



CITY COUNCIL AGENDA REPORT

Meeting Date: January 16, 2020

From: Director of Public Works/City Engineer

Subject: Addendum to Agreement with HCP LS

Community Goal/Result

Economic Development

Purpose

To provide a mechanism for sharing, and thereby reducing, the costs of obtaining a waiver for installation of water systems on individual developments at Sierra Point.

Recommendation

Approve the Addendum to the Reimbursement Agreement with HCP LS Brisbane LLC.

Background

Council approved an Agreement with HCP LS at its February 21, 2019 meeting to provide for a cost-sharing with other properties at Sierra Point who might in future benefit from the significant civil and geotechnical work completed to obtain a Title 22 waiver from the state Division of Drinking Water to install a waterline on the development at former parcels 5-7.

Discussion

Paragraph 1 of the Reimbursement Agreement requires HCP LS to provide a detailed certification of all costs incurred for the DDW waiver, requires the City Engineer to approve the cost certification, and finally requires the execution of an Addendum to this Agreement setting forth the final total cost.

The certification has been completed, and the addendum has been prepared by Legal Counsel.

Fiscal Impact

No direct impact to the city as a result of this action.

Measure of Success

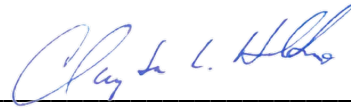
A mechanism that allows for the sharing of both the technical work and costs associated with that work to obtain a water system waiver at Sierra Point, which facilitates expeditious approval of a waiver while fairly allocating the costs amongst benefitting properties.

Attachments

1. Addendum to Reimbursement Agreement
2. February 21, 2019 staff report



Randy Breault, Public Works Director



Clay Holstine, City Manager

ADDENDUM TO REIMBURSEMENT AGREEMENT

This Addendum to Reimbursement Agreement (“Addendum”) is made _____, 2020, between the City of Brisbane (“City”) and HCP LS Brisbane, LLC (“Owner”).

Recitals

- A. City and Owner entered into a Reimbursement Agreement (“Agreement”) on March 7, 2019 in which Owner agreed to construct and operate a potable waterline over a closed sanitary landfill that is under the Properties that it owns.
- B. In order to construct that waterline, it was necessary for the City to obtain a waiver from the State Water Resources Control Board and, in order to obtain such waiver, the Division of Drinking Water of the Resources Control Board required an Operations and Maintenance Plan, including an ongoing surveillance program, to ensure no contaminants enter the potable water system from the landfill.
- C. City determined that the civil and geotechnical engineering that the Owner will provide in order to obtain the necessary waiver will directly benefit other properties (“Benefiting Properties”) since a similar requirement to obtain such waiver would be imposed when the owners of the Benefiting Properties develop their properties.
- D. The Agreement provides for an allocation of the proportionate share of the civil and geotechnical engineering costs between the Owner and the owners of the Benefiting Properties and provides for a reimbursement to the Owner of such proportionate share if development should occur on any or all of the Benefiting Properties.
- E. The Agreement further provides that the cost allocation is 33.4% to Owner and 66.6% to the owners of the Benefiting Properties, more particularly 33.3% to APN 007-165-020 and 33.3% to APN 007-165-050
- F. The Agreement also provides upon completion of the civil and geotechnical engineering and the City’s receipt of a final waiver from the Division of Drinking Water, Owner shall furnish to the City a detailed certification of all costs incurred by Owner for the civil and geotechnical engineering, which cost certification shall be adequately supported to verify and support the costs, and upon approval of the cost certification by the City Engineer, City and Owner will execute an Addendum to the Agreement setting forth the final cost (“Final Improvement Cost”) of the civil and geotechnical engineering.
- G. Owner has provided the civil and geotechnical engineering, the City has received a final waiver from the Division of Drinking Water, Owner has furnished to the City a detailed and adequately supported cost certification, the City Engineer has approved the Final Improvement Cost, and City and Owner now wish to enter into the Addendum.

NOW, THEREFORE, City and Owner agree as follows:

- 1. The Final Improvement Cost is \$246,522, as shown on the attached Exhibit 1, which Cost shall be allocated as follows: 33.4% (\$82,339) to Owner; 33.3% (\$82,338) to Benefiting Property Owner of APN 007-165-020; and 33.3% (\$82,338) to Benefiting Property Owner of APN 007-165-050.
- 2. City shall provide a copy of this Addendum to the Benefiting Property Owners.
- 3. In all other respects, the terms and conditions of the Agreement shall continue in full force and effect.

