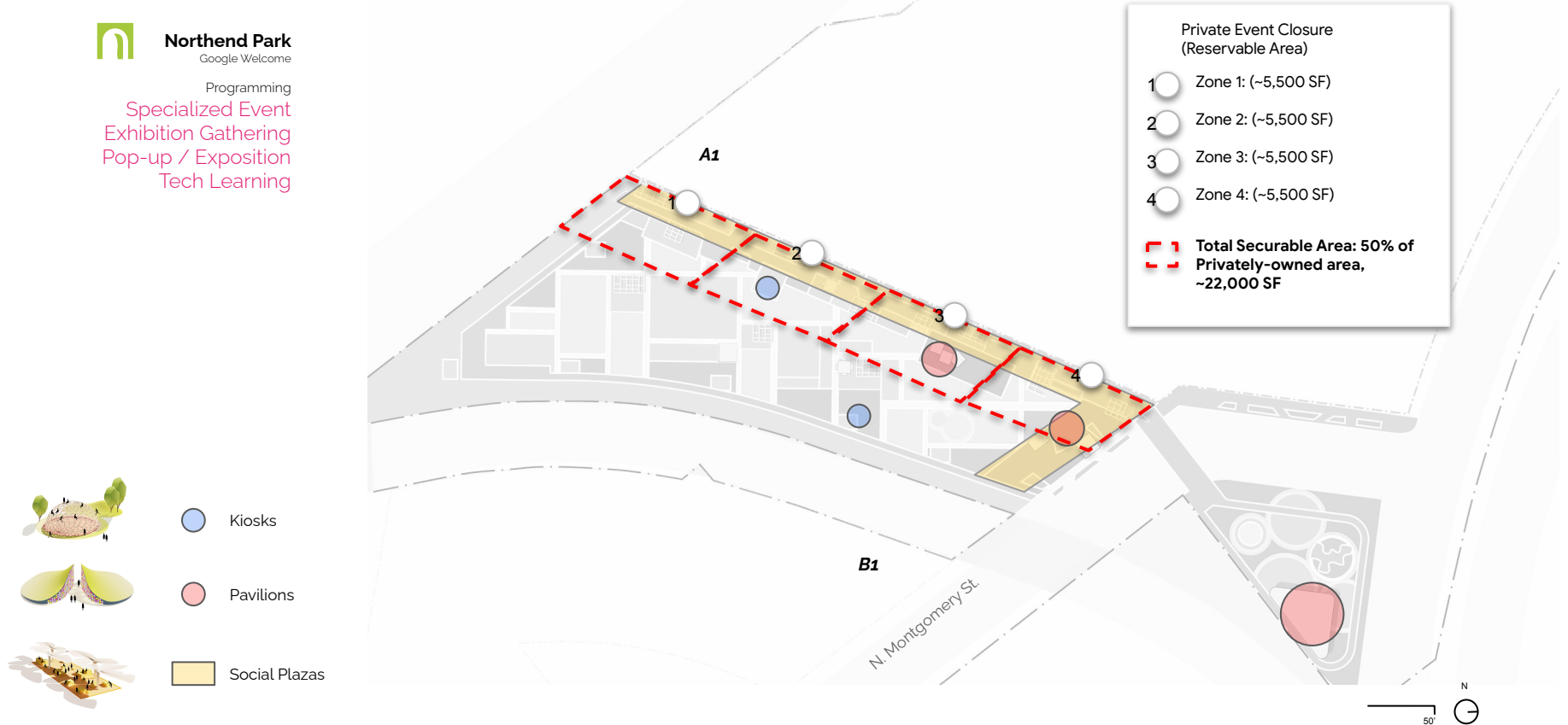
Specialized Event  
Exhibition Gathering  
Pop-up / Exposition  
Tech Learning



 Social Plazas



# Figure 5: Conceptual Reservable Event Zones - Northend Park



## **Exhibit F2**

### **Rules Regarding Public Access ~~and Private Events/Temporary Closures~~**

#### **1. Hours of Operation**

Except as set forth in Section 2 herein, each of the ~~Privately-Owned Publicly Accessible Open Spaces~~, excluding the Los Gatos Creek Riparian Corridor, ~~shall be open to the general public~~ every day from sunrise until midnight (12:00 a.m.), except that The Meander shall be open to the general public every day from Sunrise until 10:00 p.m. ¶

#### **2. Scope of Permissible Park Use**

The public is welcome to access the Privately-Owned Publicly Accessible Open Spaces for the following general uses: ¶

- to enjoy the park during the hours of operation ("park hours") ¶
- to enjoy open spaces during park hours, other than those times reserved for private events or necessary closing ¶
- to engage in commercial activity and revenue generating activities with permission of the Developer/owner ¶
- to enjoy and participate in public, community curated events that do not require payment, which will happen a minimum 6 times annually ¶
- to enjoy the gardens, naturalized areas, and landscaping without entering flowerbeds or damaging vegetation ¶
- to sit on a park chair or one seat on a bench designed for sharing ¶
- to deposit waste in trash or recycling receptacles ¶
- to walk dogs on a leash so long as the person walking the dog cleans up after the dog and deposits waste into appropriate receptacles ¶

[A1]: Global Comment – exhibits should use defined term – Privately-Owned Publicly Accessible Open Space – throughout –

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- to take souvenir photos; commercial photography by Developer/owner permission only
- to apply to the Developer/owner to host private events, i.e., corporate events, protests, or  
other special events

### Exhibit F3

#### ~~2.~~ Rules Regarding Public Events, Private Events~~, and~~ Temporary Closures

“Public event” and “private event” shall have the meaning set forth in the General Development Plan. Excluding semi-public open space (as defined in the DWDSG) under lease by a business, the Los Gatos Creek Riparian Corridor, and limited--access mid-block passages (as defined in the DWDSG), all spaces are publicly accessible, subject to the following limitations:

- a. All public events and private events require prior Developer/owner permission, and Developer/owner has the authority in its sole discretion to determine whether ~~a private~~an event is permitted, consistent with the rules and limitations for public events, private events and/or temporary closures set forth in this ~~Exhibit F2 and~~ Exhibit F3.¶
- b. All public events and private events permitted by this Exhibit F3 are permitted without any further authorization, permits, or approvals from the Director of PBCE or any other City department, except to the extent a permit is required under the San Jose Municipal Fire Code (Fire Code) or the event includes amplified noise that exceeds [60] decibels (dBA), which permit processes and requirements are set forth in the General Development Plan.
- c. ~~b.~~ Notwithstanding the limitations regarding partial closures set forth below, each individual Privately-Owned Publicly Accessible Open Space may be closed in its entirety (inclusive of the reservable areas) for a private event a maximum of six (6) times per year, not to exceed eight (8) hours in any month, except ~~for reasonable maintenance and repair~~as permitted by Paragraph (p). Except for closures described in Paragraph (p). Developer or Owner shall provide notice to the ~~public and~~ City of

each planned closure for a large private event as allowed under this paragraph at ~~last~~ thirty~~least seven~~ (30~~7~~) days in advance of the closure ~~informing the public, and shall~~ post notice at the entrance to the subject Open Space least forty-eight (48) hours in advance of ~~the planned~~such closure to inform the public.

