

From: [Klein, Nanci](#)
To: [Phan, Johnny](#); [Day, Cameron](#); [Ice, Kevin](#); [Zenk, Jessica](#)
Cc: [Frimann, Nora](#)
Subject: FW: Letter re SSE rights under AMA
Date: Wednesday, April 21, 2021 12:34:40 PM
Attachments: [Letter to City Attorney re SSE rights under AMA \(4-21-21\) \(10603286xD701E\).pdf](#)
[Requests for Modifications to Protect SAP Center \(with cover email 4-1-21\) \(10603264xD701E\).pdf](#)
[Summary of Key Provisions from AMA \(4-21-21\) \(10603287xD701E\).pdf](#)

Want to make sure you all have so we can connect – hopefully this week.

From: Lucy Lofrumento [mailto:lal@lmallp.com]
Sent: Wednesday, April 21, 2021 11:38 AM
To: Frimann, Nora <nora.frimann@sanjoseca.gov>
Cc: Jonathan Becher <jbecher@sjsharks.com>; Jon Gustafson <jgustafson@sharksice.com>; Jim Goddard <jgoddard@sapcenter.com> <jgoddard@sapcenter.com>; Klein, Nanci <Nanci.Klein@sanjoseca.gov>; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Phan, Johnny <Johnny.Phan@sanjoseca.gov>; Day, Cameron <Cameron.Day@sanjoseca.gov>
Subject: Letter re SSE rights under AMA

[External Email]

Hi Nora,

I hope you are doing well.

Please see the attached letter regarding SSE's rights under the AMA in connection with the proposed Google Project. Any assistance you can provide to help resolve the outstanding issues would be greatly appreciated.

Best regards,
Lucy



Lucy Lofrumento

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April 21, 2021

Nora Frimann, City Attorney
City of San Jose
200 E. Santa Clara St., 16th Floor Tower
San Jose, CA 95113

Re: **SSE's Rights under AMA related to Google Project**

Dear Ms. Frimann,

I am writing on behalf of Sharks Sports & Entertainment LLC and its affiliates (SSE) to outline some of SSE's rights under the Second Amended and Restated Arena Management Agreement dated August 15, 2018, as amended (AMA), in the context of the proposed approvals for the Downtown West project (Google Project). (For convenience, capitalized terms used in this letter have the definitions given in the AMA, unless otherwise indicated.)

On or about April 2, 2021, we submitted to the City a paper entitled "Requests for Modifications to Protect the SAP Center" (RFM), a copy of which is attached to this letter. On April 8, 2021, we reviewed the RFM in detail with representatives from your office as well as Economic Development, Public Works, and PBCE. During that meeting, we also made it clear that SSE is not consenting to the sale of Lots A, B & C based on the Project as currently proposed, and that therefore Lots A, B and C must be removed from any documents that may be recorded against that property or that may in any way affect SSE's rights under the AMA. To date, we have had no response to the RFM, other than an indication that staff is working on it.

We understand that it may be difficult to reconcile the desires of Google with the rights of SSE and the responsibilities of the City under the AMA. However, in the event of any conflict it is clear that the AMA controls over the Development Agreement (or other project documents) in connection with any matter that may affect title to or use of the Arena Facilities, the operation of the Arena Facilities (including Operating Revenues and Operating Expenses), access and parking for Arena customers, and other matters that are addressed by the AMA.

Both the City and Google are obligated to respect SSE's rights under the AMA and related contracts, and to not take any actions that would lead to a breach of the AMA. In fact, the

Option/Negotiation Rights Agreement between the City and Google dated December 4, 2018 (Option Agreement), to which SSE is an express third party beneficiary, emphasizes the supremacy of the AMA in numerous provisions, including the following:

- The Recitals to the Option Agreement recognize (among other things) that: SSE leases Lots A, B & C (the Property), and has the exclusive right to all revenues from operating the Property; the City must not convey any interest in the Property; the City must take all actions necessary to meet its parking obligations under the AMA; and one of the primary objectives under the DSAP is to ensure continued vitality of the Arena.
- Section 1.7(a)(ii) provides that SSE is not obligated to agree to any amendment of the AMA that would permit a sale of the Property to Google, and that SSE may disapprove of such sale in its sole and absolute discretion.
- Section 1.8 provides that the Option Agreement remains subordinate to the AMA and the rights of SSE under the AMA.

Although the RFM includes detailed comments explaining the rationale for each requested modification, including in many cases references to the AMA, I thought it might help expedite the City's review to supplement the RFM by providing the attached Summary of Key Provisions. The Summary lists and summarizes selected relevant provisions from the AMA (and other contracts) that bear on the various issues concerning the Google Project, and provides additional explanation as to why the changes requested in the RFM are appropriate.

Please keep in mind that the attached Summary of Key Provisions relates only to SSE's contract and property rights under the AMA and related documents, and not to any claims or issues that SSE may raise under CEQA or other laws and policies governing the City's actions in connection with the land use entitlements for the Google Project or the DSAP Amendments. SSE expressly reserves all of its rights and remedies.

Because public hearings on the Google Project are fast approaching, we ask that the City respond to SSE regarding the RFM by no later than the end of the day on Monday, April 26. As always, we remain willing and available to meet and confer with you or any other City staff to resolve our differences. We truly appreciate the good relationship between the City and SSE, and trust that working cooperatively, we can find mutually acceptable solutions very soon.

Sincerely,

/s/ Lucy Lofrumento

Cc: Nanci Klein
Rosalynn Hughey
Johnny Phan
Cameron Day

From: Jim Goddard

Sent: Thursday, April 1, 2021 6:51 PM

To: Klein, Nanci (Nanci.Klein@sanjoseca.gov) <Nanci.Klein@sanjoseca.gov>

Cc: Jonathan Becher Jon Gustafson; Ken Caveney; Sean Morley; Lucy Lofrumento; Cameron.Day@sanjoseca.gov; Jessica Zenk (jessica.zenk@sanjoseca.gov)

Subject: Requests for Modifications to Protect SAP Center

Nanci,

As you know, SSE has been working hard to keep up with the proposed Downtown West project entitlements, which pose severe ramifications for the future viability of the SAP Center. With recent updates and modifications provided in March, including the DSAP Amendment and associated CEQA documents, the materials now include thousands of pages, and we understand more information is still pending release including a draft development agreement.

We are providing the attached document, which the mayor requested during our recent meeting, that addresses SSE's requests for modifications to protect the SAP Center through this unprecedented land use entitlement process. These modifications are generally consistent with the key issues list previously shared and discussions the SSE team has had with City and Google representatives over a very long period of time.

