

Memorandum of Understanding
between
the City of San Jose
and
Adobe Systems Incorporated

Adobe Systems Incorporated (“**Adobe**”) was the first major technology company to locate in downtown San Jose more than 20 years ago. Adobe’s goal has always been to create a dense, urban campus. Adobe acquired its property at 345 Park Avenue and built the three existing urban high-rise towers that currently operate as Adobe’s World Headquarters (“**HQ**”). The HQ currently totals approximately 900,000 square feet and has, over the last 20 years, grown to ~2,500 employees. All three towers have direct access to each other without the need to cross any public streets, which has allowed Adobe’s employees and guests to freely move throughout the buildings. Adobe highly values its dense, urban campus environment and is 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 the property located at 333 West San Fernando Street (“**Property**”) to build a fourth tower to accommodate ~3,000 additional employees (“**HQ Expansion**”). The Property is located across West San Fernando Street from the existing HQ.

Adobe is currently doing due diligence on the Property under the terms of the PSA. Among other elements of its diligence effort, some of which relate to the City of San Jose (“**City**”) in its regulatory and proprietary capacities and are addressed below, the Parties acknowledge that, based on Adobe’s current plans, an essential element of Adobe’s diligence decision is obtaining reasonable certainty that it may construct and operate a direct, secure connection for Adobe employees and guests between the HQ and the HQ Expansion under the City’s local laws. Adobe has proposed a preliminary conceptual plan for a 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, as generally shown in Exhibit A attached hereto (the “**Pedestrian Bridge**”). The 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.

The City appreciates Adobe’s HQ 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. The City welcomes Adobe’s expansion and significant new investment in downtown San Jose, which will more than double the number of employees in the growing west side of downtown. 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.

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 HQ expansion to enhance the appearance and vitality of the corridor connecting the Diridon Station Area to the Downtown Core.

The purpose of this Memorandum of Understanding (“**MOU**”) 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.

It is acknowledged that all City actions or understandings described herein will necessarily be subject to all of the City’s policies and regulations, subsequent discretionary approvals, its governmental and regulatory authority, and all applicable laws, and that no part of this MOU creates binding obligations on either party.

Cooperation between the parties is anticipated to involve the following:

Article 1

1) Pedestrian Bridge.

- a. *Major Encroachment Permit.* Pursuant to San Jose Municipal Code Chapter 13.37 (“Ch. 13.37”), the City is conceptually supportive of and has the legal authority to issue a permit for a Major Encroachment for the Pedestrian Bridge crossing West San Fernando Street, subject to the terms and conditions set forth therein, other applicable provisions of the Municipal Code and applicable State law (“Major Encroachment Permit”). Adobe acknowledges that the City Council has ultimate discretion of approval of the Major Encroachment Permit and that the Major Encroachment Permit will be subject to an encroachment agreement to be approved by the City Council, which agreement is contemplated to be substantially in the form attached as Exhibit B hereto. In addition, other terms and conditions for the Major Encroachment Permit will be established by the City Council after submission of a complete application for the Major Encroachment Permit and may include, without limitation, the following:
 - i. Pursuant to Ch. 13.37, the Major Encroachment Permit will not require Adobe to provide a separate financial removal guarantee (e.g. bond or deposit);
 - ii. The Major Encroachment Permit will not require that Adobe provide general public access to the Pedestrian Bridge;
 - iii. The Major Encroachment Permit will 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 will 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 City Council's authorization for the Major Encroachment Permit will expire five (5) years after approval, unless Adobe has commenced construction of the HQ Expansion and Pedestrian Bridge.
- b. The parties will negotiate an amendment to the 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 located thereon, 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.
 - c. The conceptual design for the Pedestrian Bridge and all other requirements for Adobe's application for a Major Encroachment Permit in accordance with Chapter 13.37 would be considered by the City Council after the Planning Director's approval of the land use entitlements for the HQ Expansion. If the Major Encroachment Permit is approved by the City Council, the detailed plans and specifications for the Pedestrian Bridge would be approved by the Director of Public Works in accordance with Chapter 13.37 and so long as they are consistent with the approved encroachment permit application and the terms and conditions approved by the City Council as part of the Major Encroachment Permit.

2) **HQ Expansion.**

- a. The parties acknowledge that the City needs public parking for the Downtown Core to satisfy multiple municipal goals. The HQ Expansion project is not currently subject to public parking requirements. Nonetheless, subject to Adobe's more detailed feasibility analysis as part of the design and budgeting of the HQ Expansion, Adobe is conceptually supportive of public parking at the HQ Expansion in accordance with the following, to be further negotiated in conjunction with the HQ Expansion and future agreements between the parties:

