

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Settlement Agreement - Exhibit K redline PDF
Date: Thursday, May 27, 2021 3:58:35 PM
Attachments: [Exhibit K - Redlined 05252021.pdf](#)

From: Zenk, Jessica <Jessica.Zenk@sanjoseca.gov>
Sent: Tuesday, May 25, 2021 5:56 PM
To: Lucy Lofrumento <lal@lmallp.com>
Cc: Phan, Johnny <Johnny.Phan@sanjoseca.gov>; Day, Cameron <Cameron.Day@sanjoseca.gov>
Subject: Settlement Agreement - Exhibit K redline PDF

Hi Lucy,

Attached please find the redline of Exhibit K (attached to the Supplemental Memo for this evening as "Exhibit B" to that).

Best,
Jess

Exhibit B

Exhibit K

Downtown West Parking Requirements

Recitals:

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

Parking Requirements:

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

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DWDSG).

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

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have the right to designate additional land owned by the City and within $\frac{1}{3}$ of a mile of the south entrance to the SAP Center (the "Additional Parking Property") for Developer to build additional parking spaces; Developer would then be required to build additional spaces on the Additional Parking Property, subject to obtaining appropriate environmental clearance and any discretionary approvals, as well as ensuring compliance with any contractual obligations of the City; provided, however, in no event would Developer be required to build parking spaces on the Additional Parking Property that, when aggregated with the publicly-accessible spaces located within the Project boundary, would exceed the Required Parking Ratio or 4,000 total spaces, as described above.¶

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

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

c.

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