In our recent communications it has become apparent there is no current consensus among the parties (even on a conceptual level) regarding the terms under which SSE would be able to consent to Google's purchase of Lots A, B & C. And, although SSE remains committed to continuing discussions with the City and Google about acceptable terms, there is no guarantee that such an agreement will ever be achieved. Thus, the document includes a number of requests to ensure the proposed project at a minimum remains consistent with the current Arena Management Agreement. We look forward to discussing this list and associated comments with you and Google.

While we have tried to ensure that the request document is comprehensive, it remains a work in progress. SSE is working hard to finish its review, but this is a difficult task given the volume and complexity of the approval documents and the importance they have for the future viability of the SAP Center. We may change or add requests once the development agreement is released and we can complete review of all final materials that will be presented to the City Council for approval.

Please distribute this email and attached document to others at the City as you deem appropriate.

SHARKS SPORTS & ENTERTAINMENT LLC

Downtown West Mixed-Use Plan

Requests for Modifications to Protect the SAP Center

April 2, 2021

SSE requests that the City and Google make the following modifications to the draft land use entitlements applications proposed by Google for the Downtown West Mixed Use Plan, in order to ensure the City-owned arena is properly protected and that the primary objective of the current Diridon Station Area Plan, adopted in 2014, is fulfilled:

Ensure the continued vitality of the San José Arena, recognizing that the San José Arena is a major anchor for both Downtown San José and the Diridon Station area, and that sufficient parking and efficient access for San José Arena customers, consistent with the provisions of the Arena Management Agreement, are critical for the San José Arena's on-going success.

At a minimum, the City and Google are required to ensure that the proposed land use entitlements are consistent with SSE's rights under the Arena Management Agreement. In many instances, the land use entitlement documents directly conflict with the AMA, and require modification in order to conform.

Request #1: Expressly incorporate the current DSAP objective to protect the arena in each of the project approvals requested by Google, and require each future development within the mixed-use plan to fulfill this obligation prior to receiving final city approval.

Comment: Both Google and the City have assured SSE that the Downtown West project will benefit the arena and that future development of the project will not impact the facility's operations or the safety of its patrons, consistent with the DSAP arena objective above. However, this objective is not included anywhere in the goals of the project, nor is it incorporated into any of the specific application documents. This objective must be embedded in the project approvals to ensure the requirement will be achieved.

The land use approvals Google seeks are unprecedented in terms of the breadth of flexibility provided and lack of discretionary review the City will retain going forward. However, the applications remain completely silent about the future operations of the arena. Unless specific language to protect the arena is included now, the City may not be able to prevent future developments that will likely imperil the operations of SAP Center.

Request # 2: Maintain the current General Plan and Zoning District designations on the arena parking lots as “Public/Quasi Public” and maintain the current parcel lines for the arena land (including the adjacent parking lots) without new mapping; remove these parcels from the Downtown West project entitlement approval documents.

Comment: Neither the City nor Google has made a formal request for SSE to consent to the transfer of the arena parking lots (Lots A, B and C) for inclusion in the project, nor have the issues SSE identified more than two years ago to support potential transfer been addressed in any material way. In order for the arena to remain a thriving part of the downtown and continue to serve as a long-term home for the Sharks, arena parking lots should not be included in the Google project until their development is reasonably foreseeable.

More important, the City is precluded under the Arena Management Agreement from creating new burdens on title to the property leased by SSE under the agreement, including the arena parking lots A, B and C. Rezoning of these specific parking lots adjacent to the arena as part of the Google project and approving the PD Permit and Tentative Map with these parcels included will create a burden on title to the arena property and so cannot be undertaken by the applicant or the City without SSE’s consent. Google has already excluded properties owned by Caltrain and the VTA, and so can easily accomplish this modification.

Request # 3: Clarify that, even if and when SSE approves of changes to the zoning for arena parking lots A, B and C, the interim use of that property shall remain an existing permitted use pursuant to current zoning district designation without a requirement to obtain a Downtown West Use Certificate or Use Permit or any other conditions of approval. Further, clarify existing non-conforming uses to expressly state that these arena parking lots will remain a conforming use rather than become legal non-conforming one as provided for in the applications.

Comment: The City has obligations to its residents (who approved and paid for the arena), to not shorten or diminish the usefulness of the arena facilities, and has made similar agreements with SSE in the AMA. The A, B and C parking lots are integral to the success of the SAP Center and must remain permanent, at least so long as the current AMA remains in place, especially with the elimination of adequate parking supply in the area. Changing the allowed uses on these lots prior to imminent development, and making existing permitted uses legally non-compliant, will limit the arena operator’s ability to maximize the economic use of the facilities as currently allowed by the AMA.

Request # 4: Modify the circulation plan and mobility requirements to provide the following street network changes:

- a) Delete all references to the Cahill Street extension north of Santa Clara Street across arena parking lots until such time as the properties are available for development, and after SSE consents to a transfer of the property.

- b) Provide two through lanes and a left turn lane in each direction on Barack Obama Blvd. (Autumn Street) between Santa Clara Street and Park Avenue in accordance with currently adopted City plans for Autumn Street.
- c) On Santa Clara Street, maintain two general traffic through lanes in each direction and one or two left turn lanes, as needed, between Stockton Avenue and Almaden Blvd.
- d) Maintain level of service D or better during the arrival peak hour for SAP Center events on principal traffic routes used by SAP Center customers (Autumn corridor, W. Santa Clara corridor, and Julian corridor), except that no traffic lanes would need to be added beyond the existing lanes at any intersection to achieve level of service D. This exception would not apply to Barack Obama Blvd. (Autumn St.), because that street is planned to be converted from one-way to two-way operation (see point b) above).

Comment: SSE has repeatedly advised the City and Google that proposed reduction in street network capacity by eliminating roads and lanes on remaining ones, while increasing daytime population in the area by a factor of 20, will create gridlock for residents, workers, and visitors, including arena patrons. SSE continues to share information with the City and Google which confirms this patently obvious conclusion. Studies produced by the City and Google rely on unrealistic trip reduction assumptions, a system of road management (including dynamic lanes and conversion of streets to one-way operation during event peak periods), and other expensive traffic control operations to justify the project. Unfortunately, these and other possible measures will not be able to overcome the fundamental problems caused by reduced roadway capacity, which would make arrival for patrons to the arena during the peak hour before an event incredibly problematic at best, and at worst result in a local transportation system failure. Once the project is approved, the City will have no recourse to make any future modifications when the inevitable problems arise. Therefore, the City should not give up this critical roadway capacity.