- i. The public parking would provide for up to 1,000 spaces during the following hours: Mondays - Fridays from 6:30 p.m. – 2 a.m. and Saturdays, Sundays and generally recognized holidays from 10 a.m. – 2 a.m.; and
 - ii. Adobe may establish the rates for the public parking in its reasonable business judgment, so long as the rates are not set to intentionally discourage the public’s use of the public parking; and
 - iii. The public parking would be provided at no cost to the City, take effect upon the City’s issuance of a certificate of occupancy for the parking garage at the HQ Expansion and continue for the life of the Pedestrian Bridge, subject to the following:
 1. The public parking would be subject to modification (e.g., number of spaces, location of spaces, and/or hours) or terminated if, in Adobe’s reasonable business judgment, after good faith consultation with the City, the public parking is: (a) no longer needed to serve the public (e.g. other parking becomes available or the needs of the public change or are satisfied by other means), (b) becomes financially burdensome (e.g., the cost of providing some or all of the parking costs substantially more than the value of the parking revenue), and (c) becomes a security risk to Adobe’s business operations.
 - iv. Adobe would make reasonable efforts to provide the City with no less than six (6) months prior notice of any plan to permanently modify or terminate the public parking.
- b. The City and Adobe will cooperate on expedited processing of: (1) environmental clearance under CEQA, after required applications for entitlements, including, without limitation, indemnification agreement forms, have been completed by Adobe to the satisfaction of the City, and an Initial Study has been prepared for the HQ Expansion and Pedestrian Bridge by a qualified environmental consultant as directed by the City as the lead agency and author and at the applicant’s expense, and taking into account the Addendum prepared for the existing SDP approved for the Property on November 9, 2016 and all other legally appropriate opportunities for streamlining and tiering from certified environmental documents; and (2) a site development permit governing the HQ and HQ Expansion, to authorize Adobe’s proposed revisions to the approved designs and addition of the Pedestrian Bridge (“SDP”), which SDP will expire five (5) years after approval unless Adobe has commenced construction of the HQ Expansion.
 - c. The City, as the lead agency, will be responsible for the environmental review of the proposed HQ Expansion and Pedestrian Bridge at Adobe’s expense, and this review may include consultation with environmental and technical entities to be

determined by the City prior to and after completion of environmental review. The City's costs for time, materials, facilities, and consultation for processing Adobe's applications for City entitlements including, but not limited to, design review, technical review, environmental review, public engagement, challenges and appeals to the City's environmental determinations and entitlements associated with the HQ Expansion and Pedestrian Bridge shall be paid by Adobe in accordance with the City's fee schedule, the San Jose Municipal Code requirements, and the requirements of entitlement applications submitted by Adobe for the City's review and consideration.

3) **Miscellaneous Goals and Understandings.**

- a. The City and Adobe acknowledge that San Jose Municipal Code Chapter 4.46 has reduced construction taxes from 1% of total valuation until March 31, 2019, after which time, construction taxes will increase to 2.5% of total valuation.
- b. The City will assist in determining ownership interests in the underlying fee title to West San Fernando Street and, if it does not own fee title to all areas within the Pedestrian Bridge encroachment area, will explore the possibility of acquiring such fee title interest.
- c. The City and Adobe will cooperate to explore options for allowing Adobe to create a secondary means of ingress and egress at the street level to West San Fernando Street in conjunction with the HQ Expansion development, and based on the information currently available, the City is conceptually supportive of allowing such secondary access as part of the development.
- d. As part of the HQ Expansion project, Adobe may choose to participate in the City's Business Cooperation Program, which would require, in addition to other requirements of the Program, that in any construction contract or equipment purchase entered into by Adobe for the construction of the improvements in the project, Adobe shall include a provision substantially as follows:
 - i. Prior to making any purchase of materials in excess of \$5 million or development related purchases of machinery, tools, fixtures, or equipment in excess of Five Hundred Thousand Dollars (\$500,000), the general contractor, developer, or owner, (or subcontractor, as applicable) shall, to the extent allowed by applicable law, obtain a sub-permit of its seller's permit designating the Site (insert address) as the jobsite using the State of California Board of Equalization form BOE-530 (Schedule C – Detailed Allocation by Sub outlet of Combined State and Uniform Local Sales and Use Tax).

Article 2

In order to further the Parties' shared goals expressed in this MOU, the City and Adobe will cooperate to implement the terms in Article 1, generally pursuant to the aspirational Schedule of Performance attached as Exhibit C.

Article 3

This MOU confirms the support of the City and Adobe to the mutual goals and understandings set forth in Article 1, and expresses the initial intent for the framework for the mutual cooperation of the parties, as well as initial activities to be pursued to implement these cooperation efforts, and is intended to be a guide into further discussion and future cooperation. This MOU is not a contract and does not create any legally valid, enforceable or binding commitments or obligations of any kind between the parties.

Article 4

The parties will cooperate and coordinate prior to issuing any press releases concerning the matters contemplated by this MOU.

Article 5

This MOU shall take effect after it is signed by Adobe and subsequently approved by the City Council and may be terminated at any time, by written notice to the other party.

The undersigned, duly authorized by the respective parties, have signed this MOU.

CITY OF SAN JOSE, a municipal corporation

ADOBE SYSTEMS INCORPORATED, a Delaware corporation authorized to do business in the State of California

By: _____

JULIE EDMONDS-MARES
Deputy City Manager

By _____

Name:
Title:

APPROVED AS TO FORM:

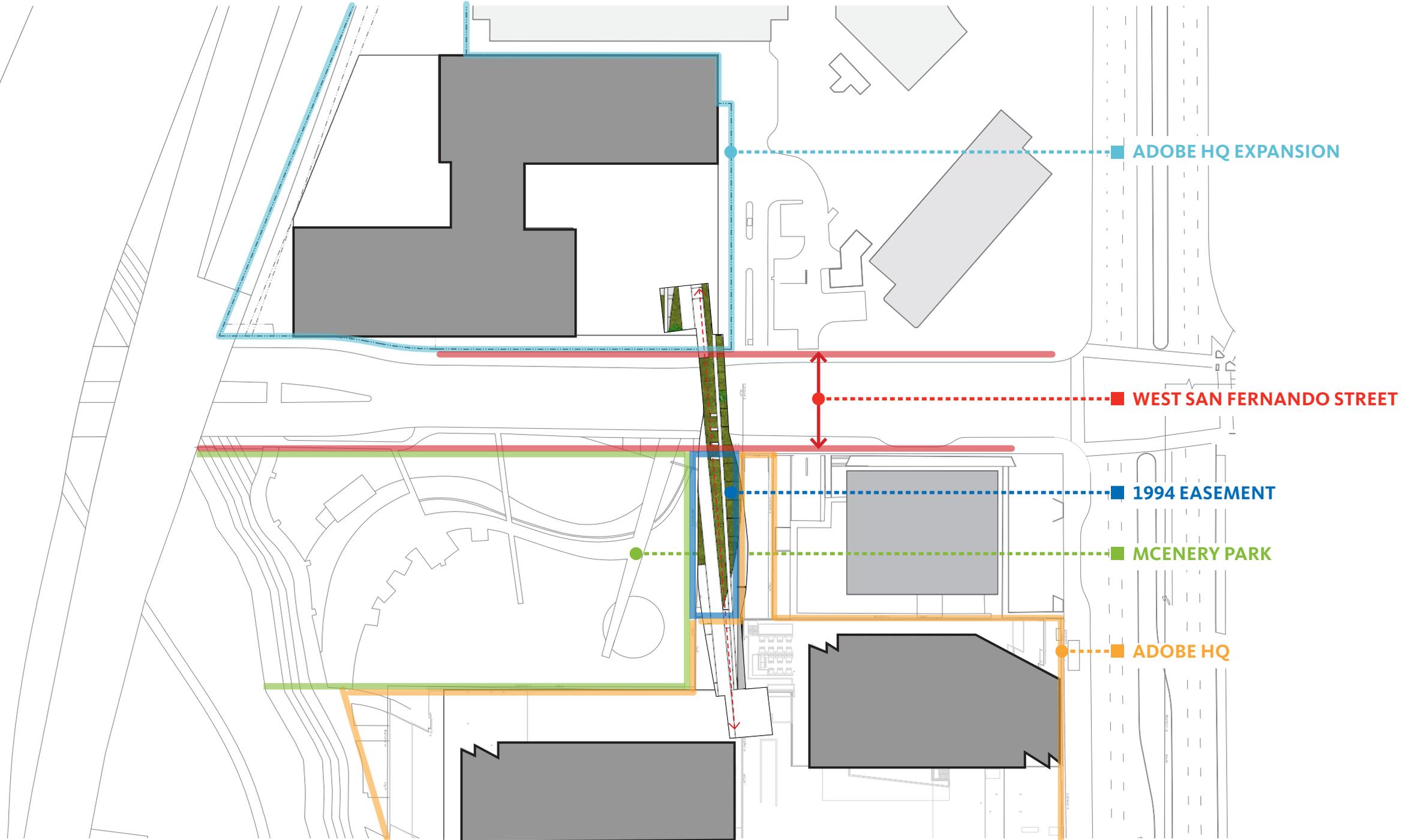
By: _____

EGAN HILL
Deputy City Attorney

EXHIBIT A

PEDESTRIAN BRIDGE CONCEPTUAL PLAN

SITE PLAN



SECTION THROUGH SAN FERNANDO LOOKING EAST

* BRIDGE DIMENSIONS ARE FOR ILLUSTRATIVE PURPOSES ONLY AND ARE BASED ON A CONCEPTUAL BRIDGE DESIGN

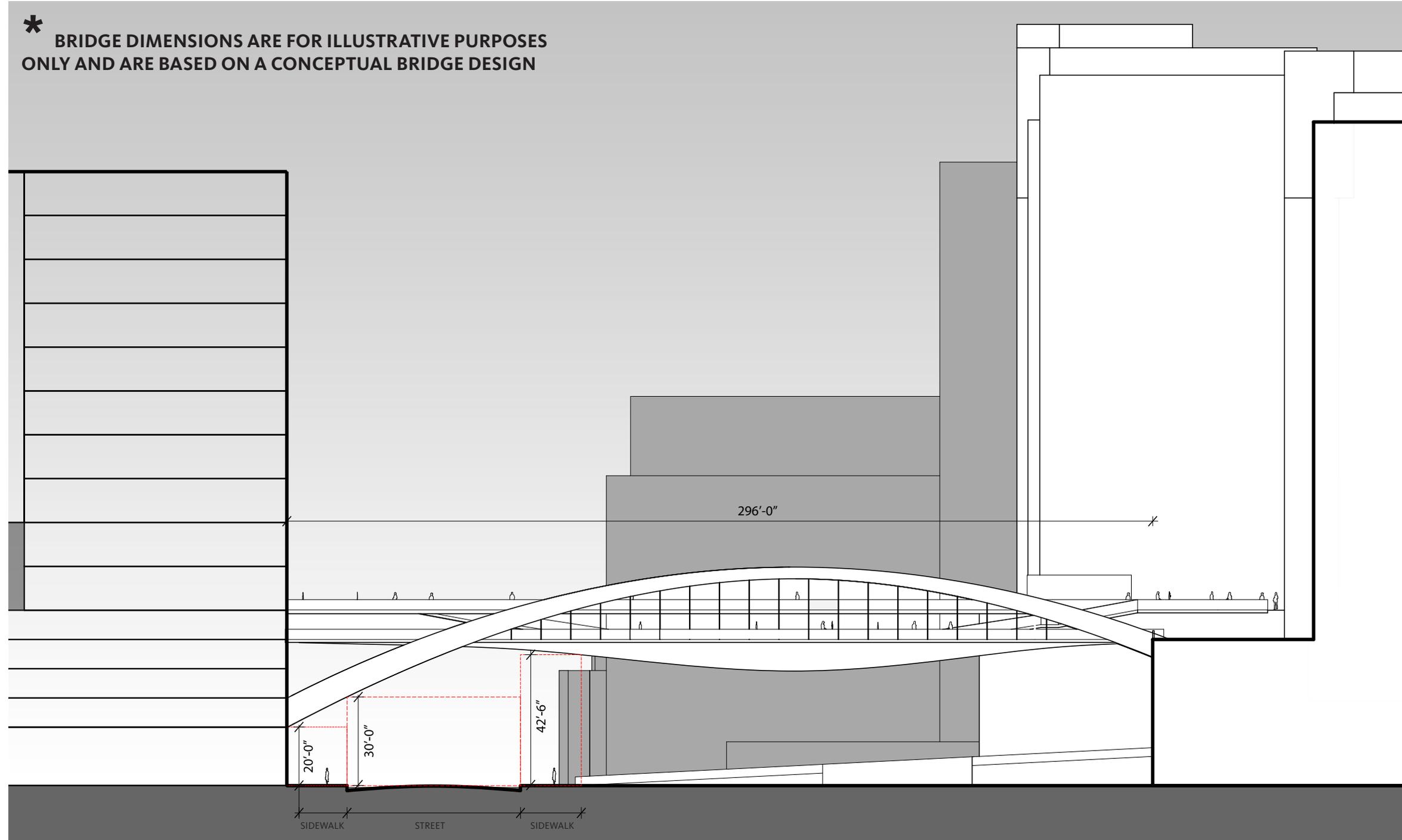


EXHIBIT B

FORM OF MAJOR ENCROACHMENT AGREEMENT

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of San José
Department of Public Works
200 E. Santa Clara St., 5th Floor
Attention: Director of Public Works
File No.:

RECORDED WITHOUT FEE
PER GOVERNMENT CODE
SECTIONS 6103 AND 27383

SPACE ABOVE RESERVED FOR RECORDER'S USE

**MAJOR ENCROACHMENT AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
ADOBE SYSTEMS INCORPORATED**

This Major Encroachment Agreement ("Agreement") is made and entered into by and between the City of San José, a municipal corporation of the State of California ("City") and Adobe Systems Incorporated and its successors in interest ("Permittee"), as of DATE ("Effective Date").

RECITALS

WHEREAS, the Permittee is the owner of certain real property in the City of San José, County of Santa Clara, State of California, described as 333 West San Fernando Street ("333 San Fernando") and 345 Park Avenue ("345 Park") (collectively "Property") which is more particularly described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Property is bounded by or subject to that certain public right-of-way or publicly owned or controlled property, commonly known as West San Fernando Street ("Public Property"); and

WHEREAS, the Permittee has requested, pursuant to San Jose Municipal Code Chapter 13.37, that the City authorize the Permittee to design, construct, maintain, repair, occupy and use a pedestrian walkway and bridge connecting 333 San Fernando and 345 Park (“Major Encroachment”), which is intended to reside within a portion of West San Fernando Street (the “Subject Premises”), as more particularly described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the City’s Director of Planning, Building and Code Enforcement approved a Site Development Permit for the Property on DATE, which was conditioned on the Permittee obtaining authorization from the City Council to allow the Major Encroachment; and

WHEREAS, the City has approved plans and specifications for the design and construction of the Major Encroachment that are consistent with the approved Site Development Permit, which are on file with the City and are incorporated herein by reference (“Plans”); and

WHEREAS, the City Council adopted a resolution authorizing the Major Encroachment, subject to the conditions set forth therein, a true copy of which is attached hereto as Exhibit B and incorporated herein by reference (“Authorization”); and

WHEREAS, this Agreement and the Authorization together constitute a revocable permit from the City allowing the Permittee to maintain the Major Encroachment, subject to the terms and conditions set forth therein (collectively “Permit”); and