[A2]: What is the process to coordinate with PRNS, Planning, Fire, or PD on closure? Spelled in General Development Plan and should be referenced here?

d. ~~e.~~ No more than one entire Privately-Owned Publicly Accessible Open Space's reservable area may be reserved for a private event at any one time, except for five (5) days per year, when all Privately-Owned Publicly Accessible Open Space reservable areas may be reserved for no more than five (5) consecutive days, provided that prior notification to the general public via posted signage, and written notification to the City Department of Parks, Recreation & Neighborhood Services ("PRNS") and other stakeholders. During such closures, public access to all City ~~Dedicated~~ Park spaces and trails shall be provided unless closure of such City ~~Dedicated~~ Park space is expressly approved in writing by PRNS.

[A3]: This would seem to be contrary to b above which calls for max six times per year no more than 8 hours in one month. Need to understand.

e. ~~d.~~ Private events held in Privately-Owned Publicly Accessible Open Space reservable areas shall be limited to no more than five (5) consecutive days in one location.

[A4]: Does this limitation apply to private events held in just one portion of an POPO, rather than in an entire park? The above restriction limiting closures to a max of 6x/year also may also be full closure of the park, rather than reservations for private events?

f. ~~e.~~ Events shall be assigned to specific venues within the Privately-Owned Publicly Accessible Open Space network appropriate to the size and nature of the event and where the event will impose the least impact to the level of service on the Privately-Owned Publicly Accessible Open Space or the public's use therefore, as determined by Developer/owner in its sole discretion.

g. ~~f.~~ Non-reservable event areas shall remain open and accessible to the public during private events, ~~the private event.~~

- h. ~~Events~~ shall maintain a clear public path of travel around the event and through the Privately-Owned Publicly Accessible Open Space, including– a safe path of travel marked in accordance with ADA standards shall be maintained.
- i. ~~g.~~ Private events held during business hours Monday through Thursday shall be encouraged to avoid high public use hours, as determined by Developer/owner.
- j. ~~h.~~ Private events held during evenings, weekends, and holidays and other hours of high public use ~~hours~~ should be limited, as determined by Developer/owner, in order to avoid high public use hours, as determined by Developer/owner.
- k. ~~i.~~ Private events held on weekends shall be limited to one weekend per month per Privately-Owned Publicly Accessible Open Space. As much as possible, as determined by Developer/owner, the event should allow the public to hear, see, or otherwise appreciate the event.
- l. ~~j.~~ Unless otherwise approved by Developer/owner, event support structures and furnishings shall be located on hardscape areas and shall be selected and arranged with a high regard for the visual and aesthetic quality of the Privately-Owned Publicly Accessible Open Space.
- m. ~~k.~~ Events involving animal acts, petting zoos, carnival rides, hot air balloons, (or helicopter landings ~~to specified areas of the Privately-Owned Publicly Accessible Open Spaces~~) shall not be permitted.
- n. ~~l.~~ Vehicle access though the Privately-Owned Publicly Accessible Open Spaces is prohibited, except that vehicle access for the limited purpose of setting up or dismantling furnishings, decor, or other items associated with a public or private event may be permitted with prior approval of Developer/owner.

[A5]: Are there specified areas where helicopter landings are allowed? ¶

o. ~~m.~~ Special Events ~~involving celebratory activities, such, as music, dance, theater, or similar activities~~ defined in the General Development Plans, are permitted with prior Developer/owner permission. Special Events are permitted pursuant to the requirements specified in the Downtown West Planned Development Zoning District and General Development Plan.

p. ~~n.~~ Notwithstanding any provision in this Exhibit to the contrary, Privately-Owned Publicly ~~Aeessble~~ Accessible Open Spaces may be closed, at Developer/owner's reasonable discretion, on short-notice or at any time for security or safety needs, and for maintenance or repair. Any security or safety-related closure lasting longer than ~~threeseven~~ (37) days shall require written approval from City, a request for which shall be responded to within twenty-four (24) hours of receipt, and the approval of which shall not be unreasonably withheld.

[A6]: This appears to fit together with the limitation in subsection b, limiting park closures to 8 hours per month/6 times per year, except for maintenance or repair. Consider whether the two should be combined.

Each of the following Privately-Owned Publicly Accessible Open Spaces may be partially closed for private events as described below (by percentage of total open space, and duration), subject to the rules and conditions above:

- a. Los Gatos Creek Park: A maximum of twenty-five percent (25%) of Los Gatos Creek Park is reservable by the public for private event use for each event zone depicted on Figure 1 for up to fifty-four (54) days per year (15%) from Sunrise to 12am. The same is reservable by Developer for private event use for each event zone depicted on Figure 1 for up to seventy-three (73) days per year (20%) from Sunrise to 12am.
- b. The Meander: A maximum of fifty-five percent (55%) of the total Privately-Owned Publicly Accessible Open Space within The Meander is reservable by the public for event use for each event zone depicted on Figure 2 for up to fifty-four (54) days per

