



SJFA: 10/31/17  
ITEM: 2 (17-317)

# Memorandum

**TO:** SAN JOSE FINANCING  
AUTHORITY BOARD

**FROM:** Kim Welsh

**SUBJECT:** SEE BELOW

**DATE:** October 25, 2017

Approved

*D. D. S. L.*

Date

*10/26/17*

**SUBJECT: LATERAL TIE-BACK AGREEMENT AND CRANE EASEMENT (43 N. FIFTH STREET – CITY EMPLOYEE GARAGE) FOR OCTOBER 31, 2017 COUNCIL/AUTHORITY MEETING**

## RECOMMENDATION

It is recommended that the City of San José Financing Authority Board adopt a resolution to authorize its Executive Director to consent to the proposed Lateral Tie-Back Agreement and Crane Easement with SJSC Properties LLC, for subterranean tie-back anchors and two cranes to operate non-live loads over the City's Parking Garage located at 43 North Fifth Street, in connection with the construction of two 28-story residential towers at North Fourth Street and East Santa Clara Street directly adjacent to the City's Parking Garage, subject to the consent of Wells Fargo Bank, National Association, as trustee for the City of San José Financing Authority Lease Revenue Refunding Bonds, Series 2013B (Civic Center Garage Project) and the City.

## BACKGROUND

SJSC Properties, LLC, Developer, is building two 28-story residential towers at North Fourth Street and East Santa Clara Streets, on roughly 1.4 acres directly adjacent to the City-owned Parking Garage property. The project will include up to 610 residential units and up to 24,693 square feet of flex/office space and approximately 14,381 square feet of ground floor commercial uses. To construct the SJSC Tower project, the Developer will excavate soil on their property and is required to shore the adjacent City Property soil safe during construction to anchor the building. To this end the Developer intends to use a shoring system that utilizes below-grade anchors (Tie-Back Anchors). The Tie-Back Anchors will be situated along the common boundary of the property line between the Developer's project and the City Property. It is important to note that after the SJSC Tower project is constructed, the Tie-Back Anchors and corresponding shoring system will no longer be needed as the SJSC Tower project's building design will remain as the final solution to shore adjacent properties.

In addition to the temporary Tie-Back shoring system, the Developer intends to utilize two large on-site tower cranes to efficiently build the high rise project. No live loads will be allowed above the 4<sup>th</sup> Street Parking Garage. The City's consent is necessary if any portion of the crane projects above the 4<sup>th</sup> Street Parking Garage.

On Tuesday October 24<sup>th</sup>, City Council approved a recommendation to allow staff to Negotiate and Execute a Lateral Tie-Back Agreement and Crane Easement for the project, knowing that the project must return to the City of San Jose Financing Authority Board to adopt a resolution to authorize its Executive Director to consent to the proposed Tie Back Agreement and Crane Easement with SJSC Properties, LLC, subject to the consent of Wells Fargo Bank, National Association, as trustee for the City of San Jose Financing Authority Lease Revenue Refunding Bonds, Series 2013B (Civic Center Garage Project).

### **ANALYSIS**

Acquisition and construction of the employee parking garage, completed in early 2007, was funded with a combination of equity contributions and various financings. The outstanding debt on the property is the City of San José Financing Authority Lease Revenue Refunding Bonds, Series 2013B (Civic Center Garage Project) (the "Bonds"). The Bonds were issued pursuant to a Trust Agreement dated as of June 1, 2013, between the City of San José Financing Authority (the "Authority") and Wells Fargo Bank, National Association (the "Trustee"). The Bonds refinanced previously-issued refunding bonds which were issued to repay commercial paper notes that were issued to provide the original funding source for the garage. In connection with the issuance of the Bonds, the City and the Authority entered into a site/facility lease and project lease whereby the City leases the garage to the Authority and the Authority, in turn, leases the garage back to the City. The rental payments made by the City to the Authority provide for the payment of debt service on the Bonds.

Pursuant to the terms of the project lease, the consent of the Authority and Trustee of the Bonds are a prerequisite for the City to enter into the Lateral Tie-Back Agreement and Crane Easement discussed herein. The project lease allows encumbrances to the property if it is a permitted encumbrance which includes, among other things, easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of the project lease and to which the Authority, the City, and the Trustee consent in writing and which do not materially impair the use or the value of the garage project. Finance staff is currently working to obtain the consent of the Trustee.

### **EVALUATION AND FOLLOW-UP**

If the Wells Fargo consents as trustee and the City of San Jose Financing Authority authorizes its Executive Director to consent to the proposed Tie Back Agreement and Crane Easement with

SJSC Properties, LLC, City staff will work expeditiously to move the project forward facilitating significant investment in San Jose and created much needed housing units and commercial space.

**PUBLIC OUTREACH**

This memorandum will be posted to the City's website for the October 31, 2017 Council agenda.

**COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, and the Department of Finance.

**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is required or associated with this action.

**CEQA**

Addendum to the Downtown Strategy 2000 EIR (Resolution No. 72767), the Envision San Jose 2040 General Plan (Resolution No. 76041) and the Envision San Jose 2040 General Plan Supplemental EIR (Resolution No. 77617).

/s/  
KIM WALESH  
Deputy City Manager  
Director of Economic Development

For questions, please contact Nanci Klein, Assistant Director of Economic Development, at (408) 535-8184.