



Memorandum

TO: SUCCESSOR AGENCY BOARD

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: August 30, 2021

Approved

Date

9/3/2021

COUNCIL DISTRICT: 3

**SUBJECT: DISPOSITION AND DEVELOPMENT AGREEMENT WITH BXP
ALMADEN ASSOCIATES, LP**

RECOMMENDATION

Adopt a resolution authorizing the Executive Officer of the Successor Agency to the Redevelopment Agency of the City of San José, after approval by the Redevelopment Dissolution Countywide Oversight Board for Santa Clara County and subsequently by the State of California Department of Finance, to:

- a) Execute an Amended and Restated Disposition and Development Agreement ("DDA") with BXP Almaden Associates, LP for the construction of a mixed-use project consisting of office space, retail space, and a garage ("Project") for the 3.57-gross acre site located on the Northwest Corner of South Almaden Boulevard and Woz Way.
- b) Negotiate and execute all ancillary documents and agreements referenced in or required under the DDA for the Project.

OUTCOME

The proposed 2021 DDA amends the terms of the agreement between the Successor Agency to the Redevelopment Agency of the City of San José ("Successor Agency") and BXP Almaden Associates, LP for the construction of a 16-story office building with two towers totaling 2.05 million square feet at the northwest corner of South Almaden Boulevard and Woz Way.

BACKGROUND

In June 2000, the San José Redevelopment Agency Board approved a Disposition and Development Agreement (DDA) with Boston Properties Limited Partnership for the development of the Plaza at Almaden Office Complex at the northwest corner of Almaden Boulevard and Woz Way. The parties subsequently amended the DDA on December 18, 2001, December 12, 2003, December 5, 2006, and May 13, 2008. The San José Redevelopment Agency and Boston Properties Limited Partnership then further amended and restated in its entirety the DDA in June 2010 (the “2010 DDA”). Today, the Successor Agency and BXP Almaden Associates, LLC, as successor in interest to Boston Properties Limited Partnership, desire to amend and restate in its entirety the 2010 DDA to revise the Project to be developed in accordance with the entitlements that are currently under consideration for approval.

The purpose of the DDA and amendments to the DDA was to proceed with a commercial project consistent with the goals for the Guadalupe-Auzerais Project Area. The San José Redevelopment Agency sold the parcels to the developer in June 2010. The DDA specifies the obligations of the developer in exchange for incorporating public land into their development.

The Project, and the fulfillment generally of this 2021 DDA, are in the vital and best interest of the City and taxing entities and the health, safety, and welfare of the City’s residents and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements under which the Project is being undertaken.

ANALYSIS

The project site is located at the northwest corner of Woz Way and South Almaden Boulevard. The approximately 3.57-gross acre site is currently a public surface parking lot with driveway access from Woz Way. The site is surrounded by the McEnery Convention Center to the east across South Almaden Boulevard, a 9-story office building to the north, the Guadalupe River and Trail to the west, and single-family residences approved for redevelopment with two office towers to the south across Woz Way.

The Project is a 16-story office building with two towers totaling approximately two (2) million square feet, including 37,603 gross square feet of ground-floor retail and amenity space and 1,416,717 gross square feet of commercial office space with an alternative parking design that includes 1,279 parking spaces (three levels of underground parking including stackers, tandem and valet parking) on a 3.57-gross acre site. The project calls for up to 15 commercial condominium units, each with a minimum size of 750 square feet.

The project site is long and narrowly shaped with an approximately 0.16-mile (845 feet) stretch of the Guadalupe River along its entire western edge. The project design includes substantial pedestrian circulation around the building and provides direct connections from the South Almaden Boulevard sidewalk to the Guadalupe River Trail through two paseos. The Project also includes a plaza at the corner of South Almaden and Woz Way.

The 2021 DDA identifies the rights and obligations of the developer and the Successor Agency to deliver the anticipated Project. It provides protection to the Successor Agency should the Project not proceed as intended. Key elements of the 2021 DDA include:

- Specific Performance Requirements – Ensures that a court can bind a defaulting party to perform;
- Right to Repurchase – Provides that the Successor Agency can repurchase the property if the developer defaults under certain conditions and time frames;
- Prevailing Wage – Ensures prevailing wages are paid to all construction employees on the Project;
- Parking Agreement – Ensures that parking spaces are available at market rates to the public on evenings and weekends;
- Percent for Public Art – Ensures that the developer funds public art on or off-site in Downtown San José; and
- Staff Reimbursement – Ensures that City staff working on behalf of the Successor Agency is compensated for time spent developing and executing this agreement.

