

CITY OF SAN JOSE FINANCING AUTHORITY
RESOLUTION NO. SJFA_____

A RESOLUTION OF THE GOVERNING BOARD OF THE CITY OF SAN JOSE FINANCING AUTHORITY AUTHORIZING ITS EXECUTIVE DIRECTOR TO CONSENT TO THE PROPOSED LATERAL TIE-BACK AGREEMENT AND CRANE EASEMENT WITH SJSC PROPERTIES, LLC TO ALLOW FOR SUBTERRANEAN TIE-BACK ANCHORS AND TWO CRANES TO OPERATE NON-LIVE LOADS OVER THE CITY'S PARKING GARAGE LOCATED AT 43 NORTH 5TH STREET, 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), AND THE CITY

WHEREAS, the City of San José ("City") and the Redevelopment Agency of the City of San José have heretofore entered into a Joint Exercise of Powers Agreement establishing the City of San José Financing Authority ("Authority") for the purpose, among others, of having the Authority issue its instruments of debt to finance the acquisition, construction and improvement of certain public capital improvements; and

WHEREAS, on March 15, 2017, the City approved a Special Use Permit (SP17-009) to SJSC Properties, LLC ("Developer") for the development of two 28-story mixed use residential towers on a 1.4-acre site at the northeast corner of N. 4th Street and East Santa Clara Street ("Developer's Project"); and

WHEREAS, Developer's Project site shares a common property line with the existing City-owned employee parking garage at 43 N. 5th Street ("City Property"); and

WHEREAS, to construct Developer's Project, the Developer will use a temporary shoring system for excavation on Developer's Project site that utilizes below-grade

anchors (“Tie-Back Anchors”) along the common boundary between Developer’s Project and the City Property that will encroach into the subterranean portions of the City Property and may remain as encroachments upon City Property after construction is completed; and

WHEREAS, in addition to the Tie-Back Anchors, the Developer may utilize up to two large on-site tower cranes to build Developer’s Project that will extend above the City Property but with no live loads permitted over the City Property; and

WHEREAS, acquisition and construction of the City Property was funded with a combination of equity contributions and various financings, and the outstanding debt on the City Property is the City of San José Financing Authority Lease Revenue Refunding Bonds, Series 2013B (Civic Center Garage Project) (“Bonds”), issued pursuant to a Trust Agreement dated June 1, 2013 between the Authority and Wells Fargo Bank, National Association (“Trustee”); and

WHEREAS, in connection with the issuance of the Bonds, the City and the Authority entered into a site/facility lease and project lease (“Lease”) whereby the City leases the garage to the Authority and the Authority, in turn, leases the garage back to the City, with rental payments made by the City to the Authority to provide for the payment of debt service on the Bonds; and

WHEREAS, the Lease allows encumbrances to the City 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 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 City Property; and

WHEREAS, on October 24, 2017, the City Council adopted a resolution authorizing the City Manager to negotiate and execute a Lateral Tie-Back Agreement and Crane Easement (“Agreement”) with the Developer for Developer’s Project; and

WHEREAS, pursuant to the terms of the Lease, the consent of the Authority and Trustee are a prerequisite for the City to enter into the Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE CITY OF SAN JOSE FINANCING AUTHORITY THAT:

The Executive Director of the City of San José Financing Authority is hereby authorized to consent to the proposed Lateral Tie-Back Agreement and Crane Easement with SJSC Properties, LLC, for subterranean tie-back anchors and up to 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.

ADOPTED this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Chair, City of San José Financing Authority

ATTEST:

TONI J. TABER, CMC
Secretary, City of San José Financing Authority