WHEREAS, as of the date of this Agreement, the City is not aware of any City public works projects planned or under consideration or construction that would impact the Major Encroachment;

NOW, THEREFORE, in consideration of the City’s granting permission for the Major Encroachment, and subject to all of the terms, conditions and restrictions set forth in this Agreement and the Authorization, the City and Permittee, for itself and all successive owners of the Property, intending to be bound thereby for the benefit of the Public Property, do hereby agree as follows:

1. Incorporation of Recitals. The recitals are true and correct and are incorporated herein as if repeated in their entirety.
2. License. The City shall not be estopped from ordering removal of the Major Encroachment in accordance with the Permit or demanding compliance with any of Permittee's obligations under the Permit. The Permit shall not be construed to create any property right in the Subject Premises that the Permittee did not possess prior to receiving the Permit. The Permit shall have no value in any proceeding greater than the Permittee's cost to obtain the Permit. The Permittee shall be solely responsible for all costs of complying with its obligations under the Permit.
3. Term of Permit and Agreement. The term of the Permit shall commence upon the Effective Date and continue for the life of the Major Encroachment, except if the Authorization is earlier revoked or terminated by the City Council pursuant to this Agreement. The term of this Agreement shall commence upon the Effective Date and shall expire only upon the City's recordation of a notice of acceptance in accordance with Section 7. Notwithstanding the City's earlier revocation or termination of the Authorization, this Agreement shall remain in full force and effect until it expires in accordance with its terms.
4. Conformance with Permit. The Permittee acknowledges and agrees that the design, construction, maintenance, repair, occupancy, use and removal of the Major Encroachment shall be in strict conformance with the Plans and the Permit. The Permit has been granted upon each and every condition contained therein and shall be strictly construed against the Permittee. The City grants the Permittee no rights that are not explicitly written in the Permit. The enumeration of the City's rights in the Permit shall not be considered exclusive or as limiting the rights generally reserved to the City under applicable law. Each of the obligations and conditions in the Permit is a material and essential condition to the granting of the Permit.
5. Revocation. The City Council may revoke the Authorization for the Major Encroachment if: (i) the City determines to use the Subject Premises for a paramount public purpose; (ii) the City determines that the Major Encroachment constitutes a public nuisance under state or federal law; or (iii) the Major Encroachment is declared unlawful under state or