The project under consideration in June 2000 consisted of three office towers, each with 19 stories, totaling approximately one (1) million gross square feet of Class A office space and ground-floor retail. The current development proposal seeking entitlement is twice the size of the previously proposed development.

Key Concepts of the Disposition and Development Agreement

Project Timeline

Attachment 5 of the 2021 DDA specifies the timeline of the Project from entitlement through project construction. The schedule of performance is outlined in Exhibit A of this memorandum and gives the developer up to ten (10) years to complete substantial construction on the Project from the time of approved entitlement.

Proof of Financing

Essential to moving this Project into construction as soon as possible is the developer's demonstration of Project financing. The developer is responsible for funding 100% of the project costs. The developer may use any combination of debt and equity to fund the Project and the 2021 DDA requires proof of financing at least sixty (60) days prior to commencement of construction.

Right to Repurchase

The Successor Agency has the option to purchase the property from the developer should the Project not move forward in a timely manner. Specifically, to exercise the repurchase option, the Successor Agency would provide the developer with notice of its exercise of the option within ninety (90) days after expiration of the period to commence construction within the timeline provided under the amended and restated DDA, which, as outlined in Exhibit A to this memorandum, is not later than sixty (60) days after issuance of a Building Permit and immediately upon completion of grading, excavation and foundation work. The repurchase price for the property would be established through a fair market value appraisal of the property at the time of the Successor Agency's exercise of the repurchase option.

Parking Agreement

The full Project parking garage incorporates 1,279 vehicle parking spaces. All parking spaces will be publicly accessible at market rate on evenings and weekends – evenings from 6 p.m. to midnight and Saturdays and Sundays from 10 a.m. to midnight.

Public Art

The developer continues to agree to provide one (1) percent of the total Project costs (hard costs and soft costs, excluding land acquisition costs) for public art to be included in or near (must be downtown) the Project.

Planning and Permitting

The Project will be reviewed by the Planning Commission prior to the Planning staff's approval because of the complexity of the development. The Project is undergoing review by the City's Planning staff for necessary planning permits including a Special Use Permit and Vesting Tentative Map. The Project must obtain the required permits in conformance with the Schedule of Performance in the 2021 DDA. Issuance of a Special Use Permit is anticipated in September 2021.

City Manager Authority as the Successor Agency Executive Officer

The City Manager, acting as the Successor Agency Executive Officer, shall have the authority to act on behalf of the Successor Agency regarding all actions required of the Successor Agency under the amended and restated agreement. Such actions include, but are not limited to, the issuance of approvals and disapprovals, extensions of deadlines in the schedule of performance, and execution of all documents except amendments to the amended agreement.

Staff Reimbursement

Pursuant to the terms of the DDA, the developer paid the Redevelopment Agency \$20,000 to help defray the former Agency's costs in connection with performing its processing and review obligations in connection with the agreement. The developer has now agreed to provide additional funds up to \$20,000 at a rate of \$200/hour for any staff costs associated with processing and reviewing obligations in connection with this current amended agreement (2021 DDA).

Economic Benefits of the Project

As reported in an economic impact study conducted by BXP Almaden Associates, LP, there are significant short- and long-term beneficial impacts from a development of this scale and mix of uses. Per the report by ALH Urban & Regional Economics, the addition of the Project in Downtown San José will result in significant economic benefits, including new job creation and new tax revenue.

An estimated 7,675 construction jobs, totaling \$777 million in construction worker earnings, are expected over the life of the Project's construction period. It is important to note that the development supports a broad range of construction job types and skill levels. The developer is committed to utilizing union construction workers to build the Project.

The current proposed Project includes approximately 1.4 million square feet of office space. Assuming 90% occupancy and based on a calculation of 200 square feet per office worker, this office space could support approximately 6,400 workers. The Project also includes approximately 37,000 square feet of ground-floor retail.

The market value of the completed Project is estimated to increase to \$1.4 billion, generating entirely new net tax revenue. Because the project is in a Redevelopment Project Area, this will be an additional tax increment to be deposited in the Redevelopment Property Tax Trust Fund (RPTTF) and distributed to the various taxing entities (including the City) after paying the Successor Agency enforceable obligations. At this point in time, the tax increment deposits into the RPTTF are sufficient to pay all of the Successor Agency's enforceable obligations.

