

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: October 16, 2017

Approved

D. D. S. L.

Date

10/16/17

COUNCIL DISTRICT: 3

**SUBJECT: AUTHORITY FOR CITY MANAGER OR HIS DESIGNEE TO
NEGOTIATE AND EXECUTE A LATERAL TIE-BACK AGREEMENT
AND CONSENT TO USE OF CRANE RELATED TO CONSTRUCTION OF
THE SJSC TOWER PROJECT**

RECOMMENDATION

(1) Adopt a resolution authorizing the City Manager or his designee to:

- a) Negotiate and execute a Lateral Tie-Back Agreement with SJSC Properties, LLC, and providing consent to the Developer to allow a crane to operate non-live loads over the City's Parking Garage located at 43 North Fifth Street in the City of San José, County of Santa Clara, State of California.
- b) Negotiate and execute all other documents and take such further actions as are necessary to complete these transactions.

OUTCOME

Upon execution of the Lateral Tie-Back Agreement with SJSC Properties, LLC, (Developer) the City will receive one hundred thousand (\$100,000) dollars that will be deposited to the General Fund.

BACKGROUND

Developer is building two 28-story residential towers ("Project") at North Fourth Street and East Santa Clara Streets, on roughly 1.4 acres directly adjacent to the City-owned Parking Garage property.

On March 15, 2017 the City approved a Special Use Permit (SP17-009) for the development of two 28-story residential towers on a 1.4 acre site at the northeast corner of North Fourth Street and East Santa Clara Streets. Specifically, the project will construct 298 residential units in the west tower and 312 residential units in the east tower, allow six commercial condominiums which includes approximately 14,381 square feet of ground floor commercial uses and up to 24,693 square feet of flex/office space. Included within the project scope are public improvements to construct a 12-foot wide sidewalk of North Fourth Street, a 20-foot sidewalk on East Santa Clara Street, and a 37-foot wide sidewalk on North Fifth Street. Included within these improvements are traffic signal modifications at the intersections of North Fourth Street and East Santa Clara Street and North Fifth Street and East Santa Clara Street. These street sections conform to the City's General Plan and Downtown Master Plan for North Fourth Street, North Fifth Street and East Santa Clara Street. The Developer has been actively working with staff to move towards the construction phase of the project.

Adjacent to the Project site is the existing City owned 4th Street Parking Garage ("City Property"). The 4th Street Parking Garage is used by City employees during normal business hours and available for public parking after 6:00 p.m. on weekdays and on the weekend.

The City Property and the Developer's SJSC Towers project share a common property line. To construct the SJSC Tower project, the Developer will excavate soil on their property and is required to shore the adjacent City Property soil safely during construction. To this end, the Developer intends to use a shoring system that utilizes below-grade anchors (Tie-Back Anchors). The Tie-Back system helps secure the building during construction. The Tie-Back Anchors are part of a larger temporary shoring system and function by anchoring back the temporary shoring via physical subterranean projections into adjacent properties. The Tie-Back Anchors will be situated along the common boundary of the property line between the Developer's project and the City Property as shown in Exhibit 1. The Tie-Backs will be positioned in subterranean areas, and will encroach in subterranean areas of the City Property. Of important note is that after the SJSC Tower project is constructed, the Tie-Back Anchors and corresponding shoring system will no longer be needed as the SJSC Tower project's building design will remain as the final solution to shore adjacent properties, however, the Tie Back Anchors will remain as an encroachment in the subterranean areas of the City Property unless removal is recommended by an independent engineer.

In addition to a temporary Tie-Back shoring system, the Developer intends to utilize two large on-site tower cranes in order to efficiently build the high-rise project. During the set-up, use, and dismantling of these cranes, the crane will project above the 4th Street Parking Garage. No live loads will be allowed above the 4th Street Parking Garage. The City's consent is necessary if any portion of the crane projects above the 4th Street Parking Garage.

The proposed Tie-Back Agreement and Consent to Use of Crane for the project specifies the price and terms, including protections for the 4th Street Parking Garage itself. The contract terms are outlined below.

ANALYSIS

High-rise development, with significant below grade excavation, often requires highly technical methods for construction in urban areas. In this case, the Developer anticipates using a common and efficient shoring system for the construction of the SJSC Tower project that utilizes below-grade Anchors or Tie-Backs to structurally support the adjacent soil during construction. The subsurface work includes drilling, installation and related work that will disturb and encroach upon the subterranean areas of the City Property ("Subsurface Work"). It is likely that the Tie-Back Anchors will remain in place after they are no longer needed to support the adjacent soil. This is a common practice as it reduces the need for immediate excavation on adjacent properties to remove the Tie-Backs. This Tie-Back method was utilized successfully in the One South Market High Rise project at the corner of Santa Clara and Market Streets and the Silvery Towers project at the corner of N. San Pedro St and W. Julian St in Downtown San Jose. In connection with the construction of the project, the Developer intends to operate two construction tower cranes on its property. The cranes will not interfere with the use of the 4th Street Parking Garage nor is it intended to carry loads above the 4th Street Parking Garage itself; however, portions of the crane boom may enter the airspace above the 4th Street Parking Garage.

