

**From:** [Phan, Johnny](#)  
**To:** [Downtown West Project](#)  
**Subject:** FW: Parks items  
**Date:** Tuesday, April 6, 2021 2:54:46 PM  
**Attachments:** [Responses to 3 9 21 City Comments to Parkland Agreement-c.docx](#)

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**From:** Straka, Stephanie <SStraka@coblentzlaw.com>  
**Sent:** Wednesday, March 10, 2021 4:12 PM  
**To:** Phan, Johnny <Johnny.Phan@sanjoseca.gov>  
**Cc:** Miller, Gregg <gmiller@coblentzlaw.com>  
**Subject:** Parks items

[External Email]

Johnny, Please provide the attached redline responses on certain park items to Thomas, AP, and Nicolle. Thanks.

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## Responses to 3/9/21 City Comments to Parkland Agreement

4. Section 3(E): Pursuant to the terms of the Development Agreement, the Parkland Fee in effect upon the Effective Date of the Development Agreement, which Fee is reflected in Exhibit E8, is vested for the term of the Development Agreement, subject to escalation based on the California Construction Cost Index, which is a subset of the Engineering News Record Construction Cost Index. Upon such escalation of the Parkland Fee, the land value of any City-Dedicated Open Space dedicated thereafter, and the Park Improvements Value for any Park Improvements constructed thereafter shall escalate by a commensurate amount using the California Construction Cost Index.

5. Will ensure formatting is correct in final.

6. Social Heart BART Language; Section 3(J): Notwithstanding the Completion timing requirements set forth in Section 3(I), in Exhibits E3.1 and E3.2, or elsewhere in Development Agreement and other Exhibits thereto, if the Completion requirement for the Social Heart is triggered by issuance of a Temporary Certificate of Occupancy for the 1,500th residential unit developed in the Project (rather than for issuance of a Temporary Certificate of Occupancy for a Building on Block D4), the Completion date for the Social Heart (inclusive of the subterranean garage) shall be extended if the VTA's BART Silicon Valley Phase II Extension Project ("BART Project") construction staging activity in the vicinity of the Social Heart prevents, delays, or otherwise interferes with Developer's timely construction and Completion of the Social Heart and/or the subterranean garage. If this occurs, Developer shall have twenty-four (24) months to Complete the Social Heart from the date on which the BART Project vacates the construction staging area.

7. Clarification regarding security for City-Dedicated Open Space upon Transfer: New Section 5(B)(6): Upon a Transfer that includes the Transfer of Developer's obligations with respect to a City-Dedicated Open Space that has not yet been Completed, (i) Transferee shall provide security in accordance with the requirements of this Agreement, or (ii) if Developer has previously provided security in accordance with this Agreement for the subject City-Dedicated Open Space, Transferee shall promptly provide new security, which security shall replace the security provided by Developer for the subject City-Dedicated Open Space. If Transferee provides security as required by (ii), above, upon Director of PW's acceptance of the new security from Transferee, the former security provided by Developer/Transferor shall be released by the City.

POPOS Transfers - DA Section 4.1.3(a)(iv): Transfer of Privately-Owned Publicly Accessible Open Space. Any Privately-Owned Publicly Accessible Open Space shall only be Transferred together with the adjacent Building or Buildings that trigger delivery of the subject Open Space, and, in addition to complying with all applicable requirements of this Agreement,

Transferee shall expressly be required to comply with the Completion requirements set forth herein, including payment of the Private Open Space Delay Penalty Fee, if owed, and shall continuously provide the subject Privately-Owned Publicly Accessible Open Space, including the amenities/improvements thereon, in compliance with the applicable regulations set forth in the Project Approvals, including the DWDSG and this Agreement.

8. Definition of “Complete”: **[STILL BEING DISCUSSED]**

9. Covenant Exhibit F1 coming soon.

10. Section 2(E) revisions re: park design elements or features: Subject to approval by the Directors of PRNS and PW, Completion of Park Improvements upon any City-Dedicated Open Space for purposes of determining compliance with Exhibit E3.1, and issuance of a Notice of Acceptance for such Park Improvements by Director of PW as outlined in Exhibit E5 of this Agreement shall not include or require the completed installation of art features, kiosks/pavilions or other structures listed by the DWDSG as optional, that are not essential to the intended use of the park by the public (“Park Art and Optional Structures”), so long as (i) final installation of such Park Art and Optional Structures will not interfere with the safe use of the park by the public, and (ii) Developer provides the Park Art and Optional Structures Security as described in this Agreement so that the City may utilize the Security to complete the installation or construction of the Park Art and Optional Structures following City’s acceptance of the Park Improvements, which City shall complete within twelve (12) months of Developer providing the Security; provided however, that City shall release all other bonds and securities as indicated in Exhibit E5. Alternatively, City may elect to extend the Delivery trigger reflected in Exhibit E3.1 by twelve (12) months to allow Developer to install or construct the Park Art and Optional Structures.

Corresponding Edits will be needed to Section 5-Securities:

Section 5.A.5. Park Art and Optional Structures Security. To allow for City to install or construct any remaining Park Art and Optional Structures following Completion of a City-Dedicated Open Space, Developer shall post a bond or other form of security acceptable to the Director of PW, and in an amount equal to the cost of the remaining Park Art and Optional Structures. The Park Art and Optional Structures Security shall be furnished by Developer to the City prior to the final Notice of Acceptance for a Park Improvement within the subject City-Dedicated Open Space.

Section 5.C.5. Park Art and Optional Structures Security. City shall release the Park Art and Optional Structures Security upon its completed installation or construction of the remaining Park Art and Optional Structures.

LTCA Language for Development Agreement: working on this.