In witness whereof, the parties have executed this Addendum on the date written above.

City of Brisbane

HCP LS Brisbane, LLC

Clayton L. Holstine, City Manager

Scott Bohn, Senior Vice President

Attest

Ingrid Padilla, City Clerk

Approved as to form



Michael H. Roush
Legal Counsel



CITY COUNCIL AGENDA REPORT

Meeting Date: February 21, 2109

From: Director of Public Works/City Engineer

Subject: Reimbursement Agreement with HCP LS

Community Goal/Result

Economic Development

Purpose

To provide a mechanism for sharing, and thereby reducing, the costs of obtaining a waiver for installation of water systems on individual developments at Sierra Point.

Recommendation

Approve the Reimbursement Agreement with HCP LS Brisbane LLC.

Background

Title 22 of the California Code of Regulations prohibits operation of a potable waterline near/over a closed sanitary landfill unless a waiver is obtained from the Division of Drinking Water (DDW) of the State Water Resources Board by the operator of the water system. The City, as the operator of the water system locally, has previously obtained such waivers, and for several decades operated a potable water distribution system at Sierra Point.

In 2008, the City requested and received a waiver to extend that water system into and across the development of property on the south shoreline commonly known as Health Care Partners (HCP). That waiver was not utilized, as the development was dormant until 2017. Due to the significant passage of time between initial approval and project recommencement, city staff contacted the DDW to confirm if the 2008 waiver was still valid. Staff was informed that it was not, and that a contemporary waiver would be required.

The new requirements for submittal and approval of a waiver have required an effort not previously encountered. (Staff was never provided a direct answer as to the reason for the new focus, but have assumed that intervening water events, such as the lead contamination crisis in Flint, MI, are a partial explanation.) In order to obtain such waiver, the City required the property owner to undertake the necessary civil and geotechnical engineering in order to meet the DDW's requirements. The DDW waiver has yet to be finalized (although staff has reason to believe it will be granted) and the civil and geotechnical engineering costs that have been incurred to obtain the waiver are still to be certified by the City Engineer, but the property owner has informed us that this effort related only to the waiver will total several hundreds of thousands of dollars.

Other properties in the Sierra Point area that will need potable water will also require a waiver from the DDW. Presumably, much of the civil and geotechnical work that HCP has undertaken can be utilized for those waivers. In light of that, if those property owners choose to rely on that work, they should reimburse HCP proportionately for the costs HCP incurred in obtaining the waiver. Accordingly, a Reimbursement Agreement has been drafted to provide for that reimbursement. See attached.

Discussion

The proposed Reimbursement Agreement (RA) between the City and HCP will require the property owners of the two undeveloped parcels at Sierra Point to reimburse HCP for a fair share of the cost of developing the current DDW waiver. (The City will require the reimbursement at the time the property owners obtain a building permit for their sites.) In exchange for this reimbursement, these two parcels will be permitted to use the civil and geotechnical work completed by HCP to submit their waiver request, which will presumably result in an approval being obtained much faster than the two years it has taken for the HCP waiver.

Should the RA not be approved, the private engineering work done for HCP would not be available to these undeveloped properties, and those property owners would have to go through their own development of same, significantly increasing their time before water could be provided onsite. Staff contacted the representative of the property owner (Michael Gerrity, Phase 3 Real Estate Partners) of 3000 Marina Boulevard, the parcel most likely to be developed in the near future, who indicated that he understood the reason for this agreement and did not express any objection to it.

Fiscal Impact

No direct impact to the city as a result of this action.

Measure of Success

A mechanism that allows for the sharing of both the technical work and costs associated with that work to obtain a water system waiver at Sierra Point, which facilitates expeditious approval of a waiver while fairly allocating the costs amongst benefitting properties.

Attachments

1. Reimbursement Agreement



Randy Breault, Public Works Director

Clay Holstine, City Manager

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (the "Agreement"), dated _____, between THE CITY OF BRISBANE, a municipal corporation ("City") and HCP LS BRISBANE LLC ("Owner"), is made with reference to the following facts:

A. Owner is the owner of certain real property in the City of Brisbane, County of San Mateo, State of California, located at Sierra Point Parkway, identified as Assessor's Parcel Nos. 007-165-080, 007-165-090, and 007-165-100 ("the Properties") and more particularly described in Exhibit "A" attached hereto and made a part hereof:

B. Owner is constructing five (5) office/research buildings and one (1) parking structure on the Properties and, as such, will need to construct and operate a potable waterline over a closed sanitary landfill that is under the Properties.