The proposed Lateral Tie-Back Agreement will include the following components:

Owner's Consent and Grant to Shoring and Subsurface Encroachment

Provides the Developer the right to encroach upon the subsurface areas of the 4th Street Parking Garage for the purpose of installing, maintaining and removing (if necessary) the Tie-Back Anchors. Agreement provides the right of ingress and egress by the Developer and its contractors onto the property. Upon completion of the SJSC Tower project, the Tie-Back Anchors will remain in-place, provided that an engineer certifies that the presence of the Tie-Back Anchors will not result in hazards or dangers to the safety or structural integrity of the 4th Street Parking Garage. The Developer will be required to promptly remove the Tie-Back anchors if the engineer recommends removal of the Tie-Back Anchors. The grant of the easements, encroachments and consents provided in the Agreement will terminate upon the earlier of either three years after the effective date of the Agreement or the completion of the Project. Furthermore, the easements and consents granted to Developer under the Agreement will automatically terminate if the Developer materially breaches any of the terms of the Agreement.

Consent to Building Crane

Provides Developer with the consent to use the crane in the area surrounding the 4th Street Parking Garage provided that (i) use of the crane does not unreasonably interfere with the use of the 4th Street Parking Garage, (ii) no loads ever pass over the 4th Street Parking Garage, (iii) the Developer operates the crane in accordance with all laws.

Compensation

As compensation for the rights and consents granted in the Agreement, the Developer shall pay to the City a fee in the amount of \$100,000. The Developer shall deliver a certified check or other approved method of payment to the City with a copy of the Agreement prior to initiating work on the Tie-Back system or installing the crane.

Developer Covenants

Prior to beginning the Subsurface Work, the Developer shall submit plans and schedule for the work. The City can disapprove the plans if the plans would negatively affect the structural integrity of the 4th Street Parking Garage.

Inspection of Existing Condition: Repair

Prior to beginning the Subsurface Work, the Developer shall perform a visual pre-construction crack and damage survey of the interior and exterior of the 4th Street Parking Garage. The Developer shall provide detailed photographic evidence of the 4th Street Parking Garage and provide the photographs and related evidence to the City.

Prior to initiating the Subsurface Work, the Developer shall obtain an inspection from a certified engineer of the structural condition of the 4th Street Parking Garage and the engineer will include recommendations, if any, to prevent any structural damage to the 4th Street Parking Garage and Developer shall implement such work in accordance with the recommendations. The engineer shall be approved by the City and paid for by the Developer.

Immediately after completion of the Project, the Developer shall inspect the 4th Street Parking Garage for damage and shall repair the 4th Street Parking Garage to the condition that existed prior to the beginning of the Subsurface Work or installation, operation, and removal of the crane.

Covenants Regarding Installation, Construction and Access to City Property

The Developer shall cause the work to be performed in accordance with the City approved Plans. The Agreement will include an exhibit displaying the locations of the Tie-Back Anchors.

The Tie-Back Anchors will be installed by drilling at an angle, below any substructures of the 4th Street Parking Garage. The drilling and installation shall be performed only from the Developer Property. The Developer shall not enter the City property for the purpose of installing the Tie-Back Anchors, except for ingress and egress onto City Property as may be reasonably necessary to perform Subsurface Work.

The Developer shall provide the City no less than five business days notice prior to entering the City property to perform any pre-construction work or evaluation. The Developer will provide

the City ten business days prior notice before commencing any construction work. The notice will include date of initiation, schedule, and contact information for the project manager.

The Developer covenants that none of the related work will be done in a manner that will adversely impact the 4th Street Parking Garage or any of the improvements on the property.

The Developer may allow any portion of the crane to extend over or be placed above the 4th Street Parking property at any time.

Developer's Indemnity

To the fullest extent permitted by law, Developer agrees to indemnify, hold harmless and defend the City and City's successors, assigns, contractors, employees, invitees, licensees and permittees from and against any and all losses damages, claims, costs and expenses.

Insurance

Developer shall carry the minimum insurance recommended by the City's risk manager at all times during the performance of the subsurface work and operation of the crane. The Developer is responsible for rectifying any damage to the 4th Street Parking Garage should any incident occur.

EVALUATION AND FOLLOW-UP

If Council approves the recommendation for allowing the City Manager or his designee to negotiate and execute the Lateral Tie-Back Agreement, upon execution of the agreement the Developer will provide \$100,000 which will be deposited to the City's General Fund.

PUBLIC OUTREACH

This memorandum will be posted to the City's website for the October 24, 2017 Council agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

COMMISSION RECOMMENDATION

No commission recommendation or input is required or associated with this action.

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COST SUMMARY/ IMPLICATIONS

The approval of the Lateral Tie-Back Agreement will generate \$100,000 of revenue that will be deposited into the General Fund.

CEQA

Addendum to the Downtown Strategy 2000 EIR (Resolution No. 72767), the Envision San Jose 2040 General Plan (Resolution No. 76041) and the Envision San Jose 2040 General Plan Supplemental EIR (Resolution No. 77617).

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

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

Attachment

Exhibit 1

