



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: January 23, 2019

Approved

Date

1/24/19

COUNCIL DISTRICT: 3

**SUBJECT: APPROVAL OF A LATERAL TIE-BACK AGREEMENT AND CONSENT
TO USE CRANES RELATED TO THE CONSTRUCTION OF JAPANTOWN
SQUARE**

RECOMMENDATION

Approve a Lateral Tie-Back Agreement and Consent to Use of Cranes with ICS Corporate Yard Multifamily, LLC to provide the developer with certain rights to use the City-owned property located at 685 North 7th Street for an amount of \$50,000, for the construction of the adjacent Japantown Square project.

OUTCOME

City Council approval of the Lateral Tie-Back Agreement and Consent to Use Cranes will allow ICS Corporate Yard Multifamily, LLC to encroach upon subterranean portions of City-owned property with tie-back anchors for site excavation and utilize the air space above the City-owned property for the operation of cranes during the construction of Japantown Square. For these rights, the Developer will pay the City the amount of \$50,000, which will be deposited into the General Fund.

BACKGROUND

Japantown Square is the planned mixed-use residential development project at the site of the City's former Japantown Main Corporation Yard. The project will include two six-story buildings with ground floor retail space and a total of 518 apartment homes, along with a three-quarter-acre "turn-key" public park. This block will also be home to the future Creative Center for the Arts, an approximately 60,000 square foot building containing rehearsal and flex space, situated on a City-owned parcel. (See "Illustration A: Japantown Square Parcel Map" below.)

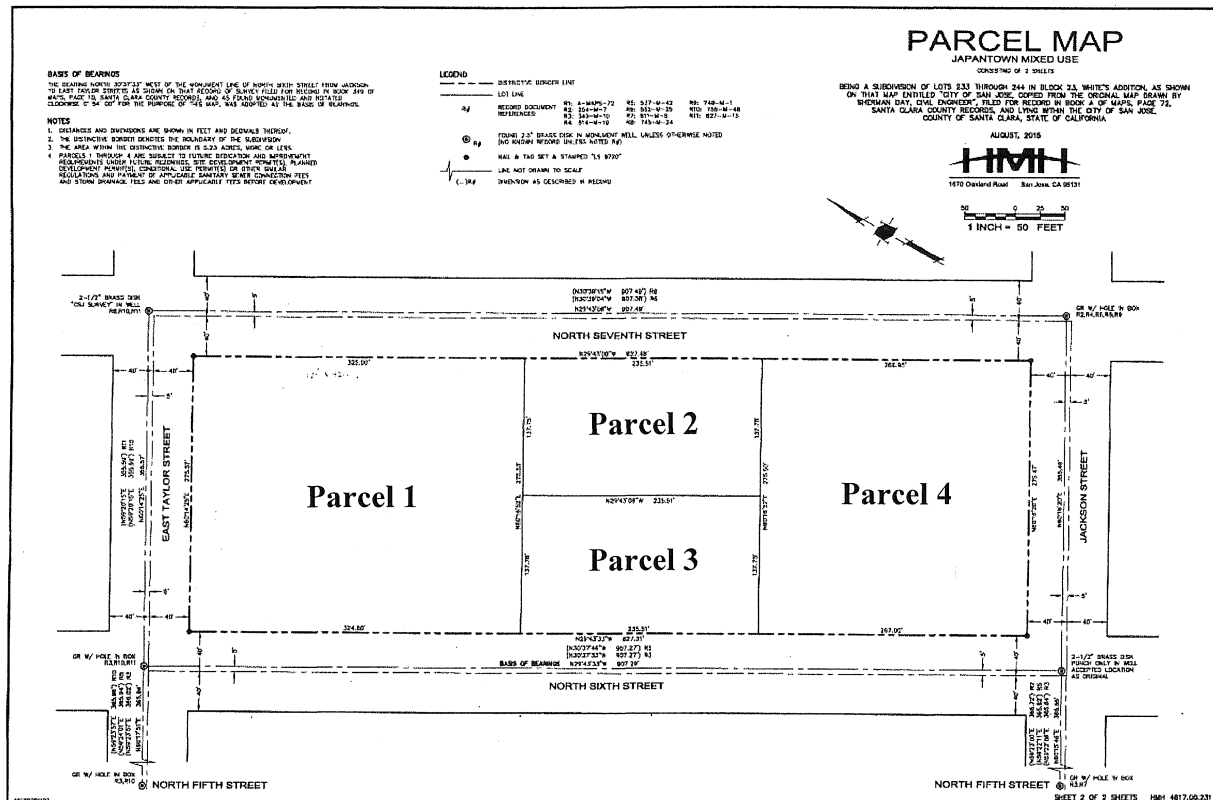


Illustration A: Japantown Square Parcel Map

Parcels 1 and 4: Developer-owned sites for the two residential buildings

Parcel 2: City-owned site for the Creative Center for the Arts

Parcel 3: Developer-owned site for the “turn-key” public park

The planning process for the relocation, sale and future redevelopment of the City's Japantown Main Corporation Yard dates back to the late 1980s when the City began evaluating the need for a larger and more modern space for its yard operations. A detailed background and history of events related to the Japantown Corporation Yard are documented in the Memorandum dated November 24, 2014. This memorandum included recommendations to approve the sale of the City's former Corporation Yard to Jackson Taylor Partners LLC for \$18.5 million, and to consider a Development Agreement for the site. City Council approved these recommendations at the December 16, 2014 Council meeting. On March 30, 2017, the City and Jackson Taylor Partners LLC completed the land sale.