C. As a condition for approval of such development City has required Owner to provide the civil and geotechnical engineering necessary for City to request approval and obtain a waiver from the State Water Resources Control Board under Section 6475(f), Title 22, California Code of Regulations to operate a waterline over a closed sanitary landfill.

D. The Division of Drinking Water (DDW) of the State Water Resources Control Board required, as a condition of the waiver, the approval of an Operations and Maintenance Plan, including an ongoing surveillance program, to ensure no contaminants enter the potable water system from the landfill.

E. City has determined that the civil and geotechnical engineering that the Owner will provide in order to obtain the necessary waiver will directly benefit other properties hereinafter described (collectively, the "Benefiting Properties"), since a similar requirement to obtain a waiver from DDW will be imposed when the owners of the Benefiting Properties develop their real property.

F. City and Owners now wish to enter into this Agreement for the purpose of allocating a proportionate share of the civil and geotechnical engineering costs to the owners of the Benefiting Properties and providing for a reimbursement to the Owner of such proportionate shares if development occurs on any or all of the Benefiting Properties during the term of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Upon completion of the civil and geotechnical engineering and receipt by City of a final waiver from DDW, Owner shall furnish to City a detailed certification of all costs incurred by the Owner for the civil and geotechnical engineering. The cost certification shall be supported by such invoices, cancelled

checks, and other documentation as City may require to verify the accuracy and legitimacy of all costs claimed by the Owner. Upon approval of the cost certification by the City Engineer, City and Owner shall execute an Addendum to this Agreement setting forth the final total cost ("Final Improvement Cost") of the civil and geotechnical engineering.

2. Based upon the civil and geotechnical engineering that each owner of the Benefiting Properties would have had to individually implement to develop trench sections, connection details and a surveillance program, the Final Improvement Cost should be allocated as follows:

33.4%	to Owner
	to owners of the <u>Benefiting Properties</u> :
33.3%	APN 007-165-020
33.3%	APN 007-165-050
100.00%	

3. In the event an application is submitted during the term of this Agreement for development of any of the Benefiting Properties, and such application involves a project for which City would have required the applicant to provide civil and geotechnical engineering necessary for City to request approval and obtain a waiver from the State Water Resources Board under Section 6475(f), Title 22, California Code of Regulations to operate a waterline over a closed sanitary landfill based upon the ordinances and building regulations of City in effect as of the date such application is submitted, City shall require that the percentage share of the Final Improvement Cost allocated to that owner/applicant be paid to City prior to the issuance of the first building permit for the proposed development on such Benefiting Property. Upon receipt of such payment, City shall promptly remit the same to the Owner.

4. Nothing herein shall require City to issue a building permit to an owner of any Benefiting Property under circumstances where such issuance would otherwise be denied, nor shall this Agreement limit in any way the authority of City to impose conditions or exactions in addition to the reimbursement condition described herein. City shall be relieved of its obligation under this Agreement to collect the reimbursement amount if City is legally prohibited from doing so under any ordinance, state or federal law, regulation, or court decision.

5. This Agreement shall remain in effect for a period of twenty (20) years from the date hereof.

6. This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto, including any transferee of legal title to the Properties. If either of the benefitting Properties is subdivided, the Final Improvement Costs that are allocated to such benefitting Properties shall be reallocated on a pro rata basis to the newly subdivided parcels.

IN WITNESS WHEREOF, the parties have executed this Reimbursement Agreement on the date first above written.

CITY:

THE CITY OF BRISBANE,
a municipal corporation

By: _____
Madison Davis, Mayor

ATTEST:

Ingrid Padilla, City Clerk



Michael Roush, City Attorney

OWNER:

EXHIBIT "A"

Legal Descriptions

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:

Owner: HCP LS BRISBANE LLC

Property: Assessor's Parcel No. 007-165-080

All that certain land situated in the State of California, County of San Mateo, City of Brisbane, described as follows:

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:

Owner: HCP LS BRISBANE LLC

Property: Assessor's Parcel No. 007-165-090

All that certain land situated in the State of California, County of San Mateo, City of Brisbane, described as follows:

All that certain land situated in the State of California, County of San Mateo, City of Brisbane, described as follows:

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:

Owner: HCP LS BRISBANE LLC

Property: Assessor's Parcel No. 007-165-100

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.