federal law by a court of competent jurisdiction. The City's revocation shall be effective ninety (90) days after providing Permittee with written notice of the City Council's determination to revoke, except if the City Council should provide a longer period of time in its resolution of revocation. If the City determines to use the Subject Premises for a paramount public purpose, the City will give the Permittee at least one (1) calendar year advance written notice of any proposed City Council action, including any action to revoke the Authorization, that would require any material modification to, or removal in whole or in part of, the Major Encroachment ("Notice of Paramount Public Purpose"). The Notice of Paramount Public Purpose will specify, to the extent this information is available to the City at the time of the notice, the nature of the proposed City Council action and the anticipated nature of the conflict with the Major Encroachment. During this 1-year notice period, upon written request of the Permittee, the Director of Public Works will make himself/herself or a designee available to meet and confer with the Permittee regarding the proposed action, including potential alternatives that would not require material modification or removal of the Major Encroachment ("Meet and Confer"). The foregoing 1-year notice period shall not apply to any City actions that only plan or consider public uses of the Subject Premises. In the event that the Director of Public Works receives actual knowledge of a planned paramount public purpose for the Subject Premises that would require any material modification to, or removal in whole or in part of, the Major Encroachment, the Director of Public Works shall provide a Notice of Paramount Public Purpose to Permittee and Meet and Confer at the Permittee's request. In addition, upon written request of the Permittee, not to exceed one meeting every twelve (12) months, the Director of Public Works or his/her designee will meet with the Permittee to discuss any City public works projects planned or under consideration or construction that may impact the Major Encroachment. In the event the Director of Public Works had actual knowledge of a planned paramount public purpose and either (i) did not provide the Notice of Paramount Public Purpose or (ii) did not Meet and Confer, the 1-year notice period above shall be extended to eighteen (18) months from the date of the Notice of Paramount Public Purpose.

6. Termination. Subject to prior notice and opportunity to cure, to the extent applicable, the City Council may terminate the Authorization in the event of a Default under this Agreement. The termination shall be effective immediately upon the City's written notice to the Permittee.

7. Removal and Restoration. After revocation or termination of the Authorization becomes effective, the Permittee shall remove the Major Encroachment and restore the Subject Premises to a condition that is safely usable by the City and public, in compliance with City standards and specifications, and satisfactory to the City's Director of Public Works, all without liability or expense to the City. Within no later than ninety (90) days of the effective date of the revocation or termination and prior to commencing any removal or restoration work, the Permittee shall submit to the City plans for the removal and restoration work, which shall be subject to the City's approval. All removal and restoration work shall be performed under the City's direction. The Permittee shall commence removal and restoration within thirty (30) days after the City's approval of the plans and shall complete removal and restoration within one hundred eighty (180) days after the City's approval of the plans, or such longer period of time for commencement or completion determined by the Director of Public Works. The Permittee's obligations under this section shall not be deemed to have been satisfied until the City records a notice on the Property accepting the Permittee's removal and restoration work, which notice shall be promptly recorded by the City after completion. If the Authorization has been terminated, the Permittee shall have no opportunity to cure any failure to comply with the foregoing removal and restoration requirements.

8. Default. Permittee shall be in default under this Agreement if it breaches, or fails to timely observe and perform any obligation under, this Agreement and fails to timely cure such breach or failure in accordance with this Agreement ("Default"). The Director of Public Works shall notify the Permittee in writing of the nature of any breach or failure to perform ("Notice of Breach"). Except where a different time period is provided in this Agreement for a particular obligation, the Permittee shall, within thirty (30) days of the Notice of Breach, commence, diligently proceed using best efforts and carry out to completion all actions necessary to correct the breach or failure to perform and prevent its recurrence. If the Director of Public Works determines, in his/her reasonable discretion, in writing that such breach or failure to perform is incapable of cure within thirty (30) days, the Director shall specify in writing the number of days in which the Permittee shall complete its cure, and the Permittee shall continue to diligently proceed to cure using its best efforts and carry out to completion all actions necessary to correct the breach or failure to perform and prevent its recurrence. Unless a longer period is

authorized by the City Council, in no event shall the Permittee's cure rights extend for a period beyond one hundred eighty (180) days from the date of the Notice of Breach for the Permittee's failure to repair structural damage or defects in the Major Encroachment, or for a period beyond ninety (90) days from the date of the Notice of Breach for all other breaches or failures to perform under this Agreement. Except as provided in Sections 10 and 13 of this Agreement, so long as Permittee has commenced and is using its best efforts to carry out to completion all actions necessary to correct the breach or failure to perform, Permittee shall not be subject to termination or self-cure remedies by the City. Prior to determining that the Permittee is in Default, the Director of Public Works shall make himself/herself or a designee available to meet and confer with the Permittee to resolve the issues identified in the Notice of Breach and any failure to cure within the applicable cure period. If the Permittee does not cure the breach or failure to perform to the City's satisfaction, the Permittee shall be in Default, and the Permittee hereby grants to the City any consent or right necessary for the City to remedy the Default. The Permittee shall be responsible for all of the City's costs to remedy the Default and the Permittee shall reimburse the City for its costs within sixty (60) days of the City's invoice therefore. In addition to any other remedies available at law or in equity in the event of a Default, the City shall be entitled to specific performance of Permittee's obligations under this Agreement and to such other injunctive or other equitable relief as may be granted by a court of competent jurisdiction.