Request # 5: Require that on each occasion when specific development plans are presented to the City for approval, and prior to approving changes to the current street network, the City will include the following as part of the approval process:

- Develop detailed preliminary plans for any proposed street changes desired along principal traffic routes used by SAP Center customers, and provide to SSE for review and comment prior to completion of the LTA discussed below. Any modifications based on results of the LTA or other considerations must also be submitted to SSE for review and comment.
- Conduct a focused Local Transportation Analysis (LTA) for the proposed development, which will address the development's impact on level of service at all nearby impacted intersections during the 6 to 7 pm peak arrival hour for events at SAP Center.

Comment: Section 21.2.3 of the AMA provides that the City must coordinate with SSE “regarding any material changes to the design, configuration or operation of the major streets and intersections in the vicinity of the Arena to the extent that they may have a direct impact on the safe and efficient flow of vehicular, bicycle, and pedestrian traffic to and from the Arena, including Autumn Street and the intersection at Autumn Street and Park Avenue.” It goes on to state that the parties “shall work together in good faith with the goal of achieving the best overall function of the streets and intersections for the benefit of both the Arena and all other development in the Diridon Area.

The City’s obligations under the AMA will continue following approval of the land use entitlement documents for the Downtown West project. However, the minimized process for approval of future development within Downtown West may make it difficult, if not impossible, for the City to fulfill such obligations unless the above suggested procedures are required in the entitlement documents.

Request # 6: Modify the project documents to provide that Delmas Street will remain open between Santa Clara and San Fernando streets. As a less desirable alternative, ensure that Google will be required to provide a driveway (entrance/exit) to the Delmas development parking that is accessible from both the east and west on Santa Clara Street.

Comment: It is SSE’s understanding, based on discussions with Google representatives and recent presentations by Google’s consultants, that Google plans to provide a driveway at Santa Clara Street to/from the Delmas development parking. Although this was not SSE’s preferred alternative, SSE has determined that it is a satisfactory resolution subject to the final design of the driveway and parking, including all the parking being accessible from this driveway. However, SSE cannot find this requirement in the project approval documents, and it is important to ensure that this parking facility will be easily accessible to arena patrons as represented.

If access to this parking facility is not provided directly from Santa Clara Street, then the convenience and efficacy of this critical supply of “Available Parking Spaces” will be severely curtailed, thus diminishing the value of such parking as mitigation for the impacts on the arena caused by the loss of parking resulting from the project. It would also be contrary to the purpose of the Transportation and Parking Management Plan (TPMP) for the arena, as incorporated into the AMA. Such purpose is stated “to establish event traffic and parking management strategies” that promote efficient and effective vehicular and pedestrian traffic circulation; provide convenient and easy access to and from area parking facilities, and minimize traffic congestion on surrounding roadway facilities, among other things.

Request # 7: Include a requirement that expressly mandates Google will be solely responsible to fund any additional traffic operation expenses needed to implement the requested proposed street circulation management plan for events at the arena.

Comment: Google must mitigate every impact it creates, including additional costs to support its massive development plan. With respect to traffic operation costs which will amount to millions of dollars a year, the community -- including the arena operator -- must not bear responsibility for funding them, which would essentially serve as a subsidy for Google. SSE and/or its customers certainly should not be asked to mitigate Google's project by covering such costs, as the current approvals likely would require.

Request # 8: Modify the approval documents to require the consent of the arena operator prior to any improvement along the arena frontage, including Santa Clara Street and sidewalks

Comment: The project approval documents include significant planned modifications along Santa Clara Street. These modifications are conceptual at this point so it is not possible to determine what, if any, modifications would be made to the arena frontage between the existing structure and face of the curb. The City has a requirement to not modify lands leased by SSE without its consent, and to make best efforts to coordinate future changes to the road network with SSE to preserve arena operations. Providing consent rights to street frontage improvements proposed by the project is a simple way to ensure the arena operations and SSE's leasehold rights can be protected, in compliance with the AMA.

Request # 9: Modify the infrastructure plan and other application approval documents to reflect that the utilidor route will not pass through or under the arena parking lots until such time in the future that the parcels may be transferred to Google and included in the General Development Plan.

Comment: It is not clear why Google has proposed a private utility system as a basic part of its development plan that relies on its ability to traverse property leased and controlled by a third party on a long-term basis without obtaining that party's prior consent, regardless of underlying City ownership. Even without the extension of Cahill Street, installation of the utilidor would create major disruption to arena operations, and granting Google the right to construct it is not a property right the City retains under the AMA.

Request # 10: Make the potential 4,800 commercial parking spaces allowed in the project applications a minimum requirement, not an "up to" maximum.

Comment: Google's applications and the associated technical studies make clear that even under best case scenarios for transportation mode shift improvements, more than 7,000 of the 25,000+ workers will still drive to work in a single occupant vehicle and many more will carpool. More realistic scenarios show that the number of workers who will need to park in the area will likely be thousands higher. This does not account for parking demands that may be created by additional development, including the proposed DSAP expansion, BART, Caltrain or High Speed Rail projects. The proposed parking requirement for Google of only 2,800 spaces will create significant parking deficiencies in the area, along with associated traffic circulation and safety issues for residents and visitors to the area, including arena

patrons. While a 4,800-parking space requirement will not solve the challenge, it will certainly help reduce parking deficiencies. Google should be required to fund and build the parking supply its demand will create, not simply have the option to provide it in the future, or rely on a future city district parking plan which may or may not ever be established or achieve the intended results.

Request # 11: Conform Google’s phasing plan for the Delmas property to comply with the agreement between the City, Google and SSE that parking available on Delmas West must remain available until such time as Block E parking or a suitable alternative is created.

Comment: As part of SSE’s agreement to consent to the sale of Lot D to Google, which was critical to the company’s commitment to move forward with its Downtown West project, Google agreed to retain all existing parking spaces on the Delmas West site until either (i) 408 new “Available Parking Spaces” are provided on Block E and Milligan or other approved alternative location; or (ii) BART service commences to Diridon, or (iii) Google has constructed at least 500 “Available Parking Spaces” as part of the development on Delmas East (all subject to the specific terms of the Lot D Lease with Google). The City’s progress on Block E and the Milligan site has stalled, and there is no timeline for those facilities to be available for parking in the future. Google’s project entitlements, including timing of development of the Delmas site, must account for fulfilling this obligation.

Request # 12: Include specific construction mitigation measures in the final entitlement approvals to protect the unique operations of the Arena (Arena Protection Plan).

Comment: For more than two years, SSE has continued to plead with the City to address the obvious construction impact challenges presented by the BART project, without any substantive response to specific requests. It is clear that Google’s project will pose even greater challenges for the arena’s continuing successful operations. Yet, the entitlement approvals remain silent on how to mitigate construction impacts, and once approvals are given, the City’s ability to manage any impacts to the arena will be greatly reduced. In the event that Google cannot propose basic construction impact mitigation program prior to approvals, the City can and should establish basic performance standards and other mitigation measures (an Arena Protection Plan) to ensure the safe and convenient ingress and egress of arena visitors (over 1.5 million annually), arena employees, vendors and contractors.