On November 13, 2017, Jackson Taylor Partners sold the land to ICS Corporate Yard Multifamily, LLC, which is a single-purpose entity owned by Shea Properties – a large, well-known residential developer. The deal between the two development companies included the assignment of the Development Agreement including project entitlements, which the City approved.

January 23, 2019

Subject: Tie-Back Agreement for Japantown Square

Page 3

Since purchasing the site and entitlements, ICS Corporate Yard Multifamily, LLC ("Developer") has worked expeditiously to satisfy the remaining requirements of the development, including obtaining Council's approval of the Turnkey Parkland Agreement on October 16, 2018. As of the release of this memorandum, the Developer has secured grading permits and anticipates obtaining full building permits in the next several weeks.

Parcels 1 and 4 depicted on Illustration A above share common property boundaries with the City-owned Parcel 2. To begin constructing the two mid-rise residential buildings on Parcels 1 and 4, the Developer must excavate the soil on its property and is required to shore the adjacent soil safely during construction. To this end, the Developer intends to use a shoring system that utilizes below-grade anchors ("tie-back anchors") that function by anchoring back the temporary shoring materials via physical subterranean projections in adjacent properties. In this case, the Developer intends to install tie-back anchors that encroach into the adjacent City-owned Parcel 2. Of important note is that after the Japantown Square project is constructed, the tie-back anchors and corresponding shoring system will no longer be needed, as the buildings themselves will remain as the final solution to shore the soil of adjacent properties.

In addition to a temporary tie-back shoring system, the Developer intends to utilize construction cranes that will pass through the airspace above the City-owned Parcel 2. However, no materials or "loads" will ever be carried over the airspace directly above the City's property.

Finally, it is important to note that the terms of the Purchase and Sale Agreement between the City and the Developer included the Developer's ability to use the City-owned Parcel 2 for construction laydown and staging during the construction of Japantown Square, until the site is needed for construction of the Creative Center for the Arts.

ANALYSIS

Development with significant below grade excavation often requires highly technical methods for construction in urban areas. In the case, the Developer intends to use a common and efficient shoring system with below-grade tie-back anchors to structurally support the adjacent City property's soil during the construction of the Japantown Square project. The tie-back anchors are proposed to be installed along the common boundaries of the property lines between the Developer's Parcels 1 and 4, and the City's Parcel 3 depicted in Illustration A. The tie-back anchors will be positioned below-grade and will encroach into subterranean areas of the City's property. 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 common practice as it reduces the need for immediate excavation on adjacent property to remove the tie-back anchors. This method was utilized successfully for a number of high-rise projects in Downtown San Jose, including One South Market and Silvery Towers, and is in use currently for the construction of the SJSC Tower project.

In connection with the construction of Japantown Square, the Developer intends to operate construction cranes, which will pass through the airspace above the City's property, though with no materials or loads. The City property is vacant land, so the cranes will not interfere with any City operations on the site.

The proposed Lateral Tie-Back Agreement and Consent to Use of Cranes with ICS Corporate Yard Multifamily, LLC includes the following components:

Owner's Consent and Grant

This section provides the Developer with an easement and right to encroach upon the subsurface areas of the City property for the purpose of installing, maintaining and removing (if necessary) the tie-back anchors. It provides the right of ingress and egress by the Developer and its contractors onto the property. It establishes that the tie-back anchors will be left in place in accordance with standard industry practice, although following the completion of the project, the City has the right to remove any tie-back anchors that have been left by the Developer on the City's property.

Consent to Building Cranes

This section provides the Developer with the right to use cranes through the airspace above the City's property, provided that the cranes do not interfere with City use of the property, no materials or "loads" are carried above the City's property, and the Developer operates the cranes in compliance with all laws.

Compensation

As compensation for the rights under the Agreement, the Developer will pay \$50,000 to the City.

Developer's Indemnity

To the fullest extent permitted by law, the Developer agrees to indemnify, hold harmless and defend the City from and against any and all losses, damages, claims, actions, liabilities, costs and expenses that arise.

EVALUATION AND FOLLOW-UP

With Council's adoption of the resolution, no further Council action is needed.

PUBLIC OUTREACH

This memorandum will be posted to the City's website for the February 5, 2019 Council agenda.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

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

COST SUMMARY/IMPLICATIONS

The Developer has provided the City a check for the \$50,000 payment. There are no direct City costs associated with the actions in this memo. The \$50,000 has been received from the developer and has been placed in the General Fund.

CEQA

An Addendum to the Japantown Corporation Yard Redevelopment Project Final Environmental Impact Report, Resolution No. 74384.

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

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