



CITY COUNCIL AGENDA REPORT

Meeting Date: June 6, 2019

From: Director of Public Works/City Engineer

Subject: Agreement with HCP LS Concerning Payment of Inspection and Emergency Response Costs

Community Goal/Result

Economic Development

Purpose

To provide a mechanism for allocating required inspection and emergency response costs directly to the individual development at Sierra Point that requires such inspection and response.

Recommendation

Approve the Agreement with HCP LS Brisbane LLC.

Background

As noted in the 2/21/19 agenda report recommending approval of a Reimbursement Agreement with HCP LS to share with other benefitting property owners the extraordinary civil and geotechnical engineering costs that were required to obtain a waiver from the Division of Drinking Water (DDW) to install new water lines at Sierra Point,, the time, duration and cost required to obtain such a waiver were extraordinary.

That agenda report also discussed that the waiver was not finalized, but was expected to be so in the near future. The final waiver from DDW was issued April 9, 2019. The engineering report that served as the final waiver included a requirement to comply with a site-specific Maintenance Monitoring and Emergency Plan (MMEP). The MMEP sets forth a monitoring schedule to ensure contaminants do not enter the potable water system from the landfill, and specifies the emergency response actions to be taken if contaminants are detected at the inspection and monitoring locations.

Staff's estimate of the costs to complete inspections for the first five years is \$60,000 per year. At year 6 and beyond, the costs are expected to reduce to approximately \$20,000 per year.

Discussion

Recognizing that these costs are attributable directly to the current HCP Sierra Point project, HCP has agreed to enter into an agreement with the city to pay these costs. The Agreement is attached. The agreement specifies the terms of payment, the required recordkeeping, and both parties' rights in the event of a failure of the other party to perform its obligations.

Fiscal Impact

The agreement is written so that costs incurred by the property owner of the current HCP development are paid by that property owner, and not shared across the city’s water systems by non-benefitting water users. No direct impact to the city’s finances as a result of this action.

Measure of Success

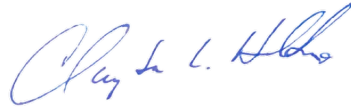
A mechanism that allows the city to recoup the costs of performing inspection and response actions directly from the water users whose development required a DDW waiver and compliance with a MMEP.

Attachments

Agreement Concerning the Payment of Inspection and Emergency Response Costs



Randy Breault, Public Works Director



Clay Holstine, City Manager

Recorded at the request of
And when recorded, return to:
City Clerk
City of Brisbane
50 Park Place
Brisbane, CA 94005

Exempt from recording fees
Government Code, Section 6103

AGREEMENT CONCERNING THE PAYMENT OF INSPECTION AND EMERGENCY RESPONSE COSTS

THIS AGREEMENT between the City of Brisbane, a Municipal Corporation ("City") and HCP LS Brisbane LLC, a limited liability company ("Owner") is made _____, 2019 concerning the obligation of Owner and its successors to pay certain inspection and emergency response costs related to the potable water system that will be installed on Owner's property, which property is located over a closed sanitary landfill.