Request # 13: Modify Google’s permitted uses to ensure that the allowed auditorium and event/conference center uses are adjunct only to the applicant’s corporate business, so that the facility will not create competition for the arena or convention center.

Comment: The applicant has represented to the public that these facilities are intended to support its larger corporate business with occasional use for community events. However, the definition of the uses would allow any property owner within the district to utilize such a facility in the future for commercial events that could easily create competition for both

the arena and convention center. This is likely unintended but clearly a permitted use in the entitlement documents as currently drafted, and this use limitation needs to be added to avoid harm to these important community facilities and their economic development benefits to the City.

Request # 14: Modify the conditions and administrative permits requirements to allow the Director of PBCE to impose reasonable conditions related to the operation of the future specific use/development proposed to ensure it will not create unreasonable operational impacts for the arena.

Comment: Upon approval of the land use entitlement applications, the applicant or future property owners would have the ability to establish a wide range of uses by right with limited ability by the City to make modifications to protect the public's interest, including the continued successful operation of the arena. As continued vitality of the arena is a basic objective of the DSAP, the City can and should preserve its rights to protect the building's ongoing success, particularly since many of the proposed uses will likely conflict at times with the arena's event and daily operations.

Request # 15: Ensure that for any special uses that could create conflicts with arena operations, Google's administrative permit requirements include a procedure whereby the arena operator must be notified of the application for the proposed activity, and before granting any permit for approval the Director must consult with the arena operator and impose reasonable conditions to protect the arena's operations

Comment: The proposed uses described in the Google development plan include live entertainment, auditorium, outdoor vending and other special events that, as currently drafted in the Conditions of Administrative Permit section, will likely create conflicts with arena operations without any recourse by the City to correct them. This relinquishment of land use authority goes well beyond the scope of use or approval process for typical projects. The permit procedures in the entitlements guarantee that Google can schedule a wide-ranging number of large events that could trigger road closures or competition for scarce parking on arena event days, without any oversight by the City or the need for any coordination or deference for events at the arena. Neither Google nor successive owners of parcels covered by the entitlements should be granted unique rights to schedule these types of events without going through the approval procedures imposed on others in the area, and without consideration for potential conflicts with the arena operations.

In addition, use rights granted in the entitlement documents should not conflict with other City ordinances. For instance, the outdoor vending rights appear to conflict with the updated peddler's ordinance adopted by the City less than 2 years ago. At minimum, the specific protections granted to the arena in the ordinance should be included (or incorporated by reference) in the entitlement documents.

Request # 16: The City must ensure that any update to the Diridon Station Area Plan does not preclude the ability to establish a stand-alone parking structure on Block E as long planned for the site.

Comment: Both the Lot E and Milligan sites are anticipated to be interim parking lots and potentially, new parking structures that would serve arena patrons. However, current draft of the proposed DSAP Amendment would modify the zoning designation for these sites. This along with new mixed use design guidelines, would preclude the properties from being developed solely as a stand-alone parking structure in a manner that will protect future arena operations long contemplated by the City and as reflected in the currently adopted DSAP.

Specifically, the proposed zoning designations for these sites are *Downtown Primary Commercial*. We believe that instead these sites should be zoned *Public/Quasi-public* to allow the construction of public parking facilities. We are also concerned that requiring the future structures to be “wrapped with active uses” will diminish parking capacity and ingress/egress functionality for event purposes, and cause access and safety impacts to pedestrians accessing the parking from either the arena or other nearby uses. Also, because there is a potential for both sites to be used for *interim* parking uses, Section 5.4 *Surface Parking Lots* of the *Downtown Design Standards and Guidelines* (DDGs) should not be required.

In addition, because these future required parking facilities must provide for safe and efficient ingress and egress that supports access to the street network, in accordance with the objective of the DSAP to ensure the continued vitality of the Arena consistent with the provisions of the AMA, the future parking lots and structures on these sites must not be required to be consistent with Section 3.5.3 *Parking and Vehicular Access Location* of the *DDGs*. The ability of parking facilities to best serve arena events is tantamount to pedestrian safety and good transportation management.

SUMMARY OF KEY PROVISIONS
From AMA and related contracts bearing on Issues related to Google Project¹

April 21, 2021

1. ARENA LAND TITLE RIGHTS AND PERMITTED USES.

1.1 Key provisions of AMA:

Section 35.2 (b) and (c): The City covenants that it will not “unreasonably interfere with Manager’s rights or benefits” under the AMA or “take any action materially affecting or diminishing City’s title to the Arena Facilities” (which includes Lots ABC).

Sections 36.2(a): The City represents and warrants that it will maintain “good, marketable and insurable title” to the Arena Facilities free and clear of any leases, agreements, restrictions, assessment or other rights that would affect Manager’s rights under the AMA.

Section 36.2(b) and Attachment No. 18: The City represents and warrants that there are no agreements relating to the Arena Facilities that will bind or affect the rights or interests of Manager, except for the Permitted Title Exceptions described in Attachment No. 18. Those Exceptions include various existing easements, a previous Conditional Use Permit, and the recorded short-form Memorandum of the AMA (as amended in 2018), which includes a legal description of the entire Arena Land including Lots ABC.

Sections 36.4.1 and 36.4.2: The above representations and warranties are (i) material inducements for entering into the AMA, and (ii) continuing and remain in full force and effect until termination of the AMA.

Sections 12.1 and 18.3: Manager has the exclusive right to control, operate, maintain and manage the Arena Facilities, including the On-Site Parking Facilities, and has the exclusive right to receive revenues from the operation of such property.

Section 18.3.1: Manager is permitted to use Lots ABC for all lawful purposes consistent with the use of the Arena as a major public assembly facility, including such uses as temporary staging of event trailers and equipment, fan festivals, special merchandise sales, press events, and other special events consistent with historical practices.

Section 18.3.2: Manager is permitted to construct utility equipment, signage facilities, lighting, and other improvements “on or about” Lots ABC in connection with the operation of the Arena as a major public assembly facility, subject to City’s approval of plans and specifications under Section 28 and other requirements of the AMA.

Section 43.3: Manager’s rights under the AMA are “coupled with an interest arising from Manager’s significant capital investment in the Arena Facilities.”

¹ For convenience, this Summary of Key Provisions includes only a partial, edited version of each applicable provision (unless otherwise indicated). Please refer to the referenced documents for the full text of each provision.

