



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: November 22, 2019

Approved

Date

11/22/19

COUNCIL DISTRICT: 3

SUBJECT: DISPOSITION AND DEVELOPMENT AGREEMENT WITH MUSEUM PLACE OWNER, LLC AND AMENDED AND RESTATED TECH INTERACTIVE LEASE AGREEMENT

RECOMMENDATION

- (a) Adopt a resolution adopting the Addendum to the Museum Place Mixed-Use Project Supplemental Environmental Impact Report to the Downtown Strategy 2040 Final Environmental Impact Report (Resolution No. 78942), and Addenda thereto, all in accordance with the California Environmental Quality Act, as amended, and adopting a related Mitigation Monitoring and Reporting Program.
- (b) Approve an Amended and Restated Disposition and Development Agreement (“DDA”) with Museum Place Owner LLC for the construction of a mixed-use project consisting of office space, retail space, expansion space for the Tech Interactive, and a garage (“Project”).
- (c) Approve an Amended and Restated Lease Agreement with the Tech Interactive related to the Project construction of expansion space for the Tech Museum and its operation on completion.
- (d) Adopt a resolution authorizing the City Manager to (i) negotiate and execute all ancillary documents and agreements referenced in or required under the DDA for the Project including the Reciprocal Easement Agreement and (ii) approve for transfer and transfer property required for the Project to Museum Place Owner LLC.

OUTCOME

Approval of the Disposition and Development Agreement (DDA) enables the City to replace the aging Parkside Hall facility with a mixed-use high rise building that includes office space, retail

space, 60,475 square feet of new space for the Tech Interactive (formerly known as the Tech Museum of Innovation), and a garage containing a minimum of 400 vehicle parking spaces. Also, with the transfer of this land the City remedies many of the confusing property line issues that now exist within this City-owned block.

BACKGROUND

In August 2017, the City Council approved a Disposition and Development Agreement with Insight King Wah, LLC for Parkside Hall site with an approximately 1.1 million square feet high rise building consisting of multiple uses including museum, residential, commercial, retail and hotel space. On June 26, 2018, the City Council approved the assignment of the Museum Place Project from Insight King Wah, LLC, to Museum Place Owner, LLC. Mentioned in the 2018 assignment was the developer's proposal to streamline uses included in the Project to commercial, retail, and museum uses. The change in building approach to the development creates a Project that is more feasible and better able to adapt to the current market cycle.

The long-term vision and planning for the Tech Interactive (Tech) included a plan for the Tech to expand into the Parkside Hall space. The City and Redevelopment Agency acknowledged this by providing the Tech with lease rights to Parkside Hall, once the Convention Center was expanded. The City is facilitating the construction of a roughly 1.1 million square foot building that includes 60,475 square feet of space for the Tech by providing the land to the developer in exchange for the developer providing free space to the Tech Interactive. The City will own, as a condominium the 60,475 square foot space. The Tech Interactive will lease the space for \$1 a year. The Tech Interactive is responsible for all tenant improvement costs. The Tech Interactive relinquishes its lease hold right to the Parkside Hall space, in exchange for the expansion space in the mixed-use development.

ANALYSIS

The Museum Place Project site is a significant opportunity in Downtown San Jose's continuing revitalization. Its proximity to hotels, office buildings (especially the under-construction Adobe tower, 200 Park Avenue, and the future offices at City View), and the McEnery Convention Center places it at the heart of Downtown revitalization. The site is in easy walking distance to the Diridon Station. Its contribution of 60,475 square feet of Tech Interactive space is a clear message regarding the benefits of public and private partnerships. The Project's redesign of the Almaden Avenue Paseo will improve the pedestrian experience of the Downtown for Convention Center and other visitors.

The Disposition and Development Agreement (DDA) identifies the rights and obligations of the developer and the City to deliver the anticipated Project. The DDA governs the Project and provides protection to the City should the Project not proceed as intended. Key elements of the DDA include:

- Project Guarantee – Phase 1 completion guarantee in the amount of \$5,000,000 and Phase II completion guarantee in the amount of \$15,000,000
- Specific Performance Requirements – Ensures that a court can bind a defaulting party to perform
- Right of Reverter – Ensures that the developer returns the property to the City if the developer defaults under certain conditions and time frames
- Prevailing Wages– Ensures prevailing wages are paid to all construction employees on the Project
- Tech Interactive – Provides a roughly 60,000 square foot condominium to the City, to be leased by the Tech Interactive for \$1 per year
- Parking Agreement – Ensures 100 spaces for the Tech and public use of a minimum of 400 vehicle parking spaces on evenings and weekends

The developer submitted a revised planning application, File No. SPA17-031-01, for the Project on October 31, 2018 and revised plans addressing the design and other issues identified by City staff on February 15, 2019. The revised Project now proposes no hotel or residential use and seeks to build approximately 928,000 square feet of office space. The reimagined Project is not only a better design for constructability, but also meets the City's need for more jobs in the Downtown. The Project still provides 60,475 square feet of Tech Interactive expansion space, approximately 8,400 square feet of retail, parking spaces as required by code, and significant improvements to the Almaden Avenue Paseo and Park Avenue. The Project is designed in anticipation of the City's concept of converting Park Avenue into an extension of the paseo system from Plaza de Cesar Chavez to the Guadalupe River.

Consideration of Site Value

In 2017, prior to the City Council's approval of the DDA with Insight King Wah, Smith & Associates appraised the roughly 100,000 square foot space occupied by and surrounding the existing Parkside Hall. The property was valued at \$200 per square foot or approximately \$20 million dollars. The developer was then required to expend at least \$20 million dollars on the Tech expansion space in exchange for the City land. As mentioned above, the Council approved the assignment of the DDA to the current owner Museum Place, LLC, led by Gary Dillabough in 2018. In working with the current developer, Tech Interactive staff and staff from Team San Jose, the developer estimates expending at least \$30 million dollars on the construction of the Tech Interactive space with additional expenditures related to loading and operations requirements for the Civic Auditorium. As described below, there are significant encumbrances on the site; when taken together the added investment and encumbrances reflect an appropriate value.

In updating the estimated value to be returned to the City, it is noteworthy to consider that the roughly 100,000 square feet of land to be used for construction of the Museum Place Project comes with significant encumbrances that were not considered in the 2017 valuation.

The Almaden Paseo portion of the Project, roughly 20,000 square feet of space, is encumbered with an emergency vehicle access easement and a pedestrian easement to ensure both access for safety vehicles and for pedestrians travelling to and from the convention center. The encumbrances on the roughly 20,000 square feet of the Almaden Paseo space preclude development of additional Museum Place commercial uses. Staff estimates the value of the Almaden Paseo land to be approximately \$50 per square foot or roughly \$1 million dollars. The remaining 80,000 square feet of Project space is valued at roughly \$360 per square foot or roughly \$28.8 million dollars.

The Project also includes several other benefits to the City that increase costs for the Project. The Museum Place Project is required to support loading and operations not only for the Museum Place Project, but also significant loading and operations space for the Civic Auditorium and the Tech Interactive Expansion space. The Museum Place Project will have an easement imposed on the Project to ensure loading access in perpetuity. The Museum Place Project is subject to Labor Peace and Prevailing Wage requirements. The Project will further provide 100 parking spaces for the City-owned condominium to be used by the Tech Interactive as well as access to a minimum of 400 vehicle parking spaces on evenings and weekends. The Museum Place Project provides the Tech Interactive with a requested two-story column-free event and gathering space, significantly limiting the total buildable square footage since the building's structural restraints do not afford the ability to build office space above the two-story column free space. Because of the cost of these elements, staff estimates the above price per square foot to be an appropriate value for the site.

Other methods of valuation provide further confirmation of the value of the Tech Expansion Space which the City is receiving as consideration for the initial property transfer to the developer. Using a rent-based model, the estimated conservative value of the 60,000 square feet of condominium space for a 10-year period is roughly \$43 million (60,000 square feet of space at \$6 per square foot for 12 months, equals roughly \$4.3 million annually or roughly \$43 million over a ten-year period). Alternatively, using a percentage of ownership model would value the approximately 60,000 square feet of condominium space (roughly 6% of the estimated \$700 million building) at around \$42 million.

