



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Welsh

SUBJECT: ADOBE MEMORANDUM OF
UNDERSTANDING

DATE: October 12, 2017

Approved

D. D. Syl

Date

10/13/17

COUNCIL DISTRICT: 3

RECOMMENDATION

Adopt a resolution authorizing the City Manager to execute a non-binding Memorandum of Understanding with Adobe Systems Incorporated addressing Adobe's contemplated headquarters expansion project and pedestrian bridge.

OUTCOME

The Memorandum of Understanding ("MOU") addresses major issues related to Adobe's headquarters expansion project ("HQ Expansion"), in particular the processes for land use entitlements and an encroachment permit authorizing a pedestrian bridge crossing West San Fernando Street ("Pedestrian Bridge") under San Jose Municipal Code Ch. 13.37 ("Ch. 13.37"), in order to facilitate Adobe's due diligence decision for the land purchase for the HQ Expansion. The MOU is a non-binding statement of understanding and will result in no legal obligations on the City's or Adobe's behalf. After completing its purchase of the real property at issue, Adobe would begin the land use development process in accordance with the City's local laws.

BACKGROUND

Adobe Systems Incorporated ("Adobe") was the first major technology company to locate in downtown San Jose more than 20 years ago, and the first in Silicon Valley to create a vertical, multi-tower campus. Adobe acquired its property at 345 Park Avenue from the former Redevelopment Agency and built the three existing urban high-rise towers that currently operate as Adobe's world headquarters. The headquarters totals approximately 900,000 square feet and has, over the last 20 years, grown to accommodate ~2,500 employees.

All three towers have direct access to each other via connecting walkways without the need to cross any public streets. This has allowed Adobe's employees and guests to freely and securely move throughout the buildings, and has proven essential to the company's workplace model.

Adobe highly values its dense, urban campus environment and, after extensive analysis, committed to continuing its investment in downtown San Jose and maintaining San Jose as its World Headquarters. Adobe is under a Purchase and Sale Agreement ("PSA") to acquire property located at 333 West San Fernando Street to build a fourth tower that could accommodate ~3,000 additional employees. This property is located across West San Fernando Street from the existing HQ.

Adobe has proposed a preliminary conceptual plan, attached to the MOU as Exhibit A, for the Pedestrian Bridge to be located on a portion of HQ property and City-owned property, spanning West San Fernando Street and connecting the HQ to the HQ Expansion. This Pedestrian Bridge would allow the ~5,500 employees to move between all of Adobe's buildings in a secure environment without needing to exit the HQ campus property and cross to the HQ Expansion at street level. Because the Pedestrian Bridge would be located on City-owned property outside of the right-of-way, in addition to the authorization to maintain the Pedestrian Bridge under Ch. 13.37, Adobe also would need to secure property rights within an area of the City-owned property over which Adobe currently has a street-level easement for ingress and egress.

Adobe has been doing due diligence on the 333 West San Fernando property under the terms of the PSA with the seller. Given the necessary property interests and permits that Adobe needs to secure in order to build and maintain the HQ Expansion and Pedestrian Bridge, Adobe desires to obtain clarity on the processes and potential terms and conditions pursuant to the City's local laws that would govern its projects as part of its due diligence under the PSA.

In addition to seeking clarity that it may construct the private pedestrian bridge, Adobe and the City seek to align expectations about other important aspects of the HQ Expansion project, including the provision of public parking and the process and timing for environmental clearance and approval of land use permits.

The MOU's purpose is to set forth the common understandings and cooperative relationships between the City and Adobe, as Adobe completes its due diligence and makes significant financial investments necessary to proceed with the purchase of the property and the design, permitting and construction of the HQ Expansion and Pedestrian Bridge. Note that the MOU includes Exhibit A: "Pedestrian Bridge Conceptual Plan," Exhibit B: "Form of Major Encroachment Agreement," and Exhibit C: "Aspirational Schedule of Performance."

ANALYSIS

The City appreciates Adobe's headquarters investment in San Jose, and the positive impact Adobe has had in San Jose for more than two decades. The City recognizes the pioneering nature of Adobe's existing headquarters as a dense, high-rise, urban campus and seeks to support

Adobe's expansion and significant new investment in downtown San Jose. Adobe's continued and additional investment will stimulate the local economy and add further depth to the City's role in Silicon Valley's innovation ecosystem.

Major Encroachment Permit and Easement for the Pedestrian Bridge

Adobe plans to design the pedestrian bridge to be a world-class pedestrian overpass structure and an attractive and iconic addition to the city's skyline. As such, the City sees opportunity for the pedestrian bridge and headquarters expansion to enhance the appearance and vitality of the corridor connecting the Diridon Station Area to the Downtown Core. Currently, staff is not aware of any project that would impact the proposed pedestrian bridge.

On June 27, 2017, the City Council adopted an ordinance regulating encroachments in City right-of-way and public easements, codified in Ch. 13.37. Pursuant to Ch. 13.37, the Pedestrian Bridge is classified as a Major Encroachment. The City Council may approve a permit for a Major Encroachment ("Major Encroachment Permit") subject to the requirements in Ch. 13.37, including the minimum approval criteria, an encroachment agreement and any additional terms and conditions approved by Council for the Pedestrian Bridge. City staff and Adobe have discussed a form of encroachment agreement to govern the Pedestrian Bridge which is attached to the MOU as Exhibit B. In addition, City staff and Adobe have discussed other terms and conditions for the Major Encroachment Permit that City staff might recommend for City Council approval after submission of a complete application for the Major Encroachment Permit, including, without limitation, the following:

- i. Pursuant to Ch. 13.37, the Major Encroachment Permit would not require Adobe to provide a separate financial removal guarantee (e.g. bond or deposit);
- ii. The Major Encroachment Permit would not require that Adobe provide general public access to the Pedestrian Bridge;
- iii. The Major Encroachment Permit would be subject to the condition that the Pedestrian Bridge will be operated only for pedestrian-related purposes as a means to facilitate movement of Adobe's employees and invitees between the HQ and HQ Expansion. Pedestrian-related purposes would include ingress and egress between the HQ and HQ Expansion, sightseeing, business-related gatherings, seating and similar uses. The Pedestrian Bridge may not be used for any other purpose without the City's prior consent. Routine maintenance and repair activities in accordance with the Major Encroachment Permit would not be subject to this condition;
- iv. The Major Encroachment Permit would be conditioned on the HQ and HQ Expansion properties being under common ownership (including affiliates of such common owner) for the operation of the two properties as one corporate campus. A subsequent sale or transfer of either property individually to a third party will constitute a basis for the City to terminate the Major Encroachment Permit unless the City pre-approves the

transfer of the permit to such separate owner(s). If the City approves a transfer to the separate owner(s), the City may require a new or revised Major Encroachment Permit as a condition of its approval;

- v. The Major Encroachment Permit would be conditioned on Adobe commencing construction of the HQ Expansion project and Pedestrian Bridge within five (5) years of the City Council's authorization for the Pedestrian Bridge.

In addition to the Major Encroachment Permit, Adobe would need to acquire an easement or other property right to construct and maintain the Pedestrian Bridge over a portion of property outside the boundaries of West San Fernando Street. Therefore, the MOU addresses the negotiation of an amendment to an existing Easement Agreement recorded as Document No. 12684586 on October 12, 1994 ("Easement Agreement"), to allow Adobe to expand the perpetual, exclusive easement area and scope of easement to include the construction, operation, maintenance and repair of the Pedestrian Bridge, with an option for Adobe to acquire fee title to the easement area at fair market value. Any additional easement or other property rights acquired by Adobe pursuant to the Easement Agreement or otherwise will not include rights within, over, under or across any dedicated public property, including West San Fernando Street.

Provision of Publicly Accessible Parking

The MOU also addresses the City's desire to obtain public parking available evenings and weekends in the HQ Expansion as part of the City's Downtown parking strategy and broader municipal goals.

Subject to Adobe's more detailed feasibility analysis as part of the design and budgeting of the HQ Expansion, which has not been undertaken, Adobe is conceptually supportive of public parking at the HQ Expansion and the MOU outlines mutual expectations for the provision of public parking, connected to the life of the Pedestrian Bridge. The parking would be provided at no cost to the City and Adobe would set rates in its reasonable business judgment. City staff's recommendations to Council in connection with the Major Encroachment Permit and Easement Agreement will reflect Adobe's determination with respect to providing public parking at the HQ Expansion.

Cooperation on Expedited Processing

The MOU acknowledges that there is an existing Site Development Permit (SDP) for 333 West San Fernando, and that the proposed revisions to the approved design of the building contemplated by that SDP and the addition of the Pedestrian Bridge will result either in an amendment to the existing SDP or a new site development permit, depending on the final project submitted by Adobe.

Regardless of path, the parties agree to cooperate on expedited processing of environmental clearance under CEQA and the land use entitlements applicable to the HQ Expansion. Because

the HQ Expansion project is only at the conceptual stage and the MOU is non-binding, the MOU does not contain required timelines for performance. Nonetheless, the MOU includes, as Exhibit C, an aspirational schedule of performance clarifying timelines for the proposed milestones set forth in the MOU.

Other MOU Provisions

In addition to the items described above, the MOU also:

- a. Clarifies the applicable construction tax rate (1% of total valuation) if the building permit is obtained before March 31, 2019.
- b. Confirms Adobe's opportunity with City support and encouragement to participate in the City's Business Cooperation Program to secure construction-related use taxes for the City of San Jose, along with a share for Adobe.
- c. States that the City and Adobe will cooperate to explore allowing a secondary means of ingress and egress at the street level to the HQ Expansion on West San Fernando Street.
- d. States that the City will explore the possibility of acquiring fee title interest to certain areas of West San Fernando Street, if it is determined that the City does not own fee title.

EVALUATION AND FOLLOW-UP

As the MOU is only an aspirational understanding between City staff and Adobe, it contains no binding commitments by the City or Adobe. The Major Encroachment Permit, including the encroachment agreement, and amendments to the Easement Agreement will be presented for City Council approval after CEQA clearance is obtained and Adobe submits applications for its land use entitlements and the Pedestrian Bridge.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the October 24, 2017 Council Meeting.

COORDINATION

This Memorandum was coordinated with the City Attorney's Office; Department of Planning, Building, and Code Enforcement; Department of Public Works; and Department of Transportation.

COMMISSION RECOMMENDATION/INPUT

There has been no City commission action on this item.

FISCAL/POLICY ALIGNMENT

This recommendation is aligned with major strategies of the City's General Plan and the City's Economic Development Strategy focused on downtown development, infill development, and headquarters retention/expansion/attraction.

CEQA

Not a Project, File No. PP17-009, Staff Report, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

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

For questions, please contact Kim Walesh at (408) 535-8177.