1.2 **Comments:**

- A. The above provisions would prohibit the City from taking any of the following actions, unless SSE consents in its sole and absolute discretion:
- Issue a PD Permit with respect to Lots ABC, and/or record a certificate of such issuance (per SJMC 20.100.300)
 - Approve a tentative map that includes Lots ABC and/or record a final map
 - Record a Development Agreement against Lots ABC
 - Grant land or easements for a street or a utility corridor through Lots ABC
 - Encroach onto the Arena Land for improvements along W. Santa Clara Street or N. Autumn Street (Barack Obama Blvd.)
 - Create any other record encumbrance or burden on SSE's leasehold estate or title to the property
- B. SSE currently has the right to implement all uses permitted under the AMA without any planning approvals or permits. Therefore, unless modified to allow the continuation of such uses as permitted (rather than legal non-conforming), the proposed General Plan, DSAP and Zoning changes would be in direct conflict with SSE's express rights under the AMA.
- C. Under Google's General Development Plan (GDP), Google would have the right to establish a wide variety of uses with limited review by the City. The GDP should be amended to allow the City to impose conditions to protect the successful operation of the Arena, specifically to ensure that the new uses do not unreasonably disrupt or conflict with Arena events, including vehicular access and parking.

2. **CONSTRUCTION ON OR ADJACENT TO ARENA LAND.**

2.1 **Key provisions of AMA:**

Section 12.1.3(a): The term "Applicable City Policies and Guidelines" means "policies and guidelines, including design guidelines governing additions and alterations to the Arena Facilities, established from time to time by City" but only if they:

- (i) Are consistent with, and in furtherance of the provisions of the AMA;
- (ii) Do not unreasonably interfere with, impede or impair the ability of Manager to effectively and soundly manage and operate (or of the San Jose Sharks to use) the Arena Facilities;
- (iii) Do not materially increase Manager's costs or other obligations under the AMA; and
- (iv) Do not substantially adversely affect a material source of revenue for the Arena or have a material effect on the operation of the Arena.

Section 3.1.3: Manager must comply with the NHL Rules regarding alterations and improvements to the Arena Facilities, including security measures. The parties must exercise their rights and perform their obligations under the AMA in a manner that is consistent with the NHL Rules.

Section 28.5.2: A party may not undertake any Capital Projects (improvements) to the Arena Facilities without obtaining the other party's written approval of all applicable plans and

specifications. Such approval may not be unreasonably withheld, conditioned or delayed, subject to 28.5.2(a) below.

Section 28.5.2(a): If the City proposes a Capital Project, Manager has the right to disapprove it if “in Manager’s reasonable opinion, such Capital Project would have a negative impact on the operational convenience and operational cost of the Arena, or if the construction work would unreasonably interfere with use of the Arena by Manager or SJS LLC or other Manager Invitees.”

Section 35.2(b): As stated above, the City represents and warrants that it will not “unreasonably interfere with Manager’s rights or benefits under this Agreement.” This is another continuing representation and warranty which remains in full force and effect until termination of the AMA pursuant to Section 36.4.2, described above.

2.2 Comments:

- A. The above provisions would prohibit the City from allowing construction of street or utility improvements on Lots ABC or any other part of the Arena Land, unless SSE consents in its sole and absolute discretion.
- B. In addition, the City could not allow construction of improvements to the frontage areas along W. Santa Clara Street and N. Autumn Street, if SSE disapproves such improvements based on the criteria stated in Section 28.5.2(a).
- C. The City may not unreasonably withhold consent for SSE to install improvements in the public right away along the street frontages related to crowd control, the protection of an unimpeded path of travel, homeland security, and so forth.
- D. The Downtown West Design Standards and Guidelines (DWDSG) do not satisfy the requirements of Section 12.1.3(a) and therefore the City may not apply them to the Arena Facilities.
- E. The City should ensure that its policies and guidelines relating to construction mitigation plans for the Google Project (and other projects in the Diridon area) address the unique needs of the Arena with respect to event operations, and that costs and expenses related to construction mitigation are not imposed on SSE.

3. CITY’S PARKING OBLIGATIONS UNDER AMA.

3.1 Key provisions of AMA:

Section 19.1.2: City must take whatever actions may be necessary to satisfy the Minimum Off-Site Parking Requirements. City must use its best efforts to anticipate potential shortages in the supply of Available Parking Spaces, and take action to avoid the loss of Available Parking Spaces below the minimum requirements.

Section 19.4: City must make all expenditures necessary to fulfill City’s parking obligations under the AMA.

Section 21.1: This section reads as follows:

“City shall continuously monitor and evaluate development within the 1/2 Mile Radius, to help ensure that its parking obligations under this Agreement will continue to be met

throughout the entire Term. Among other things, City reaffirms its intent to comply with the following obligations mandated by the City Council in connection with approval of the Diridon Plan:

21.1.1 Significant Land Use Decisions. City shall coordinate with Manager regarding significant land use and development decisions within the 1/2 Mile Radius, to ensure that the required number of Available Parking Spaces is maintained. Such coordination obligations shall include the following measures:

- (a) City shall refer to Manager all development proposals on parcels within approximately 1/3 of a mile of the Diridon Station that have off-street public parking facilities, and are in excess of 25,000 square feet. Referrals shall include the cover letter, plan set, and other relevant materials the applicant provides as part of the project submittal....Staff shall provide comments received in a timely manner from Manager to the applicant and consider them in formulating initial comments the City may provide on the proposed project.
- (b) City shall require development proposals on parcels within the central and northern zone of the Diridon Plan that have off-street public parking facilities, and are in excess of 100,000 square feet of commercial space or in excess of 50,000 square feet of stand-alone retail/restaurant projects, to conduct a parking analysis for the project. City shall similarly request the same of development proposals within approximately 1/3 of a mile of the Diridon Station. These projects would be required to analyze and identify the projected parking demand, demand management strategies, and the parking supply to be provided by the project. The analysis would identify the impacts of the project on the existing parking supply within the Diridon Station Area, and suggest ways to mitigate the impact if it is deemed significant. The analysis would also include an assessment of spaces impacted or needed during construction.”....

Section 19.3: The AMA defines three categories of “Temporary Conditions” that cause a reduction in parking available for Arena customers, as follows:

- (a) **“Intermittent Conditions”** are events (or series of events) that occur periodically, likely for years, for which the participants use the same off-site parking facilities used by Arena customers, resulting in a reduction in the number of Available Parking Spaces.
- (b) **“Long Term Temporary Conditions”** are events longer than 90 days but shorter than three years. This includes construction projects in the Diridon Station Area, “to the extent such projects in the aggregate do not result in a reduction in Available Parking Spaces for a period longer than three years.”
- (c) **“Short Term Temporary Conditions”** are any conditions (or series of conditions) that last a cumulative period of time of 90 days or less, excluding Intermittent Conditions. Examples include short-run performance events like Cirque du Soleil or Cavalia, or short-term street improvement work.