Civic Auditorium/Team San Jose Collaboration

The City National Civic Auditorium is a historic landmark operated by Team San Jose on behalf of the City. Over the past decade the City has invested millions of dollars to improve the functionality of the facility and to enable more uses, both convention related and concerts. Team San Jose has increased the booking of the Auditorium significantly, with an eye to maximizing the number of days per year the Civic Auditorium is occupied. The success of the Auditorium is also closely related to the success of the office and residential construction Projects in the Downtown. The developer and City staff understand that construction in close proximity to the Civic presents unique challenges to the on-going operations of the Auditorium.

In addition to reconfiguring and redeveloping the Almaden Avenue Paseo, the Project builds a new loading courtyard and docks for the Civic Auditorium. There are operational details that will require coordination between the Project and Team San Jose during construction and beyond. During construction close coordination between the contractor and Team San Jose will be required to enable loading of Civic Auditorium events. Once the Project is complete, the courtyard and loading area are designed to accommodate the full range of vehicles used to support events in the Civic. The City will retain a recorded easement right over the Museum Place loading area for the benefit of loading and accessing its properties, including the Tech Interactive, McCabe Hall, and the City National Civic.

Tech Interactive Collaboration

The Project delivers the Tech Interactive 60,475 square feet of new space. The final design details of the interface of the existing Tech building, its expansion space, and the new office building will be resolved during the design process. The schedule and process for design decision making is outlined in the DDA, as well as the Schedule of Performance. An example of topics to be more fully resolved as the Project's designs are finalized is the use of the former Park Avenue frontage along the Tech's expansion entry, known as the blue corridor. The expansion space is designed to provide the Tech Interactive with a flexible and column-free 10,000 square feet of space to support exhibits and other large-scale uses. Programming for the entire 60,475 square feet by the Tech Interactive is progressing. The developer is required to provide the expansion space in a condition known as "warm shell," which does not provide final finishes and other tenant improvements, but provides essential infrastructure and space for tenant improvements to occur. Coordination of construction between the main building and the Tech expansion will be ongoing throughout the Project. The original Project had a conflict with the exiting driveway of the Hyatt hotel. This conflict has been resolved with the new design and is also reflected in the proposed new Tentative Map, included as an exhibit to the DDA.

DDA Key Concepts

Proof of Financing

Essential to moving this Project into construction as soon as possible is the developer's demonstration of Project financing. The DDA requires proof of financing by June 2020.

Project Guarantee

The developer has agreed to post deposits in the amounts of \$5,000,000 for the initial utility relocations (Phase 1) and \$20,000,000 to assure timely start of work and successful completion of work (Phase 2).

Right of Reverter

The City is protected by retaining a Right of Reverter which allows the City to take back the property from the developer should the Project not move forward in a timely manner. The Right of Reverter allows the City to take back the property from the developer if: (a) the developer fails to proceed with construction of the Project after six months after written notice from the City; (b) the developer abandons or suspends construction for three months after written notice from the City; or (c) failure to convey the Tech Expansion Space Parcel to the City. However, there are extensions (two-years maximum) for these deadlines under certain conditions beyond the control of the developer such as natural disasters, labor strikes, or specific economic conditions.

Tech Interactive Expansion Space

Pursuant to the DDA and in consideration of the City's transfer to the developer of City-owned property including Parkside Hall and portions of Almaden and Park Avenues (Parcel 1), the developer shall construct and transfer back to the City a 60,475 square foot air-space parcel (Parcel 4) consisting of "Class A" commercial space, in a "Warm Shell" condition ready for build-out by the Tech Museum, located on the first and second floors within its high-rise building ("Tech Expansion Space"). Additionally, during construction the Project is supported by additional financial guarantees and performance bonds. The delivery of the Tech Interactive space is covered by contractor warranties, as well as by the construction inspection and acceptance of the work by the Department of Public Works.

The first work to take place is the relocation of utilities that support the Tech Museum and that are now connected to the Parkside Hall (Phase 1). The developer anticipates beginning this work in Q1-2020 and completing it within nine months. Demolition of Parkside Hall is now anticipated for early Q2-2020, with the Project immediately moving into excavation and other foundational work. The Project is planned for completion in Q2-2024 (Phase 2).

Parking Agreement

The developer will provide the Tech Interactive with 100 parking spaces, seven days a week. The full Project parking garage incorporates a minimum of 400 vehicle parking spaces. All parking spaces will be publicly accessible at market rate on evenings and weekends.