- year (15%) from Sunrise to 10 pm. The same is reservable by Developer for private event use for each event zone depicted on Figure 2 for up to seventy-three (73) days per year (20%) from Sunrise to 12:00 am.
- c. Creekside Walk at South Autumn Street: A maximum of thirty-five percent (35%) of the total Privately-Owned Publicly Accessible Open Space within Creekside Walk at South Autumn Street is reservable by the public for event use for each event zone up depicted on [Figure 3](#) for up to fifty-four (54) days per year (15%) from Sunrise to 12:00 am. The same is reservable by Developer for private event use for each event zone depicted on Figure 3 for up to one hundred twenty-seven (127) days per year (35%) from Sunrise to 12:00 am.
- d. The Gateway and Los Gatos Creek East: A maximum of thirty-five percent (35%) of the total Privately-Owned Publicly Accessible Open Space within the Gateway and Los Gatos Creek East is reservable by the public for event use for each event zone depicted on [Figure 4](#) for up to fifty-four (54) days per year (15%) from Sunrise to 2:00 am. The same is reservable by Developer for private event use for each event zone depicted on Figure 4 for up to seventy-three (73) days per year (20%) from Sunrise to 2:00 am.
- e. Northend Park: A maximum of fifty percent (50%) of the total Privately-Owned Open Space within Northend Park is reservable by the public for event use for each event zone depicted on [Figure 5](#) for up to fifty-four (54) days per year (15%) from Sunrise to 10 pm. The same is reservable by Developer for private event use for each event zone depicted on Figure 5 for up to seventy-three (73) days per year (20%) from Sunrise to 12am.

**Figures 1 through 5 [separate pdf]**

**Exhibit F3 ¶**

¶

**Code of Conduct For Public Use¶**

¶

**Public use and enjoyment of the Privately Owned Publicly Accessible Open Space is subject to the following rules and code of conduct:¶**

¶

**The public is welcome to access the Privately Owned Publicly Accessible Open Spaces for the following general uses: ¶**

¶

- ☐ ~~to enjoy the park during the hours of operation ("park hours")¶~~
- ☐ ~~to enjoy open spaces during park hours, other than those times reserved for private events or necessary closing¶~~
- ☐ ~~to engage in commercial activity and revenue generating activities with permission of the Developer/owner¶~~
- ☐ ~~to enjoy and participate in public, community curated events that do not require payment, which will happen a minimum 6 times annually¶~~
- ☐ ~~to enjoy the gardens, naturalized areas, and landscaping without entering flowerbeds or damaging vegetation¶~~
- ☐ ~~to sit on a park chair or one seat on a bench designed for sharing¶~~
- ☐ ~~to deposit waste in trash or recycling receptacles¶~~
- ☐ ~~to walk dogs on a leash so long as the person walking the dog cleans up after the dog and deposits waste into appropriate receptacles ¶~~
- ☐ ~~to take souvenir photos; commercial photography by Developer/owner permission only¶~~
- ☐ ~~to apply to the Developer/owner to host private events, i.e., corporate events, protests, or other special events¶~~

¶

**The following activities are prohibited within the Privately Owned Publicly Accessible Open Spaces:¶**

¶

- ☐ ~~Engaging in commercial activity, except by permission of the Developer/owner of the Privately Owned Open Space¶~~
- ☐ ~~Use of vehicles, including parking at any time without specific authorization¶~~
- ☐ ~~Blocking of entry and exit doors, building entrances, and access to or from stairs, ramps, escalators and elevators, including sitting on any stair or escalator handrails¶~~
- ☐ ~~Performing, entertaining, large gatherings, or exhibiting, except by permission and/or permit¶~~
- ☐ ~~Amplified sound, except by permission and/or permit¶~~
- ☐ ~~Feeding or tampering with wildlife¶~~
- ☐ ~~Use of illegal drugs ¶~~
- ☐ ~~Use of alcohol, outside of designated areas¶~~
- ☐ ~~Riding or operating motorized devices, except by persons with a mobility impairment¶~~
- ☐ ~~Carrying, concealing, or using weapons, including, but not limited to firearms, knives, or any similar object(s)¶~~
- ☐ ~~Carrying, concealing, or using fireworks¶~~
- ☐ ~~Defacing, graffitiing, damaging, vandalizing, or destroying any property ¶~~

[A7]: What constitutes a "large-gathering"? The terms "entertaining" and "exhibiting" could be also-vague. Are these intended to refer to commercial-entertainment/exhibits?

[A8]: Cite to ADA and other laws?

- ☐ ~~Littering or unauthorized dumping¶~~
- ☐ ~~Immediate solicitation of money or contributions¶~~
- ☐ ~~Visitors must be fully clothed¶ and may not wear clothing that is likely to provoke a disturbance, that uses or displays obscenities, "fighting words," sexually explicit language, pornography, or material or images defined as obscene under applicable law¶~~
- ☐ ~~Fighting, or use of threatening comments or gestures, obscene language or gestures, or racial, religious, or ethnic slurs¶~~
- ☐ ~~Yelling or creating noise of sufficient volume (including by sound amplification devices) that disrupts or interferes with the site or its normal business operations, or those of nearby businesses or buildings¶~~
- ☐ ~~Dogs off-leash, except in designated areas where posted¶~~
- ☐ ~~Outdoor fires¶~~
- ☐ ~~Use of powered model airplanes, boats, cars, rockets, or drones¶~~
- ☐ ~~Distribution of food or clothing, except by permission and/or permit¶~~
- ☐ ~~Skateboarding, rollerblading, or other similar activity, or any activity that impedes, obstructs, or interferes with the free flow of pedestrian or vehicular traffic, or on park structures, furniture, or hard courts, except in designated areas¶~~
- ☐ ~~Organized sports, (except in designated areas)¶~~
- ☐ ~~Camping (which includes any overnight sleeping or parking) in any open spaces including but not limited to plazas, mid-block passages, green spaces, or naturalized areas¶~~
- ☐ ~~Golf or Practice of Golf¶~~
- ☐ ~~Tampering with pest/bait stations¶~~
- ☐ ~~Violation of any federal, state or local law or ordinance¶~~
- ☐ ~~Use of temporary play equipment such as "Air Jumpers", "Bounce Houses" or "Inflatable Houses," except by permission¶~~
- ☐ ~~Sale of products and services, or distribution of commercial advertising or promotional material of any kind, other than in connection with the site's business or those of tenants or other businesses at or adjacent to the site¶~~
- ☐ ~~Photographing, video recording for commercial purposes without prior consent of the Developer/owner, or recording activity of any kind¶¶~~

[A9]: Fully clothed? or must have certain areas covered?

[A10]: Clarify whether skateboard/rollerblades are ok on pathways as some use these as modes of transport?¶  
¶ Relatedly, is bicycling permitted on pathways?¶ Arguably bicycling would be considered an "other similar activity"

[A11]: Except for very limited vehicle use to set up or take down events there will not be vehicular traffic, correct?

[A12]: Where are the designated areas?¶

[A13]: Does "Practice of Golf" mean a putting green or driving range? If so, it would be clearer to specify

[A14]: This would include casual/non-commercial recording with phones, for example. I expect this would be difficult to enforce. What is the purpose of prohibiting non-commercial recording?



Document comparison by Workshare 10.0 on Wednesday, March 3, 2021  
3:34:46 PM

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Total changes	257

**Exhibit L**

**List of Approvals**

1. Certification of Environmental Impact Report for Downtown West Mixed-Use Project  
(City Council Resolution No. \_\_\_\_ ) (includes Adoption of Mitigation Monitoring and Reporting Program, an CEQA Findings and Statement of Overriding Considerations)
2. Adopting Overriding Findings Regarding Santa Clara County Airport Land Use  
Commission's Determination of Inconsistency for the Project (City Council Resolution No. \_\_\_\_ )
3. Amendment to Envision San Jose 2040 General Plan (City Council Resolution No. \_\_\_\_ )
4. Amendment to Diridon Station Area Plan (City Council Resolution No. \_\_\_\_ )
5. Rezone to Planned Development Zoning District and approval of Downtown West General Development Plan (City Council Ordinance No. \_\_\_\_ )
6. Amendment to Title 20 of the City of San Jose Municipal Code (City Council Ordinance No. \_\_\_\_ )
7. Approval of Downtown West Planned Development Permit, including the Downtown West Design Standards and Guidelines, the Downtown West Infrastructure Standards, the Conceptual Civil Infrastructure Plan Sheets, and Conformance Review Implementation Guide (City Council Resolution No. \_\_\_\_ )
8. Development Agreement for Downtown West Mixed-Use Plan (City Council Ordinance No. \_\_\_\_ )
9. Vesting Tentative Map for Downtown West (City Council Resolution No. \_\_\_\_ )

10. Approval of Master Encroachment Diagram, Encroachment Agreement, and Authorization  
for Approval of Associated Major Encroachment Permits (City Council Resolution No. \_\_\_\_)
11. Construction Impact Mitigation Plan (Framework) (City Council Resolution No. \_\_\_\_)
12. Amendment of Historic Preservation Permit (City Council Resolution No. \_\_\_\_)
13. Landmark Designation Approval for Adjustment to San Jose Water Building (City Council  
Resolution No. \_\_\_\_)
14. Landmark Designation Approval for Adjustment to Southern Pacific Depot (City Council  
Resolution No. \_\_\_\_)
15. Street Vacation for Portions of North Montgomery Street, Delmas Avenue, Park Avenue,  
Cinnabar Street, Cottage Lane, and Barack Obama Boulevard (South Montgomery Street)  
(City Council Resolution No. \_\_\_\_)
16. Any Subsequent Approval (as defined in Section \_\_\_\_ of the Development Agreement)

[A1]: What about citing to each of the resolution-number and ordinance-number for each approval? That is the official approval from the City.

## Exhibit L

### List of Approvals

1. Certification of Environmental Impact Report for Downtown West Mixed-Use Project (City Council Resolution No. \_\_\_\_\_) (includes Adoption of Mitigation Monitoring and Reporting Program, an CEQA Findings and Statement of Overriding Considerations)
2. ~~Overruling the~~ Adopting Overriding Findings Regarding Santa Clara County Airport Land Use Commission's Determination of Inconsistency ~~Determination~~ for the Project (City Council Resolution No. \_\_\_\_\_)
3. Amendment to Envision San Jose 2040 General Plan (City Council Resolution No. \_\_\_\_\_)
4. Amendment to Diridon Station Area Plan (City Council Resolution No. \_\_\_\_\_)
5. Rezone to Planned Development Zoning District and approval of Downtown West General Development Plan (City Council Ordinance No. \_\_\_\_\_)
6. Amendment ~~of~~ to Title 20 of the City of San Jose Municipal Code (City Council Ordinance No. \_\_\_\_\_)
7. Approval of Downtown West Planned Development Permit, including the Downtown West Design Standards and Guidelines, the Downtown West Infrastructure Standards, the Conceptual Civil Infrastructure Plan Sheets, and Conformance Review Implementation Guide (City Council Resolution No. \_\_\_\_\_)
8. Development Agreement for Downtown West Mixed-Use Plan (City Council Ordinance No. \_\_\_\_\_)¶
- ~~9. Approval of Parkland Agreement~~
- ~~9.~~ ~~10.~~ Vesting Tentative Map for Downtown West (City Council Resolution No. \_\_\_\_\_)¶
- ~~11. Major Encroachment Permit for District System~~¶

[A2]: No separate approval of Parkland Agreement. Exhibit to DA.

~~12. Major Encroachment Agreement for District System~~

~~10. 13. District Systems~~ Approval of Master Encroachment Diagram, Encroachment Agreement, and Authorization for Approval of Associated Major Encroachment Permits (City Council Resolution No. \_\_\_\_)

~~11. 14.~~ Construction Impact Mitigation Plan (Framework) (City Council Resolution No. \_\_\_\_)

~~12. 15.~~ Amendment of Historic Preservation Permit (City Council Resolution No. \_\_\_\_)

~~13. 16.~~ Landmark Designation Approval for Adjustment to San Jose Water Building (City Council Resolution No. \_\_\_\_)

~~14. 17.~~ Landmark Designation Approval for Adjustment to Southern Pacific Depot (City Council Resolution No. \_\_\_\_)

~~15. 18.~~ Street Vacation for Portions of North Montgomery Street, Delmas Avenue, ~~Bird Avenue,~~ Park Avenue, Cinnabar Street, Cottage Lane, and Barack Obama Boulevard (South Montgomery Street-) (City Council Resolution No. \_\_\_\_)¶

16. Any Subsequent Approval (as defined in Section \_\_\_\_ of the Development Agreement)¶

Document comparison by Workshare 10.0 on Wednesday, March 3, 2021  
4:19:01 PM

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Document 1 ID	netdocuments://4847-1862-3455/1
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Document 2 ID	netdocuments://4845-1336-4703/1
Description	DA - Exhibit L List of Approvals Google 3.3.21
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Format changed	0
Total changes	54

**Exhibit N**

**Form of Notice of Completion and Termination**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

\_\_\_\_\_  
[address]\_\_\_\_\_

\_\_\_\_\_  
Attn:\_\_\_\_\_

(Space above this line reserved for Recorder's use only)

THIS NOTICE OF COMPLETION OF BUILDING AND COMMUNITY BENEFITS (this "Notice") dated for reference purposes only as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is made by and between the CITY OF SAN JOSE, a political subdivision and municipal corporation of the State of California (the "City"), and \_\_\_\_\_, a \_\_\_\_\_] ("Developer") .