Section 19.3.2: City may employ temporary measures as reasonably necessary to address specific Temporary Conditions that arise, subject to a separate “Temporary Parking Agreement” mutually approved by City and Manager.

- (a) The Temporary Parking Agreement would address a specifically identified Temporary Condition and describe specific temporary measures that may be taken to fulfill the City’s parking obligations under the AMA.
- (b) City must (i) notify Manager of any foreseeable Temporary Conditions as far in advance as reasonably possible, and (ii) propose a Temporary Parking Agreement (and take appropriate implementing actions) as early as necessary to ensure an uninterrupted supply of Available Parking Spaces as required by the AMA.
- (c) The specific temporary measures would be based on the nature, extent and length of the Temporary Conditions. For a Long Term Temporary Condition, the measures must ensure that there will be a permanent remediation of the condition within a reasonable period of time.
- (d) “Any temporary measures employed by City shall be designed to preserve, to the greatest extent reasonably possible, the overall access and parking ecosystem for the Arena existing as of the Commencement Date of this Agreement.”

3.2 Comments:

- A. The City failed to prepare an adequate parking analysis for the Google Project as a whole, as required by Section 21.1.1(b). Further, it appears that the City does not intend to do so for development proposals going forward. This is a breach of the AMA.
- B. The Conformance Review process eliminates the City’s ability to comply with Section 21.1.1(a) with respect to development proposals going forward. Allowing SSE (along with other members of the public) to review development proposals within a 7 or 10 day window just prior to a public hearing is not what this Section intended; rather, the intent was to provide the project submittals to SSE when the City receives them, with sufficient time to make meaningful modifications to the project based on SSE’s comments.
- C. The proposed Exhibit K to the Development Agreement (Exhibit K), as currently drafted, contains provisions that are inconsistent with the City’s parking obligations under the AMA and/or may make it difficult for the City to satisfy such obligations. For example:
 - (i) The 4,800 commercial parking spaces for the Google Project is a maximum, rather than a minimum.
 - (ii) Exhibit K fails to provide for any periodic assessment as to whether Google is meeting its goal that 85% of “publicly accessible” spaces will be “Available” for use by SAP Center customers, or for any consequences if Google fails to achieve such goal; thereby significantly increasing the risk that the City will fail to meet its Minimum Off-Site Parking Requirements under the AMA.
 - (iii) The AMA limits Long Term Temporary Conditions to 3 years, whereas Exhibit K allows 5 years.
 - (iv) The AMA requires that Temporary Conditions be mitigated in accordance with a Temporary Parking Agreement entered into between the City and SSE, but Exhibit K does

not provide for SSE's input into Googles proposed "interim parking management strategies."

4. LOT E/MILLIGAN/DELMAS WEST PARKING OBLIGATIONS.

4.1 Key provisions of First Amendment to AMA and Settlement Agreement:

First Amendment:

Section 2.2.1: As a condition precedent to Manager's agreement to allow Google to purchase Lot D and relocate parking from Lot D (which contains 228 spaces) to Delmas West (which contains 324 spaces), Google must keep all of the Delmas West Parking open (not just the 228 Replacement Parking spaces) for public parking until the earlier of the following:

- (a) City's completion of its obligation to build-out the Lot E and Milligan sites for parking lots containing at least 408 new (incremental) Available Parking Spaces (180 spaces required under the Settlement Agreement and 228 incremental spaces required under the First Amendment); OR
- (b) Provided that the City is otherwise in compliance with its off-site parking obligations under the AMA, when:
 - (i) BART service to the Diridon Station area is operational; OR
 - (ii) Google has constructed at least 500 Available Parking Spaces as part of its development project on Delmas East; provided, however, that if the 500 spaces are shared spaces they must be designed such that all 500 vehicles can safely exit from the parking structure onto the public streets within a period of 30 minutes.

Section 3.1: City must, at its sole cost and expense, acquire ownership or control over all parcels comprising Lot E and Milligan, and complete construction of surface parking lots on those properties. City will use best efforts to purchase and/or ground lease all parcels within Lot E or Milligan that it does not currently own or control, as soon as is reasonably possible. If necessary, staff will seek Council approval to condemn the necessary parcels.

Section 3.1.2: Each parking lot will contain the maximum number of parking spaces that can reasonably be constructed on each parcel, which the Parties estimate to be approximately 267 parking spaces on Lot E (which includes the 180 parking spaces City agreed to construct under the Settlement Agreement) and approximately 297 parking spaces on Milligan. In any event City must ensure a minimum of 408 new (incremental) parking spaces will be available on these lots.

Section 3.2: City shall complete the acquisition and improvement of the new parking lots on Lot E and Milligan no later than June 30, 2021, subject only to Force Majeure Events.² City shall take all actions, pay all sums of money, and exert all efforts necessary to perform its obligations timely.

² Section 37.1 of the AMA defines Force Majeure Event to include "governmental action or restriction or enactment or enforcement of any Applicable Law, except that enactment or promulgation of an ordinance, resolution, policy or guideline by City ... or a default by City..., shall not constitute a "Force Majeure Event" as applied to performance by City." City's decision to change the project description for

Section 3: Manager will operate each of the new parking lots constructed by City as an Off-Site Parking Facility (i.e., full time). Operating revenues will first be applied to pay for Manager's operating expenses for the parking lot; the net revenues will be paid to City. The new parking lots will be used exclusively for parking, with priority for Arena Event-related parking.

Trammell Crow Settlement Amendment:

Paragraph 5: City will construct at least 180 surface parking spaces and related improvements on Lot E.

Paragraph 6: The Lot E Parcels will be used exclusively for parking, with priority for Arena event-related parking, through at least June 30, 2025.

Paragraph 7: City grants SSE an option to purchase the City Parcels if the City decides to sell, lease, or otherwise transfer the City Parcels to an unrelated third party. The purchase price would be the then fair market value. SSE's option to purchase shall commence on June 30, 2025 and shall terminate when the AMA terminates.

If SSE does not exercise the option, any development after June 30, 2025 (and prior to termination of the AMA) will include shared use parking with a minimum number of Available Parking Spaces equal to the number of surface parking spaces that were provided on the Lot E Parcels prior to such development.

Paragraph 8: SSE grants to City an option to purchase the three SSE Parcels, as well as an additional parcel it owns on Lot E, upon (i) the City's agreement to construct a parking garage on the Lot E Parcels with priority for Arena event-related parking; or (ii) termination of the AMA. The purchase price would be net cash to SSE in the amount of \$1,335,000.00 increased by a defined inflation factor.

Paragraph 21: The above provisions "run with the land" and are binding on successors and assigns.

