

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING A MAJOR ENCROACHMENT PERMIT PURSUANT TO SAN JOSE MUNICIPAL CODE CHAPTER 13.37 FOR A PEDESTRIAN BRIDGE OVER SAN FERNANDO STREET CONNECTING 345 PARK AVENUE AND 333 WEST SAN FERNANDO STREET

WHEREAS, Adobe Systems Incorporated (“Permittee”) has applied for an encroachment permit pursuant to Chapter 13.37 of the San José Municipal Code (“Chapter 13.37”); and

WHEREAS, the Permittee owns the property located at 345 Park Avenue, including the three existing high-rise towers in which it is headquartered (“HQ”), and has acquired property and secured land use entitlements to construct a new office building located at 333 West San Fernando Street (“HQ Expansion,” and collectively with the HQ, the “Property”); and

WHEREAS, the Property is bounded by that certain public right-of-way known as West San Fernando Street (“Public Property”); and

WHEREAS, on June 18, 2019, the City Council authorized the City Manager to negotiate and execute a purchase and sale agreement with the Permittee to sell a parcel of City-owned property abutting the Public Property, which parcel was the subject of that certain Easement Agreement recorded with Santa Clara County as Document No. 12684586 on October 12, 1994 (“Loading Ramp Parcel”); and

WHEREAS, in its encroachment permit application, the Permittee has proposed a pedestrian walkway and bridge over the Loading Ramp Parcel, spanning a portion of

the Public Property and connecting the HQ to the HQ Expansion (“Major Encroachment”); and

WHEREAS, on May 28, 2019, the Director of the Department of Public Works (“Director”) submitted to the City Council a memorandum setting forth his findings and recommendations for the conditional approval of the Major Encroachment (hereinafter “Report”); and

WHEREAS, the Report attached the form of encroachment agreement that would govern the Major Encroachment (“Encroachment Agreement”); and

WHEREAS, this resolution shall constitute the City Council’s authorization for the Major Encroachment pursuant to Chapter 13.37, subject to the terms and conditions contained herein (“Authorization”), and together with the Encroachment Agreement, shall constitute the revocable license for the Major Encroachment (“Encroachment Permit”);

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. The City Council hereby adopts the Report, and based on the Report and all other evidence submitted, makes the following findings as of the date of this Resolution:

- A. The Major Encroachment will provide a public benefit to those using the Public Property;

- B. No other reasonable method of obtaining the desired results is available except for the Major Encroachment as proposed;
- C. Granting the Permit will not unreasonably interfere with or disrupt use of the Public Property;
- D. The Public Property has the capacity to accommodate the proposed Major Encroachment and any other existing or foreseeable public or private facilities;
- E. Granting the Permit will not be detrimental to the public interest, safety, health or welfare or have the potential to injure the property interests of others; and
- F. The Permittee has demonstrated its ability to install, maintain, repair and remove the Major Encroachment.

SECTION 2. The Encroachment Permit is hereby authorized, subject to the following:

- A. The Major Encroachment shall only be operated for pedestrian-related purposes as a means to facilitate movement of Permittee's employees and invitees between the HQ and HQ Expansion. Pedestrian-related purposes includes ingress and egress between the HQ and HQ Expansion, sightseeing, business-related gatherings, seating and similar uses as determined by the Director. The Major Encroachment may not be used for any other purpose without the Director's prior written consent.

- B. The Encroachment Permit may not be issued before the following conditions are satisfied:
1. The Permittee shall execute the form of Encroachment Agreement, subject to additional maintenance provisions, if any, determined by the Director and the minimum required terms of insurance as determined by the City's Risk Manager;
 2. The Permittee has acquired the fee interest in the Loading Ramp Parcel;
 3. The Permittee has submitted an application for the vacation of the public service easements located on the Loading Ramp Parcel, and the City Council has vacated the public service easements on the Loading Ramp Parcel; and
 4. The Director has approved final construction plans and specifications for the Major Encroachment that will result in a structure that is substantially the same in terms of location, dimensions, design and function as what was submitted with the Permittee's encroachment application. Any material modifications to the Major Encroachment proposed in the application shall require the City Council's pre-approval.
- C. This Authorization shall automatically expire five years after this resolution's date of adoption, unless the Permittee has commenced construction of its HQ Expansion project and the Major Encroachment.

SECTION 3. After satisfaction of all conditions to issuance of a permit under this Authorization and Chapter 13.37, the Director is hereby directed to execute the Encroachment Agreement and record a certified copy of the Encroachment Permit on the Property with the Office of the Recorder for the County of Santa Clara.

ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk