

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: **Draft Ordinance No. 616** - Development Agreement DA-1-16- Proposed First Amendment to Opus Office Center Development Agreement, 3000-3500 Marina Boulevard, Sierra Point

DATE: February 2, 2017

City Council Goals:

To develop recreational facilities and promote recreation, educational and cultural programs and passive uses related to parks. (Goal#6)

Purpose:

To consider DA-1-16, a proposal to amend the Opus Office Center Development Agreement (DA-1-11). The revised development agreement proposes to extend the expiration date of the planning entitlements for the Opus Office Center from 2022 to 2027. In exchange, the developer would install solar power generation facilities on the roof of the parking structure, relinquish their long-term ground lease over City-owned 3.4 acre Sierra Point Parcel R, and pay fees to the City for unspecified future improvements of Parcel R. Future improvements to Parcel R would be by determined by the City through a separate process and are not a part of this application.

Recommendation:

That the City Council approve Case DA-1-16 and introduce Ordinance No. 616.

Background:

In 2008, the City Council granted land use approvals for development of an office project (Opus Office Center) encompassing approximately 445,000 square feet of building area in 8 and 10-story buildings and a 5-level parking structure on vacant land at 3000-3500 Marina Boulevard in Sierra Point. The approvals consisted of a design permit, use permit, variance, and tentative parcel map approval. In 2011, City Council granted extensions of these approvals contingent upon construction of the project to LEED Gold standards. This requirement was formalized through the adoption of Development Agreement DA-1-11 approved by the City Council in 2012. In addition to formalizing the LEED Gold requirement, the approved DA extended the life

of the project approvals until June 2022. The property owner is now interested in further extending the term of these approvals.

Additionally, over the past few years, the City has been exploring options to regain control of Parcel R at Sierra Point to allow it to be used for public purposes . Parcel R is an approximately 3.4 acre City-owned mostly vacant site located easterly of the easterly terminus of Sierra Point Parkway. In 1984, the City granted a long-term ground lease to a developer in exchange for an upfront payment that helped finance the Marina. The ground lease had a 80–year term (renewable at the leaseholder’s option for another 19 years) and authorized the leaseholder to develop Parcel R with commercial space, envisioned in the form of retail and/or destination restaurant(s). The leaseholder of Parcel R (and owner of 3000-3500 Marina Boulevard) has been unsuccessful in attracting tenants interested in developing or occupying Parcel R as envisioned.

The proposed DA amendment is intended to address both the developer and city interests described above. The terms of the agreement are outlined in the Discussion section of this report below and discussed in further detail in the attached January 12, 2017 Planning Commission report. The Commission recommended approval of DA-1-16 by a vote of 3-0 on January 12, 2017.

Discussion:

DA-1-16 (attached to Draft Ordinance 616) proposes the following:

- A. Establishing a new 10-year term for the development agreement (commencing upon its execution), superseding the current DA-1-11 expiration date of June 4, 2022, which effectively extends the expiration date of the planning entitlements from 2022 to 2027.
- B. Retaining the LEED Gold requirement established under DA-1-11.
- C. Clarifying procedures for City review of Research and Development (R&D) already permitted in the Sierra Point Commercial District (SPCRO) zoning district under Section 17.18.020.K of the Brisbane Municipal Code.
- D. Requiring the applicant to install solar panels on the roof of the parking structure.
- E. Requiring the applicant to quitclaim or otherwise terminate their existing leasehold and related development rights over “Parcel R”.
- F. Requiring the applicant to pay \$300,000 to the City of Brisbane for unspecified site preparation of Parcel R for unspecified future public use, and for the applicant to subsequently pay the City of Brisbane upon building permit issuance \$.50 cents/square foot of building area excluding the parking garage (subject to annual adjustment to reflect the change annually in the Engineering Cost Index), such funds to be used for unspecified future public improvements of Parcel R.

