



CITY COUNCIL AGENDA REPORT

Meeting Date: April 18, 2019

From: Clay Holstine, City Manager

Subject: Agreement to Consider Abandonment of Public Rights of Way and Transfer of Real Property

Community Goal

Economic Development, Community Building

Purpose

To accommodate previously approved commercial development in the Sierra Point area and to obtain funds to plan and develop a park/open space in the Sierra Point area.

Recommendation

Approve the Agreement to Consider Abandonment of Public Rights of Way and to Transfer Real Property, in a final form as approved by the City Attorney.

Background

In the Sierra Point area, the City owns property located at Assessor's Parcel Number 007-165-060 (City Property); HCP LS Brisbane LLC (HCP) owns adjacent properties (HCP Properties). Serving the City Property and the HCP Properties, in part, is Marina Entry Road which has been dedicated to the City. In June 2008, the City and HCP entered into a Development Agreement concerning HCP's Properties. Under the Development Agreement, HCP is entitled to develop its Properties for research and development and retail purposes.

In part the Development Agreement provides that in order to facilitate development of HCP's Properties, the City will transfer to HCP a small portion (approximately 4,700 square feet) of its Property and Marina Entry Road. See schematic attached to the Agreement. To effectuate the transfer of Marina Entry Road, it will be necessary for the City to vacate this public right of way. City staff has discussed with HCP representatives the fair market value of the properties to be transferred and agreement, subject to Council approval, has been reached that the fair market value is \$200,000.

The parties have prepared an agreement, attached, to carry out this transfer and payment to the City. The salient provisions of the agreement are discussed below.

Discussion

By separate action, the City shall will consider vacating the Marina Entry Road right of way as provided in the Streets and Highways Code. If that occurs, the City will, upon its receipt from HCP of the fair market value of the properties to be transferred to HCP (\$200,000), (a) record a resolution vacating the right of way and authorizing the transfer of the properties to HCP but reserving within the right of way any necessary easements for public pedestrian access and public utility purposes, and (b) quitclaim to HCP the City's interest in the properties subject to the reserved easements.

In addition, HCP and City will process a lot line adjustment so that the transferred properties will be within the boundaries of HCP's Properties.

As to the \$200,000, those funds will be used toward the planning and development of the public park/open space area immediately adjacent to HCP's properties.

Fiscal Impact

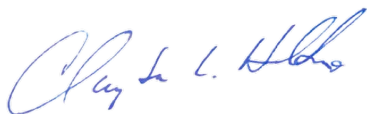
The City will receive \$200,000 towards the planning and development of open space/park in the Sierra Point area; otherwise, no fiscal impact.

Measure of Success

Development of commercial property in the Sierra Point will enhance the City's property tax income stream and development of open space/park in the Sierra Point area will provide an important amenity to those who work in the area.

Attachment

Agreement to Consider Abandonment of Public Rights of Way and Transfer of Real Property



Clay Holstine, City Manager

**AGREEMENT FOR ABANDONMENT OF PUBLIC RIGHTS-OF WAY AND
TRANSFER OF REAL PROPERTY**

THIS AGREEMENT (“Agreement”) is made _____ 2019 between the City of Brisbane, a Municipal Corporation, (“City) and HCP LS Brisbane, LLC, a Delaware limited liability company (“Owner”). City and Owner individually may be referred to as “Party” and collectively may be referred to as “Parties” in this Agreement.

Recitals

- A. City is the fee simple owner of the real property bearing Assessor Parcel Number 007-165-060 (“Parcel 6”) and of the real property identified as “MARINA ENTRY RD.” (“Marina Entry Road”) on the Assessor Map, Book 7, page 16 as the successor agency of the Redevelopment Agency of the City of Brisbane.
- B. For purposes of this Agreement, Marina Entry Road includes the land described in the Offers of Dedication recorded on February 27, 1987 as Instrument Number 87-029876 in the Official Records of San Mateo County, California, pursuant to which it is subject to the dedication to the City “for street and public service easement purposes” (“Dedication”).
- C. City and Owner have entered into a Development Agreement, dated June 16, 2008 and recorded August 26, 2008, Instrument No. 2008-097434, San Mateo County Records, (“the Development Agreement”) concerning Owner’s properties located at Assessor Parcel Numbers 007-165-080, 007-165-090, and 007-165-100, Brisbane, CA (“Owner’s Properties”).
- D. In part the Development Agreement provides that in order to facilitate development of Owner’s Properties, the City will transfer to Owner the City’s fee title in the portion of Parcel 6 and Marina Entry Road within the area identified in the schematic attached as Exhibit A (“Subject Property”).
- E. In order to effectuate this transfer, it will be necessary for the City to vacate the public rights-of-way within the Subject Property including the Dedication (“Rights of Way”), which vacation the City is willing to do.
- F. As part of this transfer, City has discussed with Owner the fair market value of the Subject Property and Owner has informed the City that it is willing to pay fair market value for the Subject Property free and clear of the Rights of Way except as otherwise specified in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises expressed below, the Parties agree as follows:

- 1. Owner shall prepare and provide to the City a map and legal description of the Subject Property.
- 2. City shall undertake to vacate the Rights of Way within the Subject Property in accordance with the procedures set forth in the Streets and Highways Code.
- 3. If the City vacates the Rights of Way within the Subject Property, the City shall, upon its receipt from the Owner of the fair market value of the Subject Property (as set forth in paragraph 5 below), (a) record a resolution or resolutions vacating

the Rights of Way within the Subject Property and authorizing the transfer of the Subject Property to Owner but reserving within the Subject Property any necessary easements for public pedestrian access and public utility purposes, and (b) quitclaim to Owner any and all of the City's right, title and interest to the Subject Property subject to the reserved easements ("Quitclaim").

4. Owner and City shall process a lot line adjustment to encompass the Subject Property within the boundaries of Owner's Properties, Assessor Parcel Numbers 007-165-130 and 007-165-140, and the Quitclaim shall be recorded in connection with that lot line adjustment. City shall cooperate in the process of that lot line adjustment, in accordance with its normal procedures.
5. The fair market value of the Subject Property shall be \$200,000.
6. City shall use these funds toward the planning and development of the public park/open space area immediately adjacent to Owner's Properties.
7. If Owner or City fails to perform any obligation under this Agreement and fails to cure the default within 30 days after the other Party has notified it in writing of the alleged default, the non-breaching Party shall have the right to enforce this Agreement by bringing an action at law or in equity to compel the breaching Party's performance of its obligations under the Agreement, for damages, restitution and reimbursement and any other remedy as provided by law.
8. In any action to enforce this Agreement the prevailing Party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This paragraph shall be interpreted in accordance with California Civil Code section 1717 and judicial decisions interpreting that statute.
9. The obligations of this Agreement shall run with the land and be binding on the Parties, their successors and assigns.
10. Formal notices, demands and communications between the Parties shall be given by registered or certified mail, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the parties as follows:
 - City: City Manager, City of Brisbane, 50 Park Place, Brisbane, CA 94005
 - Owner: Scott Bohn, HCP LS Brisbane LLC, 950 Tower Lane #1650, Foster City, CA 94404
11. This Agreement shall be governed by the laws of the State of California. Venue for any action to enforce or interpret this Agreement shall be in the Superior Court of the State of California, County of San Mateo. Any ambiguity shall not be construed against one of the Parties in favor of another.
12. This Agreement constitutes the entire agreement between the Parties and supersedes and cancels any prior agreements or understandings, whether oral or written, regarding the subject matter of this Agreement.
13. This Agreement may be amended only by a written instrument executed by the Parties or their successors in title.
14. Any of the requirements of this Agreement may be expressly waived in writing by the Parties but no waiver of any requirement of this Agreement shall, or shall be deemed, to extend or effect any other provision of this Agreement.

15. If any provision of this Agreement is invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.
16. Each of the individuals executing this Agreement represents and warrants that he or she has been authorized to do so and has the power to bind the Party for whom they are signing.
17. This Agreement may be executed in counterparts. Each counterpart shall have the same force and effect as an original and shall together constitute an effective, binding agreement on each of the Parties. Electronic and facsimile signatures shall be deemed original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first written above.

CITY OF BRISBANE

HCP LS Brisbane, LLC

Madison Davis, Mayor

By:
Managing Partner

Attest:

Ingrid Padilla,
City Clerk

Approved as to form:



Thomas McMorrow
City Attorney

LAND TRANSFER AT SIERRA POINT BIOTECH PROJECT

1"=40' (at 11"X17")