4.2 Comments:

- A. It is clear that the City is not going to be able to fulfill its obligations under the above agreements and therefore will be in breach.
- B. The Google Project documents should be modified to provide that the Delmas West development will not proceed unless and until the conditions set forth in the First Amendment to the AMA are satisfied.
- C. For purposes of consistency, and to help ensure that the City does not breach the relevant agreements, the provisions of Exhibit K to the Development Agreement regarding an Alternative Parking Arrangement on Lot E should incorporate the relevant provisions of the above agreements, including:

purposes of the environmental review, and/or to delay the environmental review because of the allocation of resources to other projects due to the pandemic, does not constitute a Force Majeure Event.

- (i) The obligation to provide priority parking for Arena guests
 - (ii) Management of the parking facility by SSE
 - (iii) SSE's option to purchase the Lot E parcels
- D. The proposed zoning for the Lot E and Milligan sites should be changed from Downtown Primary Commercial to Public/Quasi-Public allow for the construction of stand-alone public parking facilities, so as to maximize potential parking capacity and ingress/egress functionality for event purposes.

5. CHANGES TO STREET NETWORK.

5.1 Key provisions of AMA:

Section 21.2: This Section "City shall coordinate with Manager regarding transportation projects, transportation plans, and other transportation matters in the vicinity of the Diridon Station Area or that may otherwise affect ingress to and egress from the Arena..."

Section 21.2.3: "City and Manager shall also coordinate regarding any material changes to the design, configuration or operation of the major streets and intersections in the vicinity of the Arena to the extent that they may have a direct impact on the safe and efficient flow of vehicular, bicycle, and pedestrian traffic to and from the Arena, including Autumn Street and the intersection at Autumn Street and Park Avenue.

- (a) City shall give Manager advance notice of any such material changes, including copies of relevant plans and specifications, and shall meet with Manager in advance of any work in order to discuss Manager's input and suggestions.
- (b) The Parties shall work together in good faith with the goal of achieving the best overall function of the streets and intersections for the **benefit of both the Arena and all other development in the Diridon Area.**"

Other: Please also see the relevant provisions in Section 6 below, regarding the Arena TPMP.

5.2 Comments:

- A. Consistent with the above goal of achieving the best street and intersection function for the benefit of both the Arena and the Google Project, the street network configuration proposed by SSE should be adopted instead of the street network configuration proposed by Google. This would help ensure that the streets will preserve the existing functional capacity as intended under the AMA (even though such capacity will still be grossly inadequate to accommodate the enormous increase in traffic volume generated by the Google Project).
- B. The Google Project documents should be revised to make it clear that in lieu of keeping Delmas Street open between Santa Clara and San Fernando Streets, Google will be required to provide a driveway to the Delmas development parking that is accessible from both the east and west on Santa Clara Street.
- C. In order to help preserve the City's ability to perform its obligations under the AMA as set forth above, the Google Project documents (including the Conformance Review Implementation Guide) should be revised as follows:

- (i) Plans for any proposed changes to streets important for ingress/egress to the Arena must be provided to SSE for comment prior to preparation of the LTAs described below
- (ii) In addition to all other topics required by the City's Transportation Analysis Handbook, the scope of LTAs for future development proposals must include LOS/capacity analysis of the affected intersections during the 6 to 7 pm peak arrival hour for SAP Center events.
- (iii) Draft LTAs for future development proposals must be provided to SSE well ahead of public circulation, to give SSE an opportunity for meaningful input

6. TRAFFIC AND PARKING MANAGEMENT PLAN (TPMP).

6.1 Key provisions of AMA:

Section 23.1: The Arena TPMP is attached to the AMA. It identifies goals and strategies for: (i) the operation and management of the On-Site Parking Facilities; (ii) the provision of convenient Off-Site Parking Facilities; and (iii) the provision of safe and efficient traffic and pedestrian movement of Arena customers.

Section 23.1.1: City is obligated to "use its reasonable good faith efforts to devote sufficient operating funds and resources to make the movement of cars and people effective and efficient."

From TPMP attached to AMA: The Arena TPMP provides as follows:

Section I.B. "The purpose of the TPMP is to establish event traffic and parking management strategies for HP Pavilion that:

- (1) Promotes efficient and effective vehicular and pedestrian traffic circulation
- (2) Provides convenient and easy access to and from area parking facilities
- (3) Minimizes traffic congestion on surrounding roadway facilities
- (4) Minimizes traffic and parking intrusion into surrounding business and neighborhood communities"

Section I.C: "The City, the Arena Authority, and HP Pavilion Management have mutually agreed to the following goals and objectives with regard to development of this TPMP:

- (1) Ensure that all public and private improvements to transportation related facilities progress as quickly as possible.
- (2) Ensure that customers traveling to and from HP Pavilion have a positive transportation experience.
- (3) Develop and implement a traffic and parking operations plan that is effective and able to adjust as needs and opportunities arise.
- (4) Provide a process achieving regular updates to the traffic and parking management plan to respond to future challenges and opportunities."

Section V.A: "Traffic Mitigation. As part of the condition to construct HP Pavilion, certain traffic mitigation efforts were implemented to ensure that intersection and roadway capacity could adequately handle the traffic volume generated during events at HP Pavilion."

Section III: Each fiscal year, DOT submits a budget approval request to the City Council for funds needed to implement the City's obligations under the TPMP. Such obligations include Signal Central staffing, parking and code enforcement staffing, neighborhood litter removal and clean up, signal timing plan development, traffic and parking studies, traffic signal system upgrades, signage (static and portable), minor capital improvements, residential permit parking program, and public information material.³

Section 8.2.3: Operating Expenses for the items described above "shall be made at City's cost, from City's own resources."

Section 23.1.3: At least every 3 years, the parties must review the TPMP to determine whether any revisions are warranted based on then-current facts and circumstances, with the common objective of providing the most effective use of the On-Site Parking Facilities and Off-Site Parking Facilities and security measures during Arena Events, and to otherwise improve the TPMP "as the Parties may agree," provided that no such changes shall operate to limit or reduce the scope and purpose of the Arena TPMP.

Section 23.1.4: The Arena TPMP does not amend the AMA, but may be used to help interpret the Parties' intentions and respective obligations under the AMA.

Section 35.2(d): The City represents and warrants that it will not "knowingly take any action that materially impairs or impedes implementation of the Arena TPMP." This is another continuing representation and warranty which remains in full force and effect until termination of the AMA pursuant to Section 36.4.2, described above.

6.2 Comments:

- A. The proposed use of dynamic lanes and planned reliance on major revisions to the TPMP to manage event traffic is not consistent with either the express provisions or the intent of the Arena TPMP.
- B. The approvals for the Google Project should be conditioned upon Google's obligation to fund any incremental traffic operation expenses incurred by SSE or the City as a result of revisions to the street network arising from the Google Project – such funding should not come from surcharges on parking passes purchased by SAP Center customers (see discussion below in Section 7).

