

Waller Park Operations Plan

This Waller Park Operations Plan (“Operations Plan”) is entered into as of March 22, 2016, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Director of the Planning Department (“the City”), and ALTA LAGUNA, LLC, a Delaware limited liability company (“Manager”), with respect to the use, maintenance and operation of Waller Park, a privately owned but publicly accessible open space located at 155 Laguna Street, 100 Waller Street, 101 Waller Street, 188 Buchanan Street, 200 Buchanan Street, 215 Haight Street, and 229 Haight Street, in San Francisco (the “55 Laguna Project”).

The Planning Commission originally approved a Planned Unit Development for the 55 Laguna Project on January 17, 2008 (Motion No. 17537). On August 16, 2012, the Planning Commission approved Motion No. 18693 modifying certain elements of the Planning Unit Development, and on September 20, 2012, the Planning Commission approved Motion 18706 formally approving the 55 Laguna In-Kind Agreement.

Section 4.1.1 of the In-Kind Agreement requires the Manager to improve approximately 28,000 square feet of the former Waller Street right-of-way, owned by the University of California (“UC”) and leased by the Manager, as a privately owned, but publicly accessible open space (“Waller Park”), maintain public access to those open space improvements, assume maintenance and liability responsibilities, and will not permit any above-ground structures to be built on the land other than a small number of encroaching stoops leading to individual unit entrances and landscape and hardscape open space improvements.

This Operations Plan shall govern the use, maintenance and operation of Waller Park.

1. Public Use. Per Planning and In-Kind approvals and the Restrictive Easement recorded as No. 13-J706713 in the Official Records of San Francisco County on July 17, 2013 (“Restrictive Easement”), The Manager shall ensure that Waller Park functions as a privately owned but publicly accessible open space.

2. No Discrimination. Manager shall not discriminate against, or segregate, any person, or group of persons, on account of race, color, religion, creed, national origin, gender, ancestry, sex, sexual orientation, age, disability, medical condition, marital status, or acquired immune deficiency syndrome, acquired or perceived, in the use, occupancy, maintenance, operations, tenure or enjoyment of Waller Park.

3. Maintenance Standard. Waller Park shall be operated, managed and maintained by Manager in a clean and safe condition in accordance with the anticipated and foreseeable use thereof, in accordance with the Maintenance Standards attached in Exhibit 1 hereto. The costs of such maintenance shall be the responsibility of the Manager. To the extent visitors contact the City’s 311 service to report a disturbance, maintenance or repair issue at Waller Park, calls should be directed to Alchemy By Alta, 200 Buchanan Street, San Francisco, 415-991-1377. The

above contact information will also be included as part of the informational signage located at the Waller Park entrances on Laguna and Buchanan Streets, pursuant to Section 5b.

4. Temporary Closure. Pursuant to Planning and In-Kind Agreement approvals, there shall be no gates, or similar feature(s) serving to regulate pedestrians, located at either end of Waller Park. Notwithstanding the foregoing, Manager shall have the right, without obtaining the consent of any other person or entity, to temporarily close any or all of Waller Park to the public at any time and from time to time for one or more of the following reasons. In each instance, such temporary closure shall continue only for as long as Manager reasonably deems necessary or desirable.

- a. Disturbance. In the event of an emergency or danger to the public health or safety created from whatever cause (including flood, storm, fire, earthquake, explosion, accident, criminal activity, riot, civil disturbances, occupation, civil unrest or unlawful assembly), Manager may temporarily close Waller Park without notice and in any manner deemed necessary or desirable to promote public safety, security and the protection of persons and property, and may remove any members of the public therefrom; or
- b. Maintenance and Repairs. Manager may temporarily close Waller Park (or affected portions thereof), with 24 to 48 hours posted notice, in order to make any repairs or perform any maintenance as Manager, in its reasonable discretion, reasonably deems necessary or desirable to repair, maintain or operate Waller Park. Repairs shall be made in a timely manner. Closures shall be limited to the minimum duration and extent needed to perform necessary maintenance and repairs.

5. Operation of Waller Park. Operation of Waller Park shall be subject to the additional requirements of this Paragraph.

- a. Hours of Operation. Except for use of the sidewalk along the south boundary, which shall remain open and accessible to the public at all times, Waller Park shall be open and accessible to the public from 7:00 a.m. to 7:00 p.m. daily between October 1st and March 31st and from 7 a.m. to 9:00 p.m. daily between April 1st and September 31st (“**Operating Hours**”), or unless reduced hours are reasonably imposed on a temporary basis by Manager, in its sole discretion, to address disturbance and/or maintenance and repairs concerns, pursuant to Section 4. The wheelchair lifts in Waller Park along the north boundary will not be operable during hours when the Waller Park is closed. No person shall enter, remain, stay or loiter in Waller Park when Waller Park is closed to the public, except authorized service and maintenance personnel, or residents, agents, contractors or employees of the apartment buildings located at 155 Laguna St., 100 Waller St., 101 Waller St., 188 Buchanan St., 200 Buchanan St., 215 Haight St., 229 Haight St.

- b. Signs. Per Planning and In-Kind approvals, informational and directional plaques shall be designed and placed in five publicly conspicuous locations, at minimum:
1. Two signs (one on each adjacent building) at the intersection of Waller and Buchanan;
 2. Two signs (one on each adjacent building) at the intersection of Waller and Laguna;
 3. One sign at the southern entrance to Palm Lane on Hermann Street;
 4. One sign at the mid-block entrance on Haight Street at the northern entrance to Palm Lane; and,
 5. One sign at or near the entrance to the stairs at the northern end of Palm Lane, which connects Palm Lane to Woods Hall to Haight Street.

The Manager shall obtain all required signage permits. The plaques shall contain a list of all publicly-accessible entrances to Waller Park and shall include, at minimum, the information required by Planning Code Section 138(i)(1)(A)-(F).

- c. Activities. Allowed activities within Waller Park include, but are not limited to, the following: (a) recreation, (b) quiet contemplation and rest, without the use of amplified sound, and (c) neighborhood or other permitted community events, which shall not exceed eight (8) single day restricted access events. During a restricted access event, public access to areas of Waller Park that are not part of the restricted access event will not be impaired. Relevant city permits will be required for any event, assemblage, entertainment, performance, amplified sound or sale of merchandise. If permitted under the restrictive easement, to the extent rental process/rates will be charged for use of various areas within Waller Park, they will be similar to that of other City parks.
- d. Prohibited Activities. For the enjoyment of all visitors, the following activities will not be allowed: smoking, defacing private property, feeding birds, camping or sleeping, littering, climbing, skating or skateboarding, bicycling, removal of flowers or plants, pets off leash. Alcohol consumption is not allowed except by permit.

6. Arrest or Removal of Persons. Manager shall have the right (but not the obligation) to use lawful means to effect the arrest or removal of any individuals who create a public nuisance, who otherwise engage in Prohibited Activities, or who commit any crime including, without limitation, infractions or misdemeanors in or around Waller Park.

7. Security During Periods of Non-Access. Manager shall have the right to block entrances, to install and operate security devices, and to maintain security personnel in and around Waller Park to prevent the entry of persons or vehicles during the time periods when public access to Waller Park or any portion thereof is restricted or not permitted pursuant to Section 4 of this Operations Plan.

8. Removal of Obstructions. Manager shall have the right to remove and dispose of, in any lawful manner it deems appropriate, any object or thing left in or deposited on Waller Park and deemed by Manager to be an obstruction, interference or restriction of use of Waller Park, including, but not limited to, personal belongings or equipment abandoned in Waller Park.

9. Structures.

(a) No trailer, tent, shack, barn or other outbuilding, or structure of a temporary character, shall be used on any portion of Waller Park at any time, either temporarily or permanently, unless such structure is approved by Manager and permitted under the restrictive easement.

(b) No permanent structure of any type, including but not limited to bathrooms, and storage sheds, shall be erected in Waller Park without the written consent of the Manager and permitted under the restrictive easement.

10. Insurance. Manager shall maintain a Commercial General Liability insurance policy by a carrier admitted to do business in the State of California, in the amount of at least \$2,000,000 (Two Million Dollars) general aggregate and \$1,000,000 (One Million Dollars) per occurrence.

11. Severability. If any of the provisions of this Agreement, or the application of such provisions to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those to which it is held to be invalid, shall not be affected thereby.

12. Ensuring Accountability. Manager shall attend a meeting of the Market & Octavia Citizens Advisory Committee in late 2017 and in late 2019 and thereafter at five-year intervals to report on Waller Park activities and to provide Market & Octavia CAC members the opportunity to provide any feedback/concerns they may have on the operations and accessibility of Waller Park.

Manager and Planning may choose to negotiate in good faith to modify the Waller Park Operations Plan in the future to address feedback and/or to address other unforeseen operational issues that may arise.

13. Indemnity. The Manager, on behalf of itself and its successors, shall indemnify, defend, reimburse and hold the City harmless from and against any and all claims, demands, losses, liabilities, damages, injuries, penalties, lawsuits and other proceedings, judgments and awards and costs by or in favor of a third party, incurred in connection with or arising directly or

indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, or loss of or damage to property occurring in, on or about Waller Park, provided that such accident, injury, death, loss or damage does not result from the gross negligence of the City; (b) any default by the Manager under this Agreement, (c) the condition of Waller Park constructed by or on behalf of the Manager; and (d) any acts, omissions, or negligence of the Manager or its agents in or about Waller Park. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigation. The Manager specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Manager by City and continues at all times thereafter. The Manager's obligations under this Section shall survive the expiration or sooner termination of this Agreement.

CITY AND COUNTY OF SAN FRANCISCO,
Acting by and through its Planning Commission

ALTA LAGUNA, LLC
a Delaware limited liability company

By: 
Director of Planning


By: 
Name: Brian Pianca
Title: Vice President
Date: 3/22/2016

EXHIBIT 1 to Waller Park Operations Plan
General Standards of Maintenance by Manager or its Agents

1. Grounds:

- a) Litter shall be picked up at least once daily. Trash cans emptied at least once daily and washed as needed.
- b) Grounds shall be checked for hazards daily, and hazards shall be responded to promptly. Hazards include but are not limited to:
 - i. Slip hazards
 - ii. Fire hazards
 - iii. Health hazards
- c) Damaged or worn signs shall be replaced or repaired as needed.

2. Raised Turf Area:

- a) Mowing: The raised turf area will be mowed, edged, and maintained as needed to provide a healthy appearance.
- b) Ensure irrigation in good working order and set for time of year. Repair leaks.
- c) Fertilization: The raised turf area shall be fertilized as needed.
- d) Aeration of the raised turf area will occur, at a minimum, once each year.
- e) Insect & disease control: insect and disease problems will be remedied, if possible, by guidelines issued by the University of California Extension Service. All herbicides, insecticides and pesticides will be approved by the County Agency.
- f) Broadleaf weeds: broadleaf weeds will be sprayed twice per year from March-October.
- g) Herbicides may be used around trees, poles, etc.
- h) Control growth of weeds. Remove litter and debris at least once daily.

3. Ornamental Gardens, Shrubs & Ground Covers:

- a) Any diseased or damaged growth will be pruned; pruning also will ensure that all ornamental garden plants, shrubs & ground cover have appropriate size and shape for their location.
- b) All shrubs shall be fertilized annually.
- c) Ground cover will be kept a minimum of 6 inches away from all buildings, patios, fences, and other structures within its boundaries unless otherwise directed.
- d) Replacement of dead shrubs as needed.
- e) Replenish amended soil and mulch; and maintain plant irrigation basins.

4. Trees:

- a) All trees shall be living trees.
- b) All broken limbs shall be cut and no hanging limbs greater than four (4) inches in diameter shall be allowed to impede passage to pedestrians.
- c) Vines in trees shall not exceed five (5) feet in height from the base of the tree and shall not be allowed in the canopy of the trees.
- d) All trees will be fertilized once each year (in late winter) with a slow-release, balanced fertilizer.

- e) All stakes and ties will be properly maintained. Regular inspections will be done. When a tree can stand alone, stakes and ties will be removed. Replacement of dead trees as needed.

f)

5. Hardscaped Area:

- a) Litter & debris shall be picked up daily.
- b) Area shall be kept free of graffiti.
- c) Paving shall have no cracks greater than 2" diameter or depth or shall be repaired by Manager. All weeds in sidewalks, curbs, driveways, walking paths, etc., will be removed by contractor manually or chemically.

6. Insect and disease control:

- a) When insect or disease problems are suspected they will first be properly identified and then remedied, if possible, by guidelines issued by the University of California Extension Service. All herbicides, insecticides and pesticides will be approved by the County Agricultural Commissioner prior to application.