Environmental Determination:

A Mitigated Negative Declaration (MND) was prepared and adopted for the original project in 2009. This MND was also cited in the approval of DA-1-11. In considering the current application, the project has been re-evaluated to ensure that the previously adopted MND adequately identifies the project's impacts and the adopted mitigation measures are still appropriate. This analysis reveals that the proposed revisions to the project (adding solar panels to the roof of the parking structure and relinquishing the ground lease) and circumstances under which the project is being undertaken do not result in new or greater impacts or require new or different mitigation measures. The analysis supporting these conclusions is contained in the attached Addendum to the Opus Office Center IS/MND dated December 2016. It is recommended that the City Council adopt this addendum as recommended by the Planning Commission.

As a matter of information, the provisions of the revised DA require the developer pay fees to the City for future improvements to Parcel R. These future improvements have not yet been determined, and the City will undertake a separate planning and environmental review process for any future improvements to Parcel R.

Fiscal Impact:

If executed the amended Development Agreement could generate in excess of \$500,000 for public improvements to Parcel R.

Measure of Success:

To promote the orderly development of Sierra Point, providing the applicant greater certainty for future development in exchange for the community benefit of the City regaining control of Parcel R and the developer providing funds enabling Parcel R to be improved for public purposes.

Attachments:

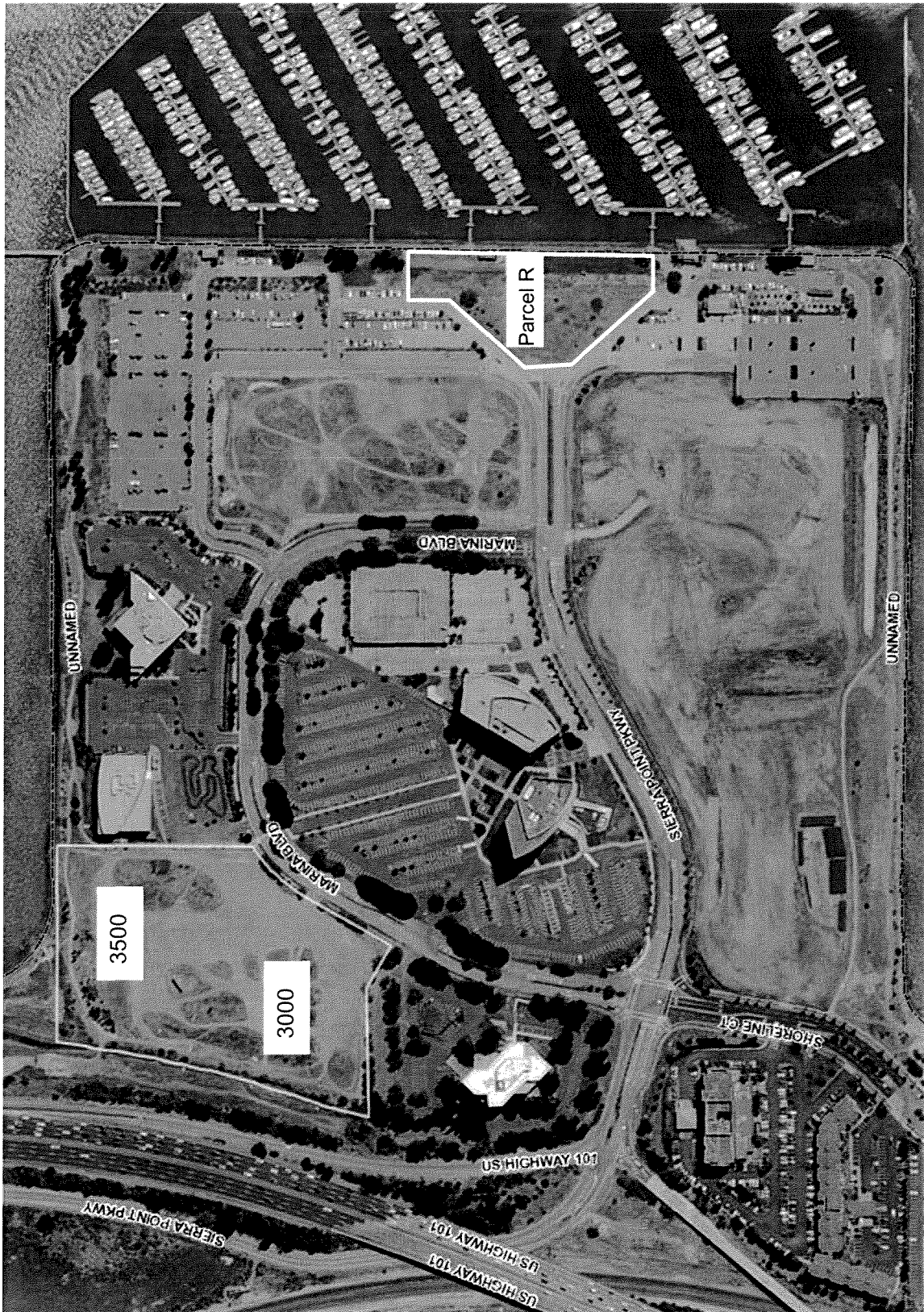
- Vicinity Map
- Draft Ordinance 616 (including draft Development Agreement Amendment)
- Planning Commission Resolution DA-1-16
- Planning Commission Staff Report and Draft Minutes- January 12, 2017 meeting
- December 2016 Opus Office Center MND/Initial Study Addendum



John Swiecki, Community Development Director



Clay Holstine, City Manager



DA-1-16 Vicinity Map

DRAFT ORDINANCE NO. 616

**AN ORDINANCE OF THE CITY OF BRISBANE APPROVING THE
FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR
ASSESSOR'S PARCEL NUMBER 007-165-020 (OPUS OFFICE
CENTER PROJECT)**

WHEREAS, Section 65864 *et. seq.* of the California Government Code and Resolution No. 88-10 adopted by the Brisbane City Council authorize the City to enter into a development agreement with any person having a legal or equitable interest in real property for the development of that property; and

WHEREAS, SIERRA POINT, LLC, a California limited liability company ("Developer") is the owner of vacant land located on the northwesterly side of Marina Boulevard, easterly of Highway 101, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-165-020 ("the Property"); and

WHEREAS, the City of Brisbane ("City") has granted land use approvals for development of an office project on the Property, consisting of approximately 438,104 square feet of office space in two buildings (8 and 10 stories), a 5-level 1,175 space parking structure, and 211 surface parking spaces ("the Project"), such approvals being identified as Design Permit DP-5-07 (as extended by DP-2-11), Use Permit UP-3-08 (as extended by UP-7-11), Variance V-1-08 (as extended by V-2-11), and Tentative Parcel Map TPM-1-08; and

WHEREAS, the City entered into a Development Agreement (Case DA-1-11) with the Developer on June 12, 2012 extending the above-referenced land use approvals to June 12, 2022 in exchange for a requirement for the Developer to construct the project to LEED Gold standards; and

WHEREAS, the Developer has filed an application to amend DA-1-11, said amendment identified as the First Amendment to the Development Agreement or Case DA-1-16; and

WHEREAS, the proposed First Amendment to the Development Agreement has been prepared and notice of the City's intention to consider adoption of such agreement amendment was given in accordance with the requirements of California Government Code Section 65867; and

WHEREAS, pursuant to the California Environmental Quality Act, the City has determined that Case DA-1-16 does not result in any new or substantially greater significant effects or require new mitigation measures not identified in the 2008 Initial Study (IS) and Mitigated Negative Declaration (MND) prepared for the Opus Office Center project and therefore does not meet the conditions described in CEQA Guidelines Section 15162 for preparation of a subsequent MND and an *Addendum to the Opus Office Center Initial Study/Mitigated Negative Declaration* (Addendum) dated December 2016 has been prepared; and

WHEREAS, on January 12, 2017, following the conduct of a duly noticed public hearing, the Brisbane Planning Commission adopted Resolution No. DA-1-16, recommending to the City Council that the draft development agreement amendment be adopted; and