7. DISTRICT PARKING FEES.

7.1 Key provisions of AMA:

Section 10.2.1: The following definitions are included in the AMA:

- (c) "City-Approved Assessment District" means an assessment district in which any City Authority owns one or more parcels of real property and has voted for the assessments to be imposed by such district.

³ The list of City obligations in the Arena TPMP also includes police traffic control staffing and employee parking, but as of July 1, 2018, the responsibility for those items has shifted to SSE pursuant to AMA Sections 19.2.2 and 24.2.4.

- (h) “Tax” means any of the following:
 - (i) Any “general tax” or “special tax” for the purpose of raising funds for general or specific governmental purposes
 - (ii) Any “assessment” imposed upon real property for a special benefit conferred upon the property
 - (iii) A “fee” or “charge” imposed as an incident of property ownership, including a charge for a “property-related service”
- (j) “Disallowed Tax Increases” means any of the following New Taxes implemented after the AMA Commencement Date, that are imposed by a City Authority or City-Approved Assessment District:
 - (i) Any New Tax on tickets or other admission to sporting or entertainment events, to the extent applicable to the Arena
 - (ii) Any New Tax on parking or other New Tax that principally targets the Arena or the use of the Arena
 - (iii) Any New Tax on parking or other New Tax for which at least 25% of revenues are generated by Manager and/or Manager’s guests
 - (iv) Any New Tax payable in connection with a special benefit district, maintenance district, business district, or other assessment district that includes the Arena and which is not expressly approved by Manager

Section 10.2: Manager would be entitled to a deduction against the Annual Fees in the amount of any Disallowed Tax Increases Manager or any other Manager-Related Taxpayers.

7.2 Comments:

- A. Any District parking designed to provide parking for Arena events should not impose surcharges on top of market rate parking fees. This would amount to a “New Tax” payable by SSE’s guests.
- B. The intent of the above provisions was to ensure that SSE and/or its guests would not bear the financial burden of development in the Diridon Station area by others, as that would essentially amount to an unfair subsidy.

8. COMPETING FACILITIES.

8.1 Key provisions of AMA:

Recital G: The City’s general goals and objectives under the AMA include: to provide a wide variety of cultural, educational, entertainment, sporting and other activities and events; to promote as wide a use of the Arena Facilities as is practical and feasible; to optimize the use of the Arena Facilities; to provide facilities and opportunities for groups and organizations from outside the greater San Jose community; and to assure the status of the Arena as a major public assembly facility in the City of San Jose.

Section 4.2: To help protect Manager’s substantial investment in the Arena Facilities and ensure the continuing success of the Arena, Manager is granted the first opportunity to manage a

Competing Facility (defined as an arena, amphitheater or comparable facility with over 5,000 seats, used for events typically held in comparable major arenas) if the City finances, financially supports or participates in the construction of the facility. This does not apply to actions taken by City in its regulatory capacity (e.g., zoning or plan approval).

Section 4.2.3: The above does not apply to any outdoor stadium used for professional sports games, or (ii) any facility used for recreation, entertainment, cultural or civic activities presented through City's Parks and Recreation Department, Office of Cultural Affairs or community and cultural arts organizations.

8.2 Comments:

A. The event/conference center (and auditorium) uses allowed as part of the Google project should be limited to uses that are adjunct to the project sponsor's corporate business, so that any such new facility will not compete with the Arena.

9. SPECIAL EVENTS.

9.1 Key provisions of AMA:

Section 21.2.2: City and Manager shall coordinate regarding the Transportation and Parking Management Plan for the Arena as well as TPMP's for the Arena Green and other major development projects.

Page 2 of Arena Green TPP provides as follows:

"Initial Coordination: In programming Arena Green, every effort will be made to avoid booking simultaneous events in the Park and Arena. Park and Arena calendars will be coordinated through the Special Park Use office. Applications for Arena Green must be submitted a minimum of 60 days in advance of the Park event. The Arena will be notified of this Park event application and possible booking at the earliest date.

The management goal is to provide a two hour time difference between the ending and starting times of Park and Arena events. If simultaneous events do occur, the following traffic and parking plan will provide the framework for accommodating these events. Simultaneous events are defined as events occurring within the two hour window."

Section 35.2(a): The City represents and warrants that it will not "fail to make reasonable good faith efforts to make reasonably available for use in connection with Events or activities at the Arena those areas adjacent to the Arena that are available for such use to the extent such areas remain within the control of City." This is another continuing representation and warranty which remains in full force and effect until termination of the AMA pursuant to Section 36.4.2, described above.

Section 25.3: SJMC 6.54.295⁴ which prohibits peddling within the "arena peddling prohibition zone" is of material importance to Manager because it helps to (i) prevent unnecessary

⁴ This ordinance was amended subsequent to the execution of the AMA. The relevant provisions are now contained in SJMC 6.54.215, which prohibits peddling within 500 feet of the Arena on event days, or in any City-owned parking lot. That section also contains requirements related to maintaining clear pedestrian and vehicular access, trash removal, noise restrictions, distance between stopped mobile peddlers, and other health and safety matters.

congestion, (ii) reduce potential obstacles to ingress and egress before and after Events, and (iii) eliminate potential hindrances to security operations.

Section 25.3.2: To ensure enforcement of the restrictions on peddling as intended, City agrees to inform the City police officers working during Events of the laws applicable to peddling. Any police costs related to enforcing the peddling ordinance shall be borne by City, without reimbursement by Manager, so long as similar assistance is offered to others without charge.

9.2 Comments:

- A. Under the Google Project's GDP, Special Events (of up to 45 consecutive days or recurring weekly or monthly for a longer period) and Limited Term Uses (longer than 45 consecutive days) may be scheduled on Private Property with no coordination with OCA or permits from the City (except for fire department or noise permits). For example, such events could occur within the large triangular area between Parcel E1 and W. Santa Clara Street, a block away from SAP Center at the entrance to a proposed shared parking facility. Per Exhibit F3 to the Development Agreement, this space may be privately reserved for up to 127 days per year, from Sunrise to 9:00 PM. This could cause major conflicts for Arena events, in terms of both traffic congestion and available parking.
 - (i) In keeping with the intent of the above provisions, the Google approval procedures for Special Events and Limited Term Uses should include referral to SSE and OCA for schedule coordination to avoid conflicts with major events at SAP Center.
- B. Rights granted for the Google Project should be subject to other applicable existing City and County ordinances. For example, food peddlers should be required to obtain County health permits and should be prohibited from peddling within 500 feet of the Arena on event days as provided by the City's peddler ordinance.