9. Maintenance and Repair of Major Encroachment. The Permittee shall maintain and repair the Major Encroachment in accordance with this Agreement so that it is in a safe condition and good working order for the intended purpose and in a similar condition to that which was originally constructed, except where a higher standard is required by applicable law. All replacements, restorations and repairs shall be at least equal in quality to the original within the reasonable judgment of the Director of Public Works, except that such replacements, restorations, and repairs shall comply with all requirements of applicable law and City standards and specifications in effect at the time of the replacement, restoration or repair. The City also shall have the right, but not the obligation, to stop or direct maintenance or repairs of the Major Encroachment to protect the public health or safety. Additional maintenance and repair requirements are set forth in Exhibit C attached hereto and incorporated herein by reference.

10. City's Right to Enter and Cure. Notwithstanding anything to the contrary in this Agreement, the City may repair the Major Encroachment at the Permittee's expense if the City determines that it represents a dangerous condition or threat of danger to life or property, and the Permittee fails to eliminate the condition or threat in accordance with this section. The City shall provide the Permittee with written notice of the dangerous condition or threat of danger to life or property, and the Permittee shall make any necessary modifications or repairs to eliminate the dangerous condition or threat of danger to life or property within ten (10) days after the City's written notice, or longer period specified by the City in its written notice depending on the nature of the modifications or repairs and the imminence of the threat, except that in cases of emergency as determined by the City, the City shall only be required to provide Permittee with one (1) day telephone notice. The Permittee shall have no right to cure its failure to comply with the obligations in this section. If the City incurs costs pursuant to this section, the Permittee shall reimburse the City for its actual costs within sixty (60) days of the City's invoice therefore.

11. Work Schedules. Except for routine maintenance and repairs that do not require a building or other permit or approval from the City, Permittee shall notify the City at least seventy-two (72) hours prior to starting any work authorized or required by the Permit to arrange a schedule acceptable to the City. Permittee shall upon completion of any work under the Permit, notify the Director of Public Works in writing. No work shall be deemed complete until such notification is received and the work is approved by the Director of Public Works in writing.

12. City Access and Inspection. The City, and its agents, representatives, officers, employees and other authorized persons shall have the full and free right of ingress and egress under, on, through and over the Subject Premises at all times without notice to the Permittee, including portions covered by structures, furnishings, materials or equipment, for any lawful purpose for which the Subject Premises may be used. Permittee shall grant the City and its agents, representatives, officers and employees, upon reasonable notice but in no event more than three (3) days, which notice shall not be required in the case of emergencies, access to the Major Encroachment for any purpose allowed under this Agreement or applicable law. If the City's access to the Major Encroachment is through the Property, such access shall be in accordance with

the Permittee's reasonable security processes.

13. Public Utilities and Facilities. The Permittee's design, construction, maintenance, repair, occupancy, use and removal of the Major Encroachment shall not interfere with, impede or make more costly the City's operation, maintenance or improvement of the Public Property. The Permittee shall verify the location of all public and quasi-public utilities and facilities that may be affected by work pursuant to the Permit. The Permittee shall protect and assume all responsibility for loss or damage to such utilities or facilities caused directly or indirectly by Permittee or its contractors, agents, employees or invitees, and shall immediately notify the Director of Public Works of any such loss or damage. Any repairs or restoration to public utilities or facilities shall be performed under the direction of the Director of Public Works. The Permittee shall complete such repairs and restoration within ten (10) days after written demand from the City, or such longer period specified by the Director of Public Works in the City's written demand. If the Permittee fails to complete repairs or restoration within the 10-day period, or such longer period specified by the Director of Public Works in the City's written demand, the Permittee shall have no right to cure, and the City may perform such repairs or restoration and the Permittee shall reimburse the City for its costs within sixty (60) days of the City's invoice therefore. If the design, construction, maintenance, repair, occupancy, use or removal of the Major Encroachment requires the removal, relocation, or repair of utilities or facilities, Permittee shall coordinate its work with the owner(s) of such utilities or facilities in advance of its performance of the work and shall pay the owner(s) for all costs incurred due to the Permittee's performance under this Agreement.
14. Permittee Responsibility for Major Encroachment. The Permittee shall be solely responsible for the design, construction, maintenance, repair, occupancy, use and removal of the Major Encroachment, and the City shall not be liable for its review, approval, inspection, maintenance, repair, restoration or removal of any aspect or portion of the Major Encroachment.
15. Risk of Loss. The City, its officials, boards, commissions and members thereof, agents, employees and contractors (collectively, "City Indemnitees") shall not be liable for any injury to persons or property arising out of, pertaining to or relating to the Major Encroachment. The Permittee acknowledges that it bears the full risk of loss or damage

to the Major Encroachment and the Property and hereby waives any right to make or prosecute any claims or demands against the City Indemnites for any loss or damage arising from or relating to the Major Encroachment. The City makes no representations or warranties regarding the suitability, condition or fitness of the Subject Premises or any portion of the Public Property and shall not be responsible or liable for any costs or expenses resulting from unknown or unanticipated conditions.