1. The City and Developer entered into that certain Development Agreement dated as of \_\_\_\_\_, 20\_\_\_\_ and recorded in the Official Records of the County of Santa Clara on \_\_\_\_\_, as Document Number \_\_\_\_\_ (Book No. \_\_\_\_, Reel No. \_\_\_\_\_) (the "Development Agreement"). Capitalized terms used in this Notice that are not defined shall have meaning given to such terms in the Development Agreement.

2. Under Section 7.1 of the Development Agreement, when one or more Buildings have been completed and all of the associated Community Benefits, Public Benefits, and other obligations and requirements (collectively "Obligations") tied to those specific Buildings have also been completed, the City agreed, upon Developer's request, to execute and record a notice of completion as it relates to the applicable Building.

3. The City confirms that the Building known as \_\_\_\_\_, located on the property described in the attached Exhibit A (the "Affected Property"), together with all of the Obligations tied to that Building through the Development Agreement and any and all Approvals (including Subsequent Approvals) granted by the City for the Project, have been completed in accordance with the Development Agreement, which Obligations may, in part or in whole, run with the land, survive Building completion, and/or continue to be binding as to the Building and Affected Property and to any and all parties having or later acquiring any interest in the Affected Property even after recordation of this Notice. All parties with an interest in the Affected Property have the right to rely on this Notice.

CITY:

CITY OF SAN JOSE,  
a municipal corporation

By:\_\_\_\_\_  
Director of Planning, Building  
and Code Enforcement

Approved as to form:

[\_\_\_\_\_] , City Attorney

By:\_\_\_\_\_  
Deputy City Attorney

## Google Draft 3.3.21

Negotiation Period Privilege; CPRA Confidential Treatment Request; Not for Public Release – CPRA Exempt; Confidential and Proprietary Business-Siting Information

**Exhibit N**

**Form of Notice of Completion and Termination**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

[address]

Attn:

(Space above this line reserved for Recorder's use only)

THIS NOTICE OF COMPLETION OF BUILDING AND COMMUNITY BENEFITS (this "Notice") dated for reference purposes only as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, is made by and between the CITY OF SAN JOSE, a political subdivision and municipal corporation of the State of California (the "City"), and \_\_\_\_\_, a \_\_\_\_\_ ("Developer").

1. The City and Developer entered into that certain Development Agreement dated as of \_\_\_\_\_, 20\_\_ and recorded in the Official Records of the County of Santa Clara on \_\_\_\_\_, as Document Number \_\_\_\_\_ (Book No. \_\_, Reel No. \_\_\_\_\_) (the "Development Agreement"). Capitalized terms used in this Notice that are not defined shall have meaning given to such terms in the Development Agreement.

2. Under Section 7.1 of the Development Agreement, when one or more Buildings have been completed and all of the associated Community Benefits, Public Benefits, and other obligations and requirements (collectively "Obligations") tied to those specific Buildings have also been completed, the City agreed, upon Developer's request, to execute and record a notice of completion as it relates to the applicable Building.

3. The City confirms that the Building known as \_\_\_\_\_, located on the property described in the attached Exhibit A (the "Affected Property"), together with all of the Obligations tied to that Building through the Development Agreement and any and all Approvals (including Subsequent Approvals) granted by the City for the Project, have been completed in accordance with the Development Agreement, which Obligations may, in part or in whole, run with the land, survive Building completion, and/or continue to be binding as to the Building and Affected Property, and to any and all parties having or later acquiring any interest in the Affected Property even after recordation of this Notice. All parties with an interest in the Affected Property have the right to rely on this Notice.

CITY:

CITY OF SAN JOSE,  
a municipal corporation

Approved as to form:

[\_\_\_\_\_] , City Attorney

[A1]: Need table attached to this Form to clearly outline what Community Benefits, Public Benefits, and other obligations have been completed as part of the Building or placeholder for future exhibit.

By: \_\_\_\_\_  
Director of Planning, Building  
and Code Enforcement

By: \_\_\_\_\_  
Deputy City Attorney

Document comparison by Workshare 10.0 on Wednesday, March 3, 2021  
3:52:37 PM

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Format changed	0
Total changes	13

**Exhibit N**

**Form of Notice of Completion and Termination**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

[address]

Attn:

(Space above this line reserved for Recorder's use only)

THIS NOTICE OF COMPLETION OF BUILDING AND COMMUNITY BENEFITS (this "Notice") dated for reference purposes only as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, is made by and between the CITY OF SAN JOSE, a political subdivision and municipal corporation of the State of California (the "City"), and \_\_\_\_\_, a \_\_\_\_\_ ("Developer").

1. The City and Developer entered into that certain Development Agreement dated as of \_\_\_\_\_, 20\_\_ and recorded in the Official Records of the County of Santa Clara on \_\_\_\_\_, as Document Number \_\_\_\_\_ (Book No. \_\_, Reel No. \_\_\_\_\_) (the "Development Agreement"). Capitalized terms used in this Notice that are not defined shall have meaning given to such terms in the Development Agreement.

2. Under Section 7.1 of the Development Agreement, when one or more Buildings have been completed and all of the associated Community Benefits, Public Benefits, and other obligations and requirements (collectively "Obligations") tied to those specific Buildings have also been completed, the City agreed, upon Developer's request, to execute and record a notice of completion as it relates to the applicable Building.

