

**From:** [Phan, Johnny](#)  
**To:** [Downtown West Project](#)  
**Subject:** FW: Potential inserts for Settlement Agreement  
**Date:** Thursday, May 27, 2021 4:10:28 PM  
**Attachments:** [Potential Settlement Language from SSE \(rev. 5-24-21\) \(10605190xD701E\).docx](#)  
**Importance:** High

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**From:** Phan, Johnny  
**Sent:** Monday, May 24, 2021 9:30 AM  
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**Subject:** FW: Potential inserts for Settlement Agreement  
**Importance:** High

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**From:** Lucy Lofrumento <[llal@lmalp.com](mailto:llal@lmalp.com)>  
**Sent:** Monday, May 24, 2021 9:26 AM  
**To:** Klein, Nanci <[Nanci.Klein@sanjoseca.gov](mailto:Nanci.Klein@sanjoseca.gov)>; Phan, Johnny <[Johnny.Phan@sanjoseca.gov](mailto:Johnny.Phan@sanjoseca.gov)>; Day, Cameron <[Cameron.Day@sanjoseca.gov](mailto:Cameron.Day@sanjoseca.gov)>  
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**Subject:** Potential inserts for Settlement Agreement  
**Importance:** High

[External Email]

Hi,

In an effort to help move the Settlement Agreement draft forward as quickly as possible, we have prepared, for your consideration, the attached sample language that could be inserted into the Agreement. Of course, we understand that there will be additional language such as mutual waivers and releases, but we thought it might be helpful to express our understanding of what SSE means by an "agreement not to sue."

Please let us know whether these provisions are consistent with your understanding as well.

Thanks  
Lucy



**Lucy Lofrumento**

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## Potential Language to Insert into Settlement Agreement

1. As used herein, the term “Project Approvals” means and includes the following:
  - a. All resolutions and ordinances being considered for approval or adoption by the City Council under Item 10.2 of its Agenda for May 25, 2021, referencing GP19-009, PDC19-039, PD19-029, PT20-027, HL20-004, HL20-005 & HP20-002 - Downtown West Mixed-Use Plan.
  - b. All resolutions and ordinances being considered for approval, adoption or consent by the City Council under Item 10.3 of its Agenda for May 25, 2021, referencing GP20-007 & C20-002 - City-initiated General Plan Amendment amending the Diridon Station Area Plan and a Conforming Rezoning.
2. Subject to Paragraph 3, Sharks Sports & Entertainment LLC and its affiliates (SSE) shall not initiate, pursue or support (directly or indirectly) any legal action that (i) challenges the legality of any of the Project Approvals, or (ii) alleges that City’s approval or adoption of the Project Approvals results in a breach of the Arena Management Agreement (AMA) or the Option/Negotiation Rights Agreement (ROFO).
3. SSE’s agreement hereunder is conditioned upon (i) the changes to the Project Approvals set forth in this Agreement being fully incorporated into the Project Approvals prior to or concurrent with City Council action on May 25, 2021, (ii) the AMA being amended as set forth in Section \_\_\_\_ prior to the second reading of the ordinances that are part of the Project Approvals, and (iii) there being no material changes to the Project Approvals compared to the Project Approvals as published May 15, 2021, other than as described herein.
4. Nothing herein shall alter or limit the respective rights and obligations of City and SSE under the AMA (as amended) or the ROFO, and nothing herein shall limit SSE’s remedies in connection with any breach of the AMA by the City other than as expressly provided herein.