16. Indemnity/Hold Harmless. To the fullest extent permitted by law, Permittee shall indemnify, hold harmless and defend the City Indemnites from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses, of any kind (including without limitation reasonable attorney's fees and costs) (collectively "Claims"), whether or not the Claims involve a third party, which arise out of, relate to or result from: (i) any act or omission of the Permittee, its independent contractors, agents, officers, employees or invitees pursuant to or in connection with the Permit or while in or about the Major Encroachment or Property for any reason; (ii) the design, construction, maintenance, repair, occupancy, use and removal of the Major Encroachment; and/or (iii) any breach of this Agreement or violation of applicable law by the Permittee, its independent contractors, agents, officers, employees or invitees, in each case whether or not caused by the negligence of the City Indemnites, except for and to the extent such Claims result from the City Indemnites' gross negligence or willful misconduct. The foregoing obligation applies to all Claims that potentially fall within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligations arise at the time such claim is tendered to Permittee by the City and continues at all times thereafter. The Permittee's indemnity obligations in this section are not intended to limit the defenses or immunities available to the City that may be applicable to the Claim at issue, and the Permittee shall be entitled to rely on such defenses or immunities in assuming the City's defense pursuant to this Agreement.

17. Insurance. Permittee shall, at Permittee's sole cost and expense and for the full term of this Agreement, obtain and maintain at least all of the minimum insurance requirements described in Exhibit D attached hereto and incorporated herein by reference. Said insurance shall name the City as additional insured by endorsement and shall be filed with and approved by the City's Risk Manager.

18. Liens. Permittee shall not allow or permit to be enforced against the City any mechanic, laborer, materialmen, contractor, subcontractor, or any other liens, claims or demands arising from any work performed under this Permit. Permittee shall discharge or pay all of said liens, claims and demands before any action is brought to enforce the same against the City or the Subject Premises.

19. Sale or Transfer of Property. The Permittee shall notify potential successor owners of the Property of the Major Encroachment's existence and the obligations under the Permit. At least sixty (60) days prior to the closing of any sale or transfer of the Property, the Permittee shall cause its successors, assigns and transferees to submit a written statement to the City evidencing the sale or transfer, agreeing to the terms and conditions of the Permit and providing updated contact information for purposes of notices under the Agreement. In the event that either 333 San Fernando or 345 Park is proposed to be sold or otherwise transferred individually to a third party that is not an Affiliate of the Permittee ("Individual Transfer"), the City Council shall be required to consent to the Individual Transfer in advance. The City reserves the right to not approve the Individual Transfer and the right to require a new or revised Permit as a condition of its approval of the Individual Transfer. If an Individual Transfer occurs without the City Council's prior consent, the Permittee shall be in Default under this Agreement, shall have no right to cure and the City shall be entitled to immediately terminate the Authorization. For the purposes of this section, "Affiliate of the Permittee" means an entity or person that is directly or indirectly controlling, controlled by, or under common control with Permittee, or an entity that takes ownership for the purposes of financing where the Permittee retains common control and operation of 333 San Fernando and 345 Park. For the purposes of this definition, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity or a person, whether through the ownership of voting securities, by contract, or otherwise, and the terms "controlling" and "controlled" have the meanings correlative to the foregoing.

20. Notices. Unless otherwise specified in this Agreement, all notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this section, with a copy to Permittee by

electronic mail. A notice shall be effective on the date it is delivered in person, or if mailed, on the date of deposit in the United States Mail. Any changes to the notice addresses must be delivered in accordance with this section. Notices shall be addressed as follows:

If to City:

City of San José
200 East Santa Clara Street, 5th Floor
San Jose, CA 95113
Attn: Director of Public Works

With a copy to:

City Attorney
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113

If to Permittee:

Adobe Systems Incorporated
345 Park Ave., San Jose, CA 95110,
Attn: General Counsel
Attn: Kenton Walker – kewalker@adobe.com

With a copy to:

Adobe Systems Incorporated
345 Park Ave., San Jose, CA 95110,
Attn: Director of Real Estate
Attn: Scott Ekman – ekman@adobe.com

With a copy to:

Adobe Systems Incorporated
345 Park Ave., San Jose, CA 95110,
Attn: San Jose Site Operations Manager
Attn: Chris Ross – chross@adobe.com

21. Compliance with Law. Permittee agrees to comply with all applicable laws, ordinances and regulations in its design, construction, maintenance, repair, occupancy, use and removal of the Major Encroachment.

22. Agreement Binding on Successor Owners. The Permittee consents to the City's recordation of the Permit against title to the Property. The Permit shall be binding upon

all successor owners of the Property. Other than by virtue of the sale or transfer of the Property, Permittee shall not assign this Agreement in whole or in part.