WHEREAS, the proposed First Amendment to the Development Agreement between the City and Developer was presented to the City Council for consideration, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, on February 2, 2017, the City Council conducted a duly noticed public hearing on the proposed First Amendment to the Development Agreement at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the City Council has considered the staff reports, the *Addendum to the Opus Office Center Initial Study/Mitigated Negative Declaration*, the minutes, proceedings and recommendations of the Planning Commission, and the oral and documentary evidence presented at the public hearing and has determined that it would be in the best interest of the City to enact the Development Agreement,

NOW, THEREFORE, the City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: The City Council finds that amending the Development Agreement with Sierra Point, LLC, in the form attached hereto as Exhibit A, is consistent with the Brisbane General Plan and the Brisbane Zoning Ordinance and will provide substantial public benefits beyond the exactions for public improvements that would be required under the normal development review process.

SECTION 2: The City Council further finds that the environmental impacts of the Project have been fully and completely analyzed in the 2008 Mitigated Negative Declaration prepared for the Project, and as described in the 2016 *Addendum to the Opus Office Center Initial Study/Mitigated Negative Declaration* (Addendum) and the Project as amended does not result in any of the conditions described in CEQA Guidelines Section 15162 for preparation of a subsequent MND.

SECTION 3: The First Amendment to the Development Agreement attached hereto as Exhibit A is hereby enacted and adopted.

SECTION 4: The City Council hereby authorizes and directs the Mayor to execute the First Amendment to the Development Agreement for and on behalf of the City after the effective date of this Ordinance.

SECTION 5: This ordinance shall take effect thirty (30) days from the date of its adoption.

The above and foregoing Ordinance was regularly introduced and, after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City

Council of the City of Brisbane held on the _____ day of _____, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Recording requested by:

City of Brisbane

When recorded, mail to:

City Clerk
City of Brisbane
50 Park Place
Brisbane, CA 94005

Exempt from recording fee: Government Code, sections 6103, 27383

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR ASSESSOR'S PARCEL NUMBER
007-165-020 (OPUS OFFICE CENTER PROJECT)**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the "First Amendment") is entered into this _____ day of _____, 2017 between the City of Brisbane, a municipal corporation ("City") and Sierra Point, LLC, a Delaware limited liability company ("Developer").

RECITALS

- A. On June 12, 2012 City and Developer entered into a Development Agreement ("the Agreement") concerning the property identified as San Mateo County Assessor's Parcel No. 007-165-020, consisting of approximately 8.87 +/- acres and commonly known as 3000-3500 Marina Boulevard, Brisbane, California, more particularly described in Exhibit A attached hereto and made a part hereof ("the Property").
- B. The Agreement was recorded on February 4, 2013, in the Official Records of San Mateo County, Instrument No. 2013-018557.
- C. City and Developer now wish to amend the Agreement as provided herein.
- D. The Successor Agency of the Redevelopment Agency of the City of Brisbane ("Successor Agency") owns certain undeveloped property located at the eastern end of Sierra Point Parkway, commonly known as 400 Sierra Point Parkway in the City, consisting of approximately 3.4 +/- acres and identified as a portion of San Mateo County Assessor's Parcel No.007-165-060 ("the Leased Property"). City and Developer's predecessor in interest previously entered into a Ground Lease Agreement, dated March 29, 1984 and recorded March 29, 1984 for the lease of the Leased Property by City to Developer's predecessor in interest .
- E. City has prepared an *Addendum to the Opus Office Center Initial Study/Mitigated Negative Declaration* dated December 2016 ("Addendum") to the Opus Office Center Initial Study/Mitigated Negative Declaration ("2008 IS/MND") which was adopted by the City in

December 2008. The Addendum concludes that the proposed revisions to the Agreement and the Opus Office Center project (the "Project") which are the subject of this First Amendment (1) would not cause new significant environmental effects not identified in the 2008 IS/MND, and (2) would not cause environmental effects to be more substantially more severe than those identified in the 2008 IS/MND, and no substantive changes have occurred with respect to current circumstances under which the Project would be undertaken that would cause new or substantially more severe significant environmental effects than were identified in the 2008 IS/MND, nor has new information become available that shows that the Project would cause new or substantially more severe environmental effects which have not already been analyzed in the 2008 IS/MND.