The developer will pay the City's standard development fees, which will include construction taxes, as well as the recently approved Commercial Linkage Fee estimated at \$17 million. The Project's percent for art component is estimated to be valued at \$4 million.

With its proximity to Diridon Station, the Project is likely to enable more people to use mass transit and decrease the number of cars on our roadways. The Project has reduced its parking by 57.5%. And with its commercial use and high-density design, the Project aligns closely with the City's urban planning principles and is consistent with the General Plan 2040, Downtown Strategy 2040, and the City's Zoning Ordinance.

CONCLUSION

Approval of the Project will create an opportunity to add 1.4 million square feet of office space, and 37,000 square feet of ground-floor retail to San José's city center. The Project is estimated to increase to a market value of \$1.4 billion, provide 7,700 construction jobs and \$777 million in construction wages over the life of the construction period, and provide a place for roughly 6,400 jobs.

EVALUATION AND FOLLOW-UP

The terms of this 2021 DDA must be approved by the Redevelopment Dissolution Countywide Oversight Board for Santa Clara County (“Oversight Board”) and subsequently by the State of California Department of Finance prior to execution by the Successor Agency Executive Officer. Pending approval from the Successor Agency Board on September 14, 2021, this item will be heard by the Oversight Board at its September 17, 2021 meeting.

CLIMATE SMART SAN JOSE

The Project is intended to be built employing sustainable construction practices and is a dense, urban commercial project close to Diridon Station. Employees and visitors will be encouraged to utilize the many multi-modal transportation options near the Project. The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This Project was reviewed by the Planning Commission on August 25, 2021. That hearing provided public notice and review prior to the issuance of the planning permits (Special Use Permit and Vesting Tentative Map). This memorandum will be posted on the City's Council Agenda website for the September 14, 2021 City Council meeting and will be scheduled for approval by the Successor Agency Board during the normally scheduled City Council meeting.

COORDINATION

This report has been coordinated with the Departments of Planning, Building and Code Enforcement and Finance, the City Manager’s Budget Office, and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

The Planning Commission recommended approval of the Project by a vote of 6-3-2 (6 approved, 3 denied, and 2 absent) at its August 25, 2021 meeting.

SUCCESSOR AGENCY BOARD

Subject: Disposition and Development Agreement with BXP Almaden Associates, LP

August 30, 2021

Page 7

CEOA

Supplemental Environmental Impact Report (SEIR) to the Downtown Strategy 2040 EIR for the Almaden Office Project, File No. SP20-005 and T21-015.

/s/

NANCI KLEIN

Director of Economic Development

For questions, please contact Blage Zelalich, Downtown Manager, at (408) 535-8172.

Exhibits

Exhibit A – Schedule of Performance

EXHIBIT A

Schedule of Performance

Requirement	Timeframe
1. City Delivery of DDA. City delivery of executed amended DDA to Developer.	Within thirty (30) days of State Department of Finance approval.
2. Application of Building Permit. Developer shall submit an application for a Building Permit for the foundation and superstructure of the Project, or any applicable phase thereof, with all building plans required for review by the City's Building Division.	Upon the approval of the entitlements actively being pursued for the Project as defined in this amended Agreement and prior to the expiration of the entitlements, as such expiration may be extended.
3. Construction Impact and Mitigation Plan. Developer submittal of a Construction Impact and Mitigation Plan for review and approval by Successor Agency staff.	Within thirty (30) days of submission of Building Permit Application to the City's Building Division.
4. Developer Receipt of Building Permit. Developer shall have received a Building Permit for the foundation and superstructure from the City's Building Division.	Within three hundred (300) days of submission of Building Permit Application to the City's Building Division.
5. Developer Evidence of Financing. The Developer shall submit evidence that all lender contingencies have been removed from Lender's binding financing commitment for the Project.	Within three hundred (300) days of submission of Building Permit Application to the City's Building Division.
6. Developer Execution of Certain Documents. Developer shall sign all loan and security documents necessary to carry out the intent of this Agreement, and all documents necessary to close the construction loan for the Project, as well as any deed restrictions that will run with the land.	Within three hundred (300) days of submission of Building Permit Application to the City's Building Division.
7. Building Construction. Developer to commence building construction.	Not later than sixty (60) days after issuance of a Building Permit and immediately upon completion of grading, excavation and foundation work.
8. Substantial Completion (Temporary Certificate Occupancy). Developer to achieve completion of construction of the Project in accordance with the Certificate of Compliance, which will then be issued by the Successor Agency.	Within 5 years of construction commencement.