3. The City confirms that the Building known as \_\_\_\_\_, located on the property described in the attached Exhibit A (the "Affected Property"), together with all of the Obligations tied to that Building through the Development Agreement and any and all Approvals (including Subsequent Approvals) granted by the City for the Project, have been completed in accordance with the Development Agreement, which Obligations may, in part or in whole, run with the land, survive Building completion, and/or continue to be binding as to the Building and Affected Property, and to any and all parties having or later acquiring any interest in the Affected Property even after recordation of this Notice. All parties with an interest in the Affected Property have the right to rely on this Notice.

CITY:

CITY OF SAN JOSE,  
a municipal corporation

Approved as to form:

[\_\_\_\_\_] , City Attorney

[A1]: Need table attached to this Form to clearly outline what Community Benefits, Public Benefits, and other obligations have been completed as part of the Building or placeholder for future exhibit.

By: \_\_\_\_\_  
Director of Planning, Building  
and Code Enforcement

By: \_\_\_\_\_  
Deputy City Attorney

Document comparison by Workshare 10.0 on Wednesday, March 3, 2021  
3:52:37 PM

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Document 2 ID	netdocuments://4824-9518-3327/1
Description	DA - Exhibit N Notice of Completion and Termination Google 3.3.21
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Total changes	13

## **Exhibit K**

### **Downtown West Parking Requirement**

#### **Downtown West Parking Requirements**

*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, and the development of up to 1,150 additional spaces (for a total of up to 4,000 publicly-available parking spaces) to ensure the long-term sustainability of the SAP Center. This does not include up to 2,360 residential parking spaces. Terms that are used but not defined in this Exhibit shall have the meanings given 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.*

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, the Required Parking Ratio shall be 0.645 spaces.
  - a. Once 4,000 publicly available parking spaces are operational and in compliance with these terms, the Required Parking Ratio will no longer apply.
  - b. Developer may construct up to 4,800 publicly available 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 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, 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-available 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 available commercial parking spaces, the project targets 85% of such spaces 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 parking requirement must be satisfied in part through at least 2,850 publicly available commercial spaces within the Project Site; including existing parking spaces, 2,850 publicly available commercial parking spaces must be maintained within the Project Site.
  - g. As an option to satisfy the requirement for the 2,851 to 4,000 publicly available parking spaces set forth above, Developer may deliver this parking either within the 1/3-mile radius of the SAP Center 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 have the right to designate additional land owned by the City and within 1/3 of a mile of the Project Site (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; provided, however, in no event would Developer be required to build parking spaces on the Additional Parking Property that, when aggregated with the publicly available spaces located within the Project boundary, would exceed the Required Parking Ratio or 4,000 total spaces, as described above.
  - 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.
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 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 ( $\frac{1}{3}$ )-mile radius thereof.
- b. If the Project will result in a temporary failure to satisfy the Required Parking Ratio, as described in Section 2.a.i, that exceeds five (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.
- c. 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 AMA is terminated earlier than 2040 or at its scheduled expiration in 2040, Section 1d.i. and Section 2a.ii shall no longer apply.

## Google Draft 3.3.21

Negotiation Period Privilege; CPRA Confidential Treatment Request; Not for Public Release – CPRA Exempt; Confidential and Proprietary Business-Siting Information

## **Exhibit K**

### **Downtown West Parking Requirement**

#### **Downtown West Parking Requirements**

*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, and the development of up to ~~1,950~~1,150 additional spaces (for a total of up to ~~4,800~~4,000 publicly-available parking spaces) to ensure the long-term sustainability of the SAP Center. This does not include up to 2,360 residential parking spaces. Terms that are used but not defined in this Exhibit shall have the meanings given 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.*

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, the Required Parking Ratio shall be 0.645 spaces.
  - a. Once 4,000 publicly available parking spaces are operational and in compliance with these terms, the Required Parking Ratio will no longer apply.
  - b. Developer may construct up to 4,800 publicly available 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 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, 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-available and priced to allow for maximum efficiency to support the SAP Center, as well as the multimodal goals of the City and Project.
    - i. ~~The project targets at least 85% of the~~At 4,000 publicly available commercial parking spaces, the project targets 85% of such spaces to be available Available for SAP Center event use ~~after 6:30 pm on event days.~~

- 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. ~~(Today, the Project Site contains 2,850 parking spaces available to the public at 6:30 pm on event days. In order to—at a minimum—replace those spaces, the~~ The parking requirement must be satisfied in part through at least 2,850 publicly available commercial spaces within the Project Site; including existing parking spaces, 2,850 publicly available commercial parking spaces must be maintained ~~as publicly available~~ within the Project Site ~~during any given phase of construction.~~)
- g. As an option to satisfy the replacement parking requirement for the 2,851 to ~~4000-~~ 4,000 publicly available parking spaces set forth above, Developer may deliver ~~the remaining required~~ this parking either within the 1/3-mile radius of the SAP Center 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 have the right to designate additional land owned by the City and within 1/3 of a mile of the Project Site (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; provided, however, in no event would Developer be required to build parking spaces on the Additional Parking Property that, when aggregated with the publicly available spaces located within the Project boundary, would exceed the Required Parking Ratio or 4,000 total spaces, as described above.
  - h. The City's Department of Transportation will review the design of parking facilities as part of ~~the Subsequent a Vertical Conformance Review Application~~ and may require one or more future ~~(Focused LTA) processes and make recommendations designed to facilitate access, egress, and safety~~ Local Transportation Analysis (Focused LTAs) to provide building-specific analysis as defined in the Conformance Review Implementation Guide.-
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

[A1]: Move this to first portion of "Phasing" section below?

[A2]: "Focused LTA" is not a defined term in this exhibit or the DA

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 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 ~~[TO BE CONFIRMED]~~ 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 ~~also~~ be required to confirm ~~the availability of that~~ at least 2,850 Available parking spaces ~~available to the public at 6:30 pm on event days~~ will be maintained in aggregate within the Project boundary and within one-third (1/3)-mile radius thereof.
- b. If the Project will result in a temporary failure to satisfy the Required Parking Ratio, as described in Section 2.a.i, that exceeds five (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.
- c. 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/~~or Lot~~C. To the extent the AMA is terminated earlier than 2040 or at its scheduled expiration in 2040, ~~section~~Section 1d.i. and Section 2a.ii shall no longer apply.



Document comparison by Workshare 10.0 on Wednesday, March 3, 2021  
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## **Exhibit J**

### **Framework for City Provided Electric Service to the Downtown West Project**

This Exhibit provides a framework for Developer and the City to follow to first confirm the viability of an electrical Microgrid as a key component of the Project, and then, subject to their respective actions and approvals, enter into a Business Relationship addressing development, ownership and operation of the Microgrid as specified in Section 3.5 below. Any capitalized terms not defined below shall have the meaning assigned to such terms in the Development Agreement (“Agreement”).

#### **1. Electric Microgrid Overview**

- 1.1. Developer is developing district systems as a key tool to achieve the Project's environmental objectives and to increase the Project's resilience in the face of power and other system outages. One of the principal district systems is the electrical microgrid ("Microgrid"). The grid-tied Microgrid will be developed to supply electricity to the Project area. The Microgrid will be fed by a primary transmission level electricity supply – 115kV from PG&E – before transforming to 12kV or 21kV distribution supply via a dedicated Project substation. In the event of a failure of PG&E's primary supply, the system will be switched to island mode, meaning that it will operate in isolation from the PG&E network, and then utilize its embedded renewable energy systems, backup generation and storage to manage electrical supply to the Project. Implementation of a feasible Microgrid is a key component of the Project's District Systems strategy, and timely delivery and energization of the Microgrid is a key factor in the development of the Project's office component.

This Exhibit shall apply only if Developer elects to proceed with the scenario for development of the Microgrid that requires a Business Relationship with City, and not to other Microgrid development scenarios as described in Condition No. \_\_\_ of Resolution No. \_\_\_\_\_.

- 1.2. The City and Developer are evaluating the option of City-provided electric service to all buildings and future customers within the Project area, subject to Council approval and applicable law.
  - a. Developer has funded a preliminary study and cost of service analysis by the City, to confirm the viability of the City-owned system. The results of this preliminary study indicate that City-provided electric service to the Project is viable.
  - b. Developer and the City have submitted applications for interconnection to PG&E.
  - c. Both parties acknowledge that City-provided electric service has potential mutual benefits, and have agreed to further develop the financial and legal basis for proceeding with the City ownership and operation of the Microgrid

following the issuance of Project entitlements, including negotiation of a Business Relationship.

## **2. Relationship to Project Approvals**

- 2.1. The Microgrid is a component of the Project that was evaluated in the Project's Final Environmental Impact Report, and which is part of the Project's Infrastructure as reflected both in the Infrastructure Plan and in the Downtown West Planned Development Permit and its implementing components, including the Downtown West Improvement Standards, Conceptual Infrastructure Plan Sheets and the Downtown West Design Standards and Guidelines.
- 2.2. The City and Developer are evaluating the option of City-provided electric service, which may be effectuated through future City actions, approvals, and/or agreements with Developer or any of its successors or assigns under the Development Agreement, and which shall not require amendment to the Agreement, the Downtown West Planned Development Permit, or any other Approval.

## **3. Condition(s) Precedent**

The City and Developer, prior to entering into a Business Relationship for City provided electric service to the Project area, shall satisfy the following conditions precedent:

- 3.1. City shall complete a preliminary cost of service analysis to determine economic feasibility of City provided electric service.
- 3.2. City shall make a determination to participate with the Developer in the acquisition, ownership, operation or other administration of the Microgrid subject to satisfactory negotiation and implementation of the Business Relationship as described in Section 3.5.
- 3.3. City and Developer shall make a determination whether to proceed with the City's Wholesale Transmission Interconnection Application to PG&E as reasonably practical and feasible, including any discussions, actions, approvals and/or agreements with PG&E regarding PG&E's System Impact Study, Facilities Study, interconnection facilities required to connect the Microgrid to the PG&E transmission grid, and/or Interconnection Agreement.
- 3.4. As soon as reasonably practicable and feasible, the City shall take all steps necessary under applicable federal, state and local law to organize as an entity qualified to provide electrical energy service to meet the electrical loads of end-users within the Project, and to meet its other obligations under a prospective Business Relationship with Developer; City shall confirm completion of such steps in writing to Developer.
- 3.5. City and Developer shall negotiate and determine whether to execute the terms of a "Business Relationship", including but not limited to the following:

- 3.5.1. City adopted Microgrid design standards and process, with Design standards that are mutually agreeable to Developer and the City.
- 3.5.2. Development and installation of the Microgrid by Developer.
- 3.5.3. Ownership, operation and maintenance of the Microgrid, including but not limited to City acquisition of the Microgrid; necessary leases, easements, and licenses from the Developer for the City to operate and maintain the Microgrid on Developer-owned land; Developer ownership, and operation and maintenance of non-distribution system facilities such as behind the meter components.
- 3.5.4. Alterations and/or reconfigurations of the Microgrid, including but not limited to good faith efforts by the City to allow such alterations and/or reconfigurations determined to be beneficial by Developer.
- 3.5.5. Energy Services, including but not limited to the supply of energy to the Microgrid and establishment of fair and equitable cost-based rates.
- 3.5.6. Customer relations with the City, including but not limited to response to customer inquiries, adjudication of customer complaints, and billing.



## **Exhibit J**

### **Framework for City Provided Electric Service to Google's the Downtown West Project**

This Exhibit provides a framework for Developer and the City to follow to first confirm the viability of an electrical Microgrid as a key component of the Project, and then, subject to their respective actions and approvals, enter into a **Business Relationship** addressing development, ownership and operation of the Microgrid as specified in Section 3.5 below. Any capitalized terms not defined below shall have the meaning assigned to such terms in the Development Agreement ("Agreement").

#### **1. Electric Microgrid Overview**

- 1.1. Developer is developing district systems as a key tool to achieve the Project's environmental objectives and to increase the Project's resilience in the face of power and other system outages. One of the principal district systems is the electrical microgrid ("Microgrid"). The grid-tied Microgrid will be developed to supply electricity to the Project area. The Microgrid will be fed by a primary transmission level electricity supply – 115kV from PG&E – before transforming to 12kV or 21kV distribution supply via a dedicated Project substation. In the event of a failure of PG&E's primary supply, the system will be switched to island mode, meaning that it will operate in isolation from the PG&E network, and then utilize its embedded renewable energy systems, backup generation and storage to manage electrical supply to the Project. Implementation of a feasible Microgrid is a key component of the Project's District Systems strategy, and timely delivery and energization of the Microgrid is a key factor in the development of the Project's office component.