F. As provided by law, on January 12, 2017, the Planning Commission of the City conducted a public hearing on the proposed amendment to the Agreement adopted Resolution No. DA-1-16 recommending the Brisbane City Council approve the First Amendment.

G. As provided by law, on February 2, 2017, the City Council of the City conducted a public hearing on the First Amendment, accepted the findings and recommendations of the Planning Commission, determined the First Amendment was consistent with the General Plan and introduced Ordinance No. 616 to adopt the First Amendment to the Agreement.

H. On _____, 2017, the City Council adopted Ordinance No. 616 adopting the First Amendment to the Agreement. Ordinance No.616 became effective _____, 2017.

Now, therefore, in consideration of the mutual covenants contained in this First Amendment, City and Developer agree as follows:

Section 1. Unless otherwise provided herein, the Definitions used in the Agreement shall have the same meanings as used in this First Amendment.

Section 2. Section 2.2 of the Agreement (Land Use Term) is amended to read as follows:

"2.2 Land Use Term. The term of the Agreement, as amended, shall commence on the effective date of Ordinance No. 616 (as set forth in Recital H) and shall expire 10 years thereafter, on May 6, 2027, subject to Sections 6 and 8.2 of the Agreement, unless sooner terminated or extended as hereinafter provided. Notwithstanding any provisions to the contrary that may be contained in City's Subdivision or Zoning Ordinances, the Project Approvals shall remain in full force and effect during the Land Use Term of this Agreement, as amended, and any extensions thereof."

Section 3. Section 4.1 of the Agreement (Applicable Ordinances and Approvals) is hereby amended by adding thereto a new subsection (d) to read as follows.

"4.1 Applicable Ordinances and Approvals. Developer shall have the right to proceed with development of the Project in compliance with Applicable Law, subject to the following:

(Subsections (a), (b) and (c), no change.)

(d) Notwithstanding anything in this Agreement to the contrary, City determines that the permitted uses in the Research and Development category of the SP-CRO Sierra Point Commercial District, as generally described in Chapters 17.02 and 17.18 of the Brisbane Municipal Code include, but are not limited to, the following uses and facilities:

- (i) A use primarily engaged in the study, testing, engineering, design, analysis of experimental products, processes or services related to current or new technologies. Research and development of uses may include manufacturing, fabricating, processing or storing products, materials or similar related activities where such activities are accessory to research, development or evaluation. Related administrative uses such as finance, marketing, sales, accounting, purchasing or corporate offices; providing services to others on- or off-site; and related educational uses may also be included provided they remain accessory to the primary uses of “research and development” , and are consistent with any limitations on accessory uses for the SP-CRO Sierra Point Commercial District. Typical “research and development” uses may include, but are not limited to, computer software and hardware firms, electronic research firms, biotechnical firms, clean technology firms and pharmaceutical research laboratories.
- (ii) A use for which research and development components require substantial laboratory space and/or equipment for testing or development, which may also include associated adjacent or nearby work stations for recording or preparing written documentation of research. Typical laboratory research and development uses may include, but are not limited to, biotechnical firms and pharmaceutical research laboratories.
- (iii) A use for which the research and development components primarily occur in an office setting, with minimal laboratory area or research equipment, other than computers and other related electronic equipment. Typical office type research and development uses may include, but are not limited to, computer software and computer simulation firms.
- (iv) Any use otherwise determined by the City’s Community Development Director to be a permitted use under the research and development category.