Tech Interactive Amended and Restated Lease Agreement

The City Council also directed that the Tech Museum provide evidence of its abilities and plans to operate and manage the expansion space. The Museum has provided a program of uses they believe the expansion space provides for the overall improvement of Museum operations. With the new space the Tech can offer a greater variety of classes and exhibits, provide enhanced meeting space and other revenue-generating productions within the 10,000 square feet of double-height column free space, and improve the Museum-supporting food and retail operations. The

specifics of space planning will be developed in collaboration with the Museum Place Project to coordinate utility locations and ensure appropriate building code improvements. The Tech has developed a schedule of performance for its delivery of plans and specifications to assure the necessary coordination with the larger Museum Place Project. This schedule and other updates is included in the Amendment of the Lease Agreement with the Tech Museum.

The Amendment and Restatement of the Lease Agreement will provide an extension of the Lease for 55 years, subject to the same conditions and requirements of the current lease, and provides for the new expansion space to be incorporated into the Lease. Below is an outline of key terms of the Amendment and Restatement of the Lease Agreement:

- The expansion space will be added to the facilities for use and operation by the Tech Museum.
- The Tech cannot use the expansion space for uses not supportive of the Tech's mission, such as leased office space.
- No subleasing or licensing of any space is permitted on the first or second floors of the existing Museum Building, nor use on the first or second floors of the existing Museum Building for uses other than education-based uses which are available to the generally admitted public, beyond the Imax, gift shop, and restaurant space already existing.
- The Tech cannot enter into any sublease or license for space within the Facility which would result in more than thirty percent (30%) of the gross square footage in the Facility being subleased and/or licensed at any given time.
- The Tech can return the expansion space to the City, should they be unable to maintain or operate the space appropriately to support the mission of the Tech Museum.
- The existing repair and maintenance obligations of the City will continue to apply to the existing facilities, and approximately the same level of repair and maintenance obligations will apply to the new expansion space.
- Should the developer fail to close escrow as a result of a default by the developer, the Tech Museum will be reimbursed for expenses related to the proposed Project up to \$500,000, which will come out of the \$1 million deposit placed in escrow by the developer. The City will retain the remainder of the deposit.
- In the event the City sells the Tech Expansion Space back to the developer (allowed in DDA if a casualty occurs), the Tech Lease shall terminate with the Tech receiving the lesser of its relocation expenses or half the proceeds of the sale of the expansion space.
- There is no additional City subsidy connected to the expansion space, but the existing City subsidy to the Tech will remain unchanged.

The City will ensure that the Tech is integrated into the construction planning and scheduling with the Project to enable ongoing operations of the Museum and for implementation of Tech expansion space and tenant improvements.

Planning and Permitting

The Project has filed a new Vesting Tentative Map to reflect the City's plans for a modified Park Avenue. The original Museum Place Project property terminated at the current Park Avenue

right of way line. Shifting the Project northward facilitates the subterranean parking garage moving north, thereby creating greater separation between the excavation and McCabe Hall and the loading zone for the Civic Auditorium during construction. This change also removes some potential conflicts with the Hyatt Place driveway that accesses the southern end of the Almaden Avenue Paseo.

The Project will be reviewed by the Historic Landmarks Commission prior to Planning approval because of its proximity to McCabe Hall and the Civic Auditorium. The Project is undergoing review by the PBCE staff for necessary planning permits including a Special Use Permit Amendment and Vesting Tentative Map. The Project must obtain required permits in conformance with the Schedule of Performance in the DDA. Issuance of a Site Development permit is anticipated early 2020.

Economic Benefits of Museum Place

In 2015, the City Council directed staff to provide an economic analysis of the Project and its benefits to the City. As noted below, there are significant short- and long-term beneficial impacts from a development of this scale and mix of uses.

The addition of the Museum Place development in Downtown San Jose will result in significant economic benefits, including new job creation, and new tax revenue. The Project includes approximately 928,000 square feet of office space, which is designed to attract a tech-tenant. Based on an industry norm of 200 square feet per office worker, this office space could support approximately 4,600 workers. The Project also includes approximately 8,400 square feet of ground floor retail. And as many as 1,000 jobs will be supported through the construction phases of the Project. It is important to note that the development supports a broad range of job types and skill levels.