RECITALS

- A. Owner is the owner of real property located in the City of Brisbane, County of San Mateo, California, commonly known as 800, 1000, 1200, 1400, 1600 and 1800 Sierra Point Parkway and more particularly described in Exhibit A, attached hereto and incorporated herein by reference ("the Property").
- B. The Property overlies a closed sanitary landfill.
- C. Owner has received from the City development plan approval for the Property that includes five office/research buildings and a parking structure ("the Project").
- D. The Project requires the installation of new water lines to supply potable water to the Project.
- E. The City, in its role as operator of Water System No. 411002, requested a waiver, under Title 22, California Code of Regulations, Section 6475 (f), from the Division of Drinking Water ("DDW") of the State Water Resources Control Board in order to allow Owner to install new water lines to supply potable water to the Project notwithstanding that the water lines would overlie a closed sanitary landfill.
- F. DDW, as a condition of granting such waiver, required that the City submit for its review and approval a Maintenance Monitoring and Emergency Plan ("MMEP") that sets forth a monitoring schedule to ensure, on an ongoing basis, that no contaminants enter the potable water system from the landfill.
- G. City and Owner's consultant prepared an MMEP for the DDW's review and approval.
- H. Based on the final version of the MMEP dated February 28, 2019, the DDW has issued to the City an Amended Domestic Water Supply Permit (Revised Permit Number 02-17-13P-4110002, effective April 9, 2019 to construct, operate, monitor and maintain the water system within the Sierra Point Biotech Development ("Sierra Point Water Supply System").
- I. City will undertake operation, monitoring and maintenance of the Sierra Point Water Supply System as provided in the MMEP.
- J. City and Owner by this Agreement intend to set forth their respective obligations concerning the MMEP including Owner's ongoing financial responsibility to pay for the operation, monitoring and maintenance of the Sierra Point Water Supply System as provided in the MMEP and an allowance for mitigation and emergency responses.

NOW, THEREFORE, in consideration of the following promises, the parties agree as follows:

1. The Recitals set forth above are true and correct.
2. MMEP, as used in this Agreement, means the final MMEP as approved by the DDW as reflected in the Amended Domestic Water Supply Permit referenced in Recital H, and any future amendments thereto as required and approved by the DDW.
3. City shall operate, monitor and maintain the Sierra Point Water Supply System as set forth in the MMEP. In general terms, for the first five years of this Agreement, there will be quarterly inspections for settlement monitoring, landfill gas monitoring and infiltration monitoring at pump-out vaults; after five years, the inspections will be annually.
4. The estimated cost of such inspections and related matters, such as preparing reports, and an allowance to cover any costs for mitigation or emergency responses is \$60,000 for the first five years and \$20,000 thereafter.
5. Owner shall pay the City the cost incurred for the City's compliance with the MMEP.
6. Upon execution of this Agreement and thereafter on the anniversary date of this Agreement for four years, Owner shall deposit with the City the sum of \$60,000. After five years, on each anniversary date of this Agreement, Owner shall deposit with the City the sum of \$20,000 annually. The Owner's deposits shall be held by City in a Reserve Account and disbursed in accordance with the terms of this Agreement.
7. City shall disburse from the Reserve Account the cost of all professional services retained by the City to carry out the terms of the MMEP, for any mitigation or emergency responses and other out of pocket expenses reasonably and necessarily incurred by the City in connection with this Agreement.
8. City shall keep a record of the Reserve Account showing the deposits made by Owner and all disbursements from the Reserve Account and shall, during the first five years of this Agreement, send to Owner quarterly such record and thereafter to Owner annually.
9. If at any time a disbursement from the Reserve Account would result in the balance being inadequate to cover foreseeable expenses to be incurred by the City, plus a reasonable margin as deemed appropriate by the City based on the nature of the anticipated expenses, City shall give written notice of such fact to Owner and Owner shall within 30 days after receipt of such notice deposit with the City such additional amount as may be necessary to restore the balance of the Reserve Account to an amount indicated by the City in the notice.
10. In the event of any failure or refusal of Owner to deposit the amounts set forth in paragraph 6 of this Agreement or to deposit the additional funds as set forth in paragraph 9 of this Agreement, City shall be entitled to (a) suspend all further processing of any Project applications, if any, (b) place the amount of the additional funds on the water bill for the Property and/or (c) to enforce this Agreement as set forth in paragraph 11 of this Agreement. If the water bill for some or all of the Property is in the name of a tenant(s) or other third party(ies), Owner shall notify such tenant or third party in writing, with a copy of such notice to the City, of this Agreement and the potential obligation of such tenant/third party to provide the additional funds to the City in order to continue water service.
11. If Owner fails to perform any obligation under this Agreement and fails to cure the default within 30 days after the City has notified Owner in writing of the default, City shall have the right to enforce this Agreement by bringing an action at law or in equity to compel Owner's performance of its obligations under the Agreement, for damages, restitution and reimbursement and any other remedy as provided by law.
12. 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.