This Exhibit shall apply only if Developer elects to proceed with the scenario for development of the Microgrid that requires a Business Relationship with City, and not to other Microgrid development scenarios as described in Condition No. \_\_\_ of Resolution No. \_\_\_\_\_.

- 1.2. The City and Developer are evaluating the option of City-provided electric service to all buildings and future customers within the Project area, subject to Council approval and applicable law.
  - a. Developer has funded a preliminary study and cost of service analysis by the City, to confirm the viability of the City-owned system. The results of this preliminary study indicate that City-provided electric service to the Project is viable.
  - b. Developer and the City have submitted applications for interconnection to PG&E.
  - c. Both parties acknowledge that City-provided electric service has potential mutual benefits, and have agreed to further develop the financial and legal basis for proceeding with the City ownership and operation of the

[A1]: Microgrid is a technical term that may not define the service that the City will provide. This Exhibit covers "electric service," of which the microgrid is just a component. This needs to be addressed throughout the Exhibit. See suggested language.

[A2]: This may not be a contract but a tariff/rate. There may be more than one agreement. We propose "business relationship" but there may be a better/broader term.

[A3]: The other 3 electric service options are covered in the permit conditions but should not be included in the DA.

Microgrid following the issuance of Project entitlements, including negotiation of a Business Relationship.

## 2. Relationship to Project Approvals

- 2.1. The Microgrid is a component of the Project that was evaluated in the Project's Final Environmental Impact Report, and which is part of the Project's Infrastructure as reflected both in the Infrastructure Plan and in the Downtown West Planned Development Permit and its implementing components, including the Downtown West Improvement Standards, Conceptual Infrastructure Plan Sheets and the Downtown West Design Standards and Guidelines.
- 2.2. The City and Developer are evaluating the option of City-provided electric service, ~~(which may be effectuated through future City actions, approvals, and/or agreements with Developer)~~ or any of its successors or assigns under the Development Agreement, and which shall not require amendment to the ~~Agreement, the Downtown West Planned Development Permit, or any other Approval.~~

## 3. ~~Condition(s) Precedent~~

The City and Developer, prior to entering into a Business Relationship for City provided electric service to the Project area, ~~shall~~ satisfy the following conditions precedent:

- 3.1. City shall complete a preliminary cost of service analysis to determine ~~economic~~ feasibility of City provided electric service.
- 3.2. City shall make a determination ~~whether~~ to participate with the Developer in the ~~continued evaluation of City provided electric service to the Project area~~ acquisition, ownership, operation or other administration of the Microgrid subject to satisfactory negotiation and implementation of the Business Relationship as described in Section 3.5.
- 3.3. City and Developer shall make a determination whether to proceed with the City's Wholesale Transmission Interconnection Application to PG&E as reasonably practical and feasible, including any discussions, actions, approvals and/or agreements with PG&E regarding PG&E's System Impact Study, Facilities Study, interconnection facilities required to connect the Microgrid to the PG&E transmission grid, and/or Interconnection Agreement.
- 3.4. As soon as reasonably practicable and feasible, the City shall take all steps necessary under applicable federal, state and local law to organize as an entity qualified to provide electrical energy service to meet the electrical loads of end-users within the Project, and to meet its other obligations under a prospective Business Relationship with Developer; City shall confirm completion of such steps in writing to Developer.¶

~~3.5. Developer shall confirm in writing to the City that it has the legal authority to meet its obligations under a prospective Business Relationship.~~

[A4]: This is good language. The terms that we have flagged above could be re-defined using this language.¶

[A5]: We didn't see definitions for these terms.

[A6]: Our understanding of the purpose of this Exhibit is to establish the "process" or conditions for proceeding with the City-provided electric service. This is the heart of the document and it should be simplified around this "process." The process is something like this: (1) Finalize the service study and economic feasibility analysis; (2) obtain Council approval to continue evaluating city service; (3) develop work plan and execute funding agreement to continue work; (4) City takes necessary steps and obtains approvals to form utility; (5) City and Developer negotiate and execute agreements. Steps 4 and 5 are iterative and occur in parallel to a large degree.

[A7]: Same as above.¶

[A8]: The formal use of the term "Cost of Service" is too specific and implies that City is already operating a utility.

[A9]: The Exhibit appears to assume that Google will assign the Interconnection Agreement to the City. However, (1) City has its own application with PG&E, and (2) it may not be possible for Google to transfer application to City. This Exhibit should keep all options open.

3.5. ~~3.6.~~ City and Developer shall negotiate and determine whether to execute the terms of ~~the~~ “Business Relationship”, including but not limited to the following:

3.5.1. ~~3.6.1.~~ City adopted Microgrid design standards and process, with Design standards that are mutually agreeable to Developer and the City.

3.5.2. ~~3.6.2.~~ Development and installation of the Microgrid by Developer.

3.5.3. ~~3.6.3.~~ Ownership, operation and maintenance of the Microgrid, including but not limited to City acquisition of the Microgrid; necessary leases, easements, and licenses from the Developer for the City to operate and maintain the Microgrid on Developer-owned land; Developer ownership, and operation and maintenance of non-distribution system facilities such as behind the meter components.

3.5.4. ~~3.6.4.~~ Alterations and/or reconfigurations of the Microgrid, including but not limited to good faith efforts by the City to allow such alterations and/or reconfigurations determined to be beneficial by Developer.

3.5.5. ~~3.6.5.~~ Energy Services, including but not limited to the supply of energy to the Microgrid and establishment of fair and equitable cost-based rates.

3.5.6. ~~3.6.6.~~ Customer relations with the City, including but not limited to response to customer inquiries, adjudication of customer complaints, and billing.

¶

~~3.6.7.~~ ¶

~~3.7.~~ ¶

~~3.8.) The City will develop and obtain Council approval for cost-based rates..~~ ¶

[A10]: Is Google contemplating submitting another application?

[A11]: Per our discussion with the Google energy team, this Exhibit to the DA should only include a general framework and description of the process for City-owned electric service. All of these terms should be part of future negotiations (i.e., it's premature to assume City will purchase infrastructure, what the design standards will be, etc. The service needs to be consistent with future rate, tariffs, and agreements, and any purchase cost will be reflected in rates).

Document comparison by Workshare 10.0 on Wednesday, March 3, 2021  
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