Once complete, the market value of the Project is estimated to be well over \$700 million, which will be added to the property tax roll, generating entirely new net tax revenue. With a local tax rate of 1.2%, annual property tax collected from owners of the Project could be \$8.2 million or more, of which the City would collect \$984,000 annually. The ground floor retail, along with food and beverage, will generate additional sales tax. The developer will pay the City's standard development fees, which will include construction taxes.

Outside of the immediate, direct economic benefits, there are substantial indirect economic benefits to this Project. With its proximity to Diridon Station, the Project is likely to enable more people using mass transit and decrease the number of cars on our roadways. And with its mixed-use, high-density design, the Project aligns closely with the City's urban planning principles and with the General Plan.

The City's vision for this Project is not merely the replacement of one building for another, but the activation of the major pedestrian corridors along Almaden Avenue and Park Avenue and activation of the paseo connecting San Carlos to Park Avenue. The Project places its retail space and the building entry facing the newly re-envisioned and reconstructed paseo. The vast blank

wall of Parkside Hall along Park Avenue will be replaced with the Tech Interactive's planned expansion space, which will also open onto a wide sidewalk that will support outdoor uses. A portion of the paseo will continue to serve as a working service alley in support of the Civic Auditorium and the Project's back-of-house needs. The design of the paseo will accommodate up to 80' long truck access and turning movements as required by the Civic Auditorium operators and users.

City Manager Authority

The City Manager's authority to negotiate and execute other ancillary documents related to the DDA will enable the final details outlined in the DDA as they relate to the maintenance, use, and disposition of public space to be resolved including the Loading Dock Area and other shared use areas common to the parcels. Other documents necessary to finalize the Project that will be executed by the City Manager prior to close of escrow are a Parking Agreement, a Reciprocal Easement Agreement (REA) to the extent necessary to document mutual easements required for the Project, an access easement for the adjacent property owner, and other documents as referenced in or required under the DDA. The REA is the instrument used to formally record the easements and other covenants that will allow and restrict certain uses of the Project and will not be finalized until the substantial completion of the Project.

CONCLUSION

Approval of the Museum Place Project will create an opportunity to add 938,000 sq. ft. of office space, and roughly 60,000 sq. ft. of expansion space for the Tech Interactive. The Project is estimated to provide a place for roughly 4,000 jobs, 1,000 construction jobs, and add approximately \$1,000,000 annually in taxes to the General Fund.

EVALUATION AND FOLLOW-UP

Staff will continue to coordinate final design elements of the Project with the Tech Interactive and Team San Jose.

CLIMATE SMART

The Project is intended to be built employing sustainable construction practices, and is an urban, dense commercial project close to Diridon Station. Employees and visitors will be encouraged to access a rich resource of multi-modal transportation options. The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This Project was preliminarily reviewed by Design Review Committee of the Historic Landmarks Commission on December 5, 2018, due to the Project's proximity to the City Landmark (City National Civic Auditorium, HL86-40) and under the Historic Preservation Ordinance. A Director's Hearing will provide public notice and review prior to issuance the planning permits (Special Use Permit Amendment and Vesting Tentative Map). This memorandum will be posted on the City's Council Agenda website for the December 3, 2019 Council Meeting.

COORDINATION

This report has been coordinated with the City Attorney's Office and the Department of Planning, Building and Code Enforcement.

COMMISSION RECOMMENDATION/INPUT

The Project was reviewed by the Design Review Committee of the Historic Landmarks Commission on December 19, 2018. The Subcommittee had the following comments: The proposed geometric glass building contrasts greatly with the adjacent mission revival historic building. While the previous design was more "busy", it related better to its surroundings. There should be elements to link the styles of the new building to the adjacent historic building, particularly with focus placed on the lower floors. Previously a pergola was proposed on the paseo to create a linking element, which is no longer included. The committee suggested:

- Use landscaping to create a "draw" in the paseo and integrate the old building with the new building.
- Consider warming up the color of the new building to interact better with the adjacent Mission Revival building. Use less white/silver window treatment on lower floors.
- Play with materiality at lower floors. Introduce more solid elements to relate to the Mission Revival building, instead of just glass.