13. The obligations of this Agreement shall run with the land, be binding on the parties, their successors and assigns and this Agreement shall be recorded in the Official Records of San Mateo County.
14. This Agreement shall not terminate so long as the DDW requires the MMEP.
15. 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: HCP LS Brisbane LLC, 950 Tower Lane, Suite 1650, Foster City, CA 94404
16. 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.
17. This Agreement constitutes the entire agreement between the parties and supersedes and cancels any prior agreements or understandings, whether oral or written.
18. This Agreement may be amended only by a written instrument executed by the parties or their successors in title, and duly recorded in the Official Records of San Mateo County.
19. 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.
20. 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.

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: Scott Bohn
Senior Vice President

Attest:

Ingrid Padilla,
City Clerk

Approved as to form:



Thomas McMorrow
Interim City Attorney

EXHIBIT A

Refer to Legal Description in attached First American Title Insurance Company Order Number: NCS-856487-ONT1

LEGAL DESCRIPTION

Real property in the City of Brisbane, County of San Mateo, State of California, described as follows:

PARCELS 5, 6 AND 7 AS SHOWN ON LOT LINE ADJUSTMENT NO. LLA-2-17, AS EVIDENCED BY DOCUMENT RECORDED SEPTEMBER 13, 2018 AS INSTRUMENT NO. 2018-071734 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

ALL THAT REAL PROPERTY SITUATE IN THE CITY OF BRISBANE, COUNTY OF SAN MATEO, STATE OF CALIFORNIA BEING A PORTION OF LOT 7 & LOT 6 AS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED IN [VOLUME 58 OF PARCEL MAPS AT PAGE 79](#) BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWEST CORNER OF LOT 7, SAID POINT ALSO BEING ON THE EASTERLY RIGHT OF WAY LINE OF SHORELINE COURT;

THENCE ALONG A CURVE TO THE LEFT WITH A RADIAL BEARING OF SOUTH 42°16'26" EAST, A RADIUS OF 500.00 FEET, CENTRAL ANGLE OF 36°40'24" AND AN ARC LENGTH OF 320.04 FEET TO A POINT ON A CURVE TO THE RIGHT;

THENCE NORTH 11°03'10"EAST 197.11 FEET TO A POINT ON A CURVE TO THE RIGHT;

THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 70.00 FEET, CENTRAL ANGLE OF 72°34'42" AND AN ARC LENGTH OF 88.67 FEET TO A POINT ON A CURVE TO THE RIGHT;

THENCE CONTINUING ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 225.00 FEET, CENTRAL ANGLE OF 21°15'04" AND AN ARC LENGTH OF 83.45 FEET TO A POINT ON A CURVE TO THE LEFT;

THENCE ALONG SAID CURVE TO THE LEFT WITH A RADIUS OF 495.00 FEET, CENTRAL ANGLE OF 27°43'09" AND AN ARC LENGTH OF 239.48;

THENCE LEAVING SAID CURVE SOUTH 12°36'06"EAST 540.92 FEET TO THE SOUTHERLY PROPERTY LINE;

THENCE ALONG THE SOUTHERLY PROPERTY LINE, NORTH 88°47'34" WEST 691.14 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

ALL THAT REAL PROPERTY SITUATE IN THE CITY OF BRISBANE, COUNTY OF SAN MATEO, STATE OF CALIFORNIA BEING A PORTION OF LOT 7 & LOT 6 AS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED IN [VOLUME 58 OF PARCEL MAPS AT PAGE 79](#) BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 6, THENCE FROM SAID POINT OF COMMENCEMENT, SOUTH 88°47'34"EAST 98.23 FEET TO THE POINT OF BEGINNING;