23. Severability. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.
24. Survival. All provisions of this Agreement shall survive revocation or termination of the Authorization. The provisions under Sections 13-16, 18 and 29-30 shall survive the expiration of this Agreement for a period equal to the statute of limitations applicable to the underlying obligation or claim.
25. Headings. The headings used in this Agreement are for convenience only and shall not be used in the interpretation of this Agreement.
26. Days. All references to days in this Agreement shall mean calendar days, unless specified otherwise.
27. Time is of the Essence. Time is of the essence in performing each and all obligations under this Agreement.
28. Amendment. This Agreement may be amended only by a written instrument executed by the Permittee, approved by the City Council and recorded on title to the Property.
29. Choice of Law. This Agreement shall be construed according to the laws of the State of California.
30. Venue. Any dispute arising under this Agreement shall be adjudicated in California State Court in and for the County of Santa Clara, or in the Federal Court in and for the Northern District of California, as appropriate.
31. No Precedent. The terms and conditions in this Agreement and the Permit shall not be construed to establish a precedent or policy for any subsequent City authorizations for

encroachments.

IN WITNESS WHEREOF, this Agreement is executed by the parties as of the date first written above.

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

[Sr.] Deputy City Attorney

By: _____
Name:
Title:

PERMITTEE*

Print Name of Permittee and Type of Entity

By _____
Name:
Title:

By _____
Name:
Title:

* Proof of authorization for Permittee's signatories is required to be submitted concurrently with this Agreement. All Permittee signatures must be accompanied by an attached notary acknowledgement.

EXHIBIT A
DESCRIPTION OF
SUBJECT PREMISES

INSERT DESCRIPTION

EXHIBIT A
MAP SHOWING THE
SUBJECT PREMISES

EXHIBIT A
DESCRIPTION
OF THE PROPERTY

All that certain real property situate in the City of San José, County of Santa Clara, State of California **DESCRIPTION** filed for record on **DATE** in the official records of the County of Santa Clara in **BOOK #, PAGE #**.

EXHIBIT B

AUTHORIZATION FOR MAJOR ENCROACHMENT

EXHIBIT C

ADDITIONAL MAINTENANCE/REPAIR REQUIREMENTS

Permittee's maintenance and repair of the Major Encroachment shall include all of the following requirements, in addition to any additional requirements necessary to comply with applicable law:

- A. All work shall be coordinated through the Department of Public Works, Development Services Division.
- B. All graffiti shall be removed from the Major Encroachment within five (5) business days of occurrence.
- C. All cosmetic damage (i.e., non-structural, damage posing no harm or threat of harm to life or property) to the Major Encroachment shall be repaired within ten (10) business days of occurrence.
- D. All structural damage to the Major Encroachment shall be repaired within ninety (90) days of occurrence, or such longer period of time established in writing by the Director of Public Works in his/her reasonable judgment after consultation with the Permittee based on the nature of the damage, the extent of the necessary repairs and the Permittee's evidence of good faith efforts to timely complete the repairs. Notwithstanding the foregoing, any structural damage that represents a dangerous condition or threat of danger to life or property shall be subject to Section 10 of the Agreement.
- E. **INSERT ADDITIONAL REQUIREMENTS**
- F. **INSERT ADDITIONAL REQUIREMENTS**
- G. **INSERT ADDITIONAL REQUIREMENTS**
- H. **INSERT ADDITIONAL REQUIREMENTS**
- I. **INSERT ADDITIONAL REQUIREMENTS**
- J. **INSERT ADDITIONAL REQUIREMENTS**

EXHIBIT D

INSURANCE REQUIREMENTS

*[TO BE ESTABLISHED AFTER SUBMISSION OF THE APPLICATION FOR THE MAJOR
ENCROACHMENT PERMIT]*

EXHIBIT C

ASPIRATIONAL SCHEDULE OF PERFORMANCE

<i>Task</i>	<i>Date</i>
Execution of this MOU	Following City Council approval on October 31, 2017
Complete Analysis of City Ownership to West San Fernando Street and Confirm Conceptual Feasibility of Secondary Access to West San Fernando Street for HQ Expansion	City to complete analysis prior to Adobe due diligence decision under PSA
Due Diligence Decision by Adobe under PSA	October 31, 2017, or as may be established in the PSA
Project Description for HQ Expansion and Pedestrian Bridge for City Analysis of SDP and CEQA Compliance	Adobe to complete by January 31, 2018
City to determine if SDP Amendment or New SDP is appropriate based on the Project Description	City to complete within 30 days of receipt of Project Description
Adobe to Submit Initial Study and applicable Technical Studies for the HQ Expansion	Adobe to complete and provide to City within 6-8 weeks after City determination of SDP process.
City to review Initial Study and Technical Studies to determine appropriate CEQA process.	City to complete within 30 days of receipt of Application, Initial Study and Technical Studies. The parties acknowledge that the CEQA process and timing depends on the results of the Initial Study and Technical Studies in compliance with CEQA.
Adobe to Submit Applications for SDP, Major Encroachment Permit and all other requirements in compliance with local laws	Adobe to submit by within 90-120 days of City's CEQA determination based on the Initial Study and Technical Studies.
Parties to Negotiate Amendment to 1994 Easement Agreement	Adobe and City to complete concurrently with City's review of Applications for SDP and Major Encroachment Permit.
Planning Director to Consider and Take Action on the SDP and CEQA Determination	City to complete as soon as feasible depending on the results of the CEQA determination.

<i>Task</i>	<i>Date</i>
City Council to Consider the Major Encroachment Permit and 1994 Easement Amendment.	The parties acknowledge that the City Council may review the Planning Director's determination on the SDP concurrent with the City Council's consideration of the Major Encroachment Permit and 1994 Easement Amendment and retains the discretion to modify the SDP as necessary to comply with the terms of the Major Encroachment Permit and 1994 Easement Amendment.
Adobe to commence construction of the HQ Expansion project as soon as feasible	Prior to the expiration of the SDP and Major Encroachment Permit authorization