The Project will be reviewed by the HLC as part of the permitting process to come.

HONORABLE MAYOR AND CITY COUNCIL

November 22, 2019

Subject: Museum Place Disposition and Development Agreement

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CEQA

Addendum to the Museum Place Mixed-Use Project Supplemental Environmental Impact Report to the Downtown Strategy 2040 Final Environmental Impact Report (Resolution No. 78942), and addenda thereto, File No. SPA17-031-01.

/s/

KIM WALESH

Deputy City Manager

Director of Economic Development

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

Attachment

APPENDIX OF DDA TERMS

Assignment

- The developer shall not assign (or permit assignment of) this Agreement or any right herein, nor shall the developer make (or permit) any sale, transfer, conveyance, or assignment of the whole or any part of the Site or the improvements thereon (whether directly or indirectly), without prior written approval of the City, which approval shall be provided or withheld at the City's sole discretion. This prohibition shall not apply to, and the City's approval shall not be required for, Permitted Transfers.

Guaranty

- Provide either (a) an Additional Security Letter of Credit (as hereinafter defined) or (b) an Additional Security Surety Bond (as hereinafter defined) as security for the payment and or performance by the developer of its obligations under this Agreement with respect to Phase I in the amount of \$5,000,000;
- Either (a) an Additional Security Letter of Credit (as hereinafter defined) or (b) an Additional Security Surety Bond (as hereinafter defined) as additional security for the payment and or performance by the guarantor of its obligations under the Phase II Completion Guarantee in the amount of \$20,000,000

Parking

- 100 spaces available for the Tech Interactive use
- A minimum of 400 vehicle parking spaces within the garage available nights and weekends

Tech Space

- Tech's ability to lease out 30% of the its total space, City to review/not unreasonably withhold approval; beyond 30%, would go to City Council for review and approval
- Tech use not impede or hinder Museum Place uses

Tech Relationship

- The developer extends its DDA indemnification obligations to the Tech, and to be directly responsible to the Tech for disruptions caused to the Tech which are greater than an agreed level of disruptions.
- Responsibility for keeping the Tech informed and soliciting/obtaining input from the Tech in relation to the Project shall be borne by the developer.

Paseo Use

- Includes the right to utilize, control and secure the paseo, including for the serving of food and beverages, subject to any public access rights and permitting requirements

Scope of Development

Phase I Off-Site Utility Work:

- Relocate and remove utility systems connecting to and through the Site and within public rights of way adjacent to the Site within Park Avenue and Almaden Avenue.

Phase II Work

Site Preparation

- Remove and relocate or dispose of, if necessary, the solar panel system located on the roof of Parkside Hall. Developer shall also be responsible for the cost of any buy-out or termination fee required to terminate the Power Purchase Agreement between Tech Interactive and Solar Star TM Innovation LLC.
- Demolish and remove all above ground structures, pavement, walks, curbs, gutters, and other above ground improvements located on the Site.
- Remove and/or relocate (i) overhead utility systems and subsurface utility systems now in service which lie below the Site's surface and which would be located within the perimeter of the Project after construction, and (ii) utilities servicing the Site and now in service, such as storm sewers, sanitary sewers, water systems, underground electrical systems and telephone gas systems.
- Relocate the public art piece located on the Site entitled "Civic Stage Set" by David Bottini to a location approved by the City and the artist and as outlined in the Fifth Amendment to the Agreement between The City of San Jose and David Bottini Regarding Civic Stage Set Artwork dated November 1, 2017.
- Site excavation pursuant to the Final Project Drawings.
- Provide protection for the Tech Interactive and McCabe Hall located adjacent to the Project as set forth on the Final Project Drawings.

Private Improvements

- Office Space. Approximately 928,116 square feet of creative technology office space within a high-rise structure;
- Retail Space. Approximately 8,409 square feet of retail space within a high-rise structure and located generally on the ground floor level.
- Project Garage. A parking garage to serve the Project containing parking spaces for a minimum of four hundred (400) vehicles
- Common Area. Common area improvements associated with the Project such as landscaped courtyards, exercise areas and community rooms, entry lobbies and portals, and other shared facilities within the interior of the Site.