THENCE LEAVING SAID POINT OF BEGINNING, ALONG THE SOUTHERLY PROPERTY LINE SOUTH 88°47'34" EAST 212.29 FEET;

THENCE LEAVING SAID PROPERTY LINE AND ENTERING LOT 6, NORTH 01°12'26" EAST 398.89 FEET;

THENCE SOUTH 88°47'34" EAST 94.57 FEET;

THENCE SOUTH 65°46'55" EAST 105.51 FEET;

THENCE NORTH 69°26'50" EAST 134.38 FEET;

THENCE NORTH 40°14'54" EAST 41.23 FEET TO A POINT ON A CURVE TO THE LEFT;

THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 130.00 FEET, CENTRAL ANGLE OF 39°02'31" AND AN ARC LENGTH OF 88.58 FEET;

THENCE NORTH 01°12'26" EAST 258.57 FEET TO A POINT ON THE NORTHERLY PROPERTY LINE OF LOT 2;

THENCE ALONG SAID NORTHERLY PROPERTY LINE SOUTH 88°47'34" WEST 44.91 FEET;

THENCE NORTH 01°12'26" EAST 25.00 FEET TO A POINT ON CURVE TO THE LEFT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIAL BEARING OF NORTH 01°12'26" EAST, A RADIUS OF 490.00 FEET, CENTRAL ANGLE OF 28°50'26" AND AN ARC LENGTH OF 246.65 FEET;

THENCE ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SIERRA POINT PARKWAY, SOUTH 62°22'00" WEST 357.27 FEET TO A POINT ON A CURVE TO THE RIGHT;

THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 495.00 FEET, CENTRAL ANGLE OF 14°47'46" AND AN ARC LENGTH OF 127.83 FEET;

THENCE LEAVING SAID CURVE, SOUTH 12°36'06" EAST 540.92 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

ALL THAT REAL PROPERTY SITUATE IN THE CITY OF BRISBANE, COUNTY OF SAN MATEO, STATE OF CALIFORNIA BEING A PORTION OF LOT 3 AS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED IN [VOLUME 58 OF PARCEL MAPS AT PAGE 79](#) BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEAST CORNER OF LOT 5, SAID POINT ALSO BEING ON THE SOUTHERLY RIGHT OF WAY LINE OF SIERRA POINT PARKWAY;

THENCE ALONG THE SOUTHERLY RIGHT OF WAY LINE NORTH 88°47'34" EAST 315.09 FEET;

THENCE SOUTH 43°47'34" EAST 111.96 FEET;

THENCE SOUTH 01°12'26" WEST 285.83 FEET;

THENCE NORTH 88°47'34" WEST 60.50 FEET;

THENCE SOUTH 01°12'26" WEST 415.00 FEET TO THE SOUTHERLY PROPERTY LINE OF LOT 3;
THENCE ALONG SAID SOUTHERLY PROPERTY LINE NORTH 88°47'34" WEST 705.24 FEET;
THENCE LEAVING SAID PROPERTY LINE AND ENTERING LOT 2, NORTH 01°12'26" EAST 398.89 FEET;
THENCE SOUTH 88°47'34" EAST 94.57 FEET;
THENCE SOUTH 65°46'55" EAST 105.51 FEET;
THENCE NORTH 69°26'50" EAST 134.38 FEET;
THENCE NORTH 40°14'54" EAST 41.23 FEET TO A POINT ON A CURVE TO THE LEFT;
THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 130.00 FEET, CENTRAL ANGLE OF 39°02'31" AND AN ARC LENGTH OF 88.58 FEET;
THENCE NORTH 01°12'26" EAST 258.57 FEET THENCE SOUTH 88°47'34" EAST 315.09 FEET TO THE POINT OF BEGINNING.

APN: 007-165-080-8 and 007-165-090-7 and 007-165-100-4