



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: June 4, 2018

Approved

Date

6/14/18

COUNCIL DISTRICT: 3

**SUBJECT: ASSIGNMENT OF DEVELOPER INTEREST IN THE MUSEUM PLACE
DISPOSITION AND DEVELOPMENT AGREEMENT**

RECOMMENDATION

Consent to an assignment by Insight King Wah, LLC of its interest as the Developer in the Disposition and Development Agreement (DDA) dated August 18, 2017 for the Museum Place project to Museum Place Owner LLC.

OUTCOME

Consent to the assignment will allow the transfer of all of the rights and obligations of Insight King Wah, LLC, the original developer under the DDA for the Museum Place project, to Museum Place Owner, LLC led by Gary Dillabough. Mr. Dillabough and his partners are also the owners of multiple downtown properties including the Bank of Italy and the Fountain Alley parking lot. Museum Place Owner, LLC has stated their intention to move the project forward within the timeframe outlined in the current Schedule of Performance.

BACKGROUND

On November 1, 2015, Council approved Insight, King Wah LLC as the developer of the Museum Place project. Insight was chosen after a Request for Proposals (RFP) process that included four bids.

On August 18, 2017, the City Council approved a Disposition and Development Agreement intended to replace the roughly 42,000 sq. ft. Parkside Hall facility with a high rise development of approximately one million square feet comprised of multiple uses. Redevelopment of the site for the future expansion of the Tech Museum of Innovation was anticipated when the Tech Museum was originally constructed. The Tech Museum has rights over the Parkside Hall building and associated land. The original developer Insight King Wah, LLC had agreed to build approximately 60,000 square feet of expansion space within a high rise infill development at no cost to the Tech in exchange for the land area required for the development. Since Council approval of the DDA in August of 2017, Insight King Wah, LLC has collaborated extensively with the City and Team San Jose to ensure that the project supports adjacent uses. The project is designed to add considerable density, create a significant number of jobs, add tax revenues and maintain access to the Civic National Theater, as well as facilitate pedestrian access along Almaden Court, a former street and now paseo between Park Avenue and San Carlos Street. Insight King Wah, LLC completed a Supplemental EIR and related entitlements for the project.

ANALYSIS

On August 18, 2017, City Council approved a DDA for the Museum Place project with Insight King Wah, LLC. The project is intended to redevelop the aging Parkside Hall facility with a multi-use high rise building. Proposed uses include the Tech Museum expansion space, retail, a hotel, office space and apartment units. At this time Museum Place Owner, LLC has purchased King Wah, LLC's rights in the DDA. Museum Place Owner, LLC led by Gary Dillabough is the entity that intends to construct the Museum Place project. Mr. Dillabough is a Managing Partner at Navitas Capital and at the Westly Group. Mr. Dillabough was formerly the CEO of Lunera and VP of Strategic Partnerships at eBay. Mr. Dillabough and his partners have recently purchased several key buildings in Downtown including the Bank of Italy building and the Fountain Alley Parking lot, investing over \$100 million in Downtown San Jose.

The Disposition and Development Agreement states that the City has sole and absolute assignment rights in the DDA. Staff is recommending that the City Council consent to the assignment of the Developer's interest in the DDA. Mr. Dillabough has accepted the obligations contained within the Agreement.

The DDA specifies the rights and obligations of the parties and outlines the schedule of performance for the project. Major sections of the DDA include:

- Conveyance of the site
- Development of the site
- Financing of the site
- Use of the site
- Defaults and Remedies

June 4, 2018

Subject: Assignment of Developer Interest in the Museum Place Disposition and Development Agreement

Page 3 of 5

- General Provisions
- Special Provisions

The Disposition and Development Agreement strives to clearly identify which party is responsible for what obligation over the course of the development. Further, the DDA protects the City should the developer default and not proceed as contemplated. Highlights of the protections in the DDA include:

Project Guarantee – Developer provides a completion guarantee from a creditworthy third party (usually related to the Developer), whereby the Guarantor is obligated to step in and finish the Project and pay to cover costs or losses on the project if the developer is unable to complete the Project. The Developer will also provide either funds in the amount of remaining costs of construction to be placed in a blocked escrow account to be expended on hard costs for the project or the Developer will provide an irrevocable standby letter of credit or a completion bond.

Specific Performance – If the Developer or the City defaults, and the default is not cured, the non-defaulting party may institute an action for specific performance compelling action.

Right of Reverter – The City can take possession of the site and all improvements revert in the City if the Developer fails to proceed with construction for a period of six months.

Labor Agreement - Also, as directed by City Council, Insight King Wah, LLC negotiated two Project Labor Agreements with the Building Trades Council and SEIU.

Tech Museum of Innovation – Mr. Dillabough understands that the corner stone to the Museum Place project is the substantial expansion to the Tech Museum of Innovation. Mr. Dillabough views the Tech expansion as a key element of the program that sets the project apart from any other new development in the South Bay. Mr. Dillabough has met with the Executive Director of the Tech and Tech staff on multiple occasions to begin a collaboration for both entities.

Potential Project Changes – With the assignment of Insight King Wah, LLC's interest in the Museum Place DDA, along with the substantial other holdings recently acquired in downtown San Jose, the Developer has a formidable vision for San Jose's future. Mr. Dillabough has indicated a strong desire to make the Museum Place project a standout location that the City of San Jose can look to with pride. The Developer's team is reviewing all elements of the project and will work with the City make adjustments to the project where the Developer believes there is an opportunity to further enhance the project. The Developer recognizes that Downtown San Jose has a limited supply of Class A office in a prime location close to Diridon Station. As a result, the Developer has indicated an intention to focus on office, retail and the Tech Museum expansion space, likely reducing or eliminating the residential and hotel components of the project. While changes may be contemplated, no changes have been formally requested to the program at this time. Should the developer seek to make changes to the approved project program, the Developer will be required to work with the appropriate City departments and

HONORABLE MAYOR AND CITY COUNCIL

June 4, 2018

Subject: Assignment of Developer Interest in the Museum Place Disposition and Development Agreement

Page 4 of 5

obtain any additional analysis required and any needed new permit approvals. Any substantial changes to the Project would require an amendment to the DDA and approval by City Council.

EVALUATION AND FOLLOW-UP

The Developer has had initial meetings with staff from the relevant City departments to familiarize themselves with project requirements and discuss parameters for any potential changes in the project program. Staff will work closely with the Developer to ensure all necessary analysis and permit approval and potential Council approvals are obtained, should they be required.

PUBLIC OUTREACH

This memorandum was posted on the City Council Agenda website for the June 26, 2018 Council Meeting.

COORDINATION

This report was coordinated with the City Attorney's Office and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action

COST SUMMARY/IMPLICATION

At this time no cost implications are known. Should the program for the project be proposed to change, staff will return to City Council for a proposed amendment to the DDA.

HONORABLE MAYOR AND CITY COUNCIL

June 4, 2018

Subject: Assignment of Developer Interest in the Museum Place Disposition and Development Agreement

Page 5 of 5

CEQA

Supplemental Environmental Impact Report for the Museum Place Mixed-Use Project to the “The Downtown Strategy 2000 Final Program Environmental Impact Report,” adopted by City Council Resolution No. 72767 on June 21, 2005; “Envision San Jose 2040 General Plan Final Program Environmental Impact Report,” adopted by City Council Resolution No. 76041 on November 1, 2011; and “Supplemental Environmental Impact Report to the Envision San Jose 2040 General Plan Final Program Environmental Impact Report,” adopted by City Council Resolution No. 77617 on December 15, 2015.

/s/

KIM WALES

Deputy City Manager

Director of Economic Development

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