Off-Site Improvements

- Clear, grub and grade where the Off-Site Improvements are to be located.
- Design and improve street frontages along the boundaries of the Site to such standards as required under the Permits.
- Install fire hydrants in locations within the street rights-of-way which are necessary and sufficient to serve the Project.
- Provide utility stubs, including water, gas, electricity, sewer, storm, cable television and telephone service, at the edge of the Site in locations as reasonably necessary and sufficient to serve the Project.
- Provide all related utility infrastructure improvements and/or upgrades to support the Project as approved by the City Public Works Department.
- All permanent public open spaces around the perimeter of the Project shall be landscaped in such a manner so that the public open spaces shall be integrated with the Project and the Off-Site Improvements for the Project.
- Remove and relocate the J.C. DeCaux public toilet located on Almaden Avenue to a location approved by the City.

Tech Expansion Space

- Construct the Tech Expansion Space, which shall consist of approximately sixty thousand four hundred seventy-five (60,475) square feet of exhibition, office, and retail space in a warm shell condition.

Schedule of Performance

<ul style="list-style-type: none">• Developer submittal of evidence of financing for Phase I Off-Site Utility Work	On or before February 1, 2020.
<ul style="list-style-type: none">• Developer shall submit to City construction documents for the Phase I Off-Site Utility Work, including an updated Project Budget.	On or before February 1, 2020.
<ul style="list-style-type: none">• City shall review and comment on Phase I Off-Site Utility Work in coordination with TMI.	City Review Target Date: forty-five (45) days after developer submittal developer shall have thirty (30) days to respond to any City comments.
<ul style="list-style-type: none">• Commencement of the Phase I Off-Site Utility Work.	Upon issuance of construction permits for the Phase I Off-Site Utility Work, but in no event later than June 2020 (and within sixty (60) days after the Close of Escrow

<ul style="list-style-type: none"> • Substantial completion of Phase I Off-Site Utility Work. 	<p>Within nine (9) months after commencement of the Phase I Off-Site Utility Work, but no later than February 2021.</p>
<ul style="list-style-type: none"> • Developer shall provide evidence of financing for the Phase II Work. 	<p>On or before March 2021.</p>
<ul style="list-style-type: none"> • Developer to submit construction documents for all demolition, excavation and foundation work (“D, E & F Work”) work to City. 	<p>On or before March 2021.</p>
<ul style="list-style-type: none"> • Developer to submit design documents to City for coordination with TMI for Phase II Work. 	<p>As appropriate to meet the milestone for developer’s submittal of construction documents described in Section D, No. 8 below.</p>
<ul style="list-style-type: none"> • City shall provide preliminary design phase documents for the Tech Expansion Space tenant improvements to developer. 	<p>On or before September 1, 2020 but not less than one hundred twenty (120) days prior to the developer’s submittal of the construction documents.</p>
<ul style="list-style-type: none"> • Commence construction of the Phase II Work 	<p>On or before June 2021.</p>
<ul style="list-style-type: none"> • Substantial Completion of the Tech Expansion Space Warm Shell and transfer of the Tech Expansion Space to the City. 	<p>On or before April 2024.</p>
<ul style="list-style-type: none"> • Substantial Completion of the Phase II Work. 	<p>On or before April 2024</p>

Warm Shell

- Shell and core will comply with all codes and regulations, including fire, building, Title 24 and ADA.
- Shell exterior façade along Park Avenue at the Tech Expansion Space frontage shall maximize transparency and promote connectivity for the public to the interior space.
- Core shall include a conveyance (elevator) between the two Tech Expansion Space Levels.
- Provide core building systems, such as common building corridors, wall, and flooring construction finishes, exposed structure, and slab, code/exit signage, fire/life safety provisions, fire sprinklers, doors to building corridors, switchgear, telephone conduit to telecom room, water and drain lines stubbed into space.
- All new Tech Expansion Space systems shall be separately metered, unless otherwise directed by code or agreed to by TMI, and TMI shall maintain exclusive access and control of these facilities. Developer shall supply sub meters in coordination with TMI plans.
- Shafts, structural openings, sleeves, etc. shall be provided where TMI has indicated prior to construction, in coordination with TMI design documents.
- Exposed surfaces of concrete structure to be natural as-is in appearance without extra cost or protection.
- TMI shall review all plans to coordinate exposed conduits prior to construction.