The prohibition of research and development including the use of live dogs, cats or nonhuman primates set forth in Section 17.18.020 K of the Brisbane Municipal Code is not affected by this Section 4.1 (d), nor is the requirement for compliance with conditions imposed by the Fire

Marshal or Building Official on building permit applications and building design. As to the uses described in this Section 4.1 (d), the Developer shall not be required to apply for a conditional use permit for such use unless, following a risk assessment under Section 17.18.045 of the Brisbane Municipal Code (as said Section may be amended) or following an evaluation by the Fire Marshal or Building Official, there is a recommendation that certain conditions of approval are necessary to protect the public health, safety and welfare and those conditions are not otherwise included in any of the Codes, standards or regulations applicable to such use. The City and the Developer recognize that the likelihood of such conditions not being included in the Codes, standards or regulations applicable to such uses is not substantial. Prior to submitting an application for a Subsequent Project Approval, a Developer may submit a Risk Assessment Questionnaire in order for the City to conduct a risk analysis and the for the Fire Marshal and Building Official to evaluate the risks. Thirty days from the date the City has received the completed Risk Assessment Questionnaire and any other information from the Developer the City needs to conduct the risk analysis and undertake an evaluation of the risk, the City will advise, based on the completed Questionnaire and other information it has received, the Developer whether the Developer needs to apply for a conditional use permit. If the City fails to advise the Developer within 30 days of its receipt of a fully completed Questionnaire (and any other information that the City has requested) whether the Developer needs to apply for a conditional use permit, the Developer shall not be required to apply for such permit. ”

Section 4. Within 10 days of the effective date of Ordinance 616, Developer shall (a) by separate instrument quitclaim or otherwise terminate all of its interest in the Leased Property to the Successor Agency and (b) pay to City \$300,000, which payment will be used for site preparation of that portion of the Leased Property to be developed for public purposes.

Section 5. Each time the City issues a building permit for development of the Property, the Developer shall pay to City \$.50 times the square footage of the building (other than the parking structure) for which the City has issued such building permit , which payment will also be used toward developing for public purposes the Leased Property. The \$.50/square foot will be adjusted each January 1 to reflect the change in the Engineering Cost Index.

Section 6. Developer shall install on the top floor of the parking structure that it constructs on the Property a solar panel system sufficient to provide electrical energy to help meet the electrical energy needs of the Project. This Section 6 supersedes and replaces Condition of Approval V of the Project Approvals.

Section 7. In all other respects, the terms and conditions of the Agreement shall continue in full force and effect.

In witness whereof, City and Developer have executed this First Amendment on the date set forth above.

City of Brisbane

Sierra Point, LLC

Mayor

BY: _____
Its _____

Attest:

City Clerk

Approved as to form:

City Attorney

RESOLUTION DA-1-16

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
RECOMMENDING ADOPTION OF AN ORDINANCE AMENDING DEVELOPMENT
AGREEMENT DA-1-11 FOR THE OPUS OFFICE CENTER AT 3000-3500 MARINA BOULEVARD,
SIERRA POINT

WHEREAS, Sierra Point LLC, the applicant, filed an application (Case DA-1-16) with the City of Brisbane for the first amendment to the existing Opus Office Center Development Agreement (Case DA-1-11) which:

Establishes a new 10-year term for the development agreement (commencing upon its execution), superseding the current DA-1-11 expiration date of June 4, 2022, effectively extending the previous planning entitlements as well;

Retains the LEED Gold requirement established under DA-1-11;

Clarifies procedures for City review of Research and Development (R&D) already permitted in the Sierra Point Commercial District (SPCRO) zoning district under Section 17.18.020.K of the Brisbane Municipal Code;

Requires the applicant to install solar panels on the roof of the parking structure;

Requires the applicant to quitclaim or otherwise terminate its existing leasehold and related development rights over "Parcel R";

Requires the applicant to pay \$300,000 to the City of Brisbane for unspecified site preparation of Parcel R for unspecified future public use, and for the applicant to subsequently pay the City of Brisbane upon building permit issuance \$.50 cents/square foot of building area excluding the parking garage (subject to annual adjustment to reflect the change annually in the Engineering Cost Index), such funds to be used for unspecified future public improvements of Parcel R; and

WHEREAS, an *Addendum to the Opus Office Center Initial Study/Mitigated Negative Declaration* (Addendum) dated December 2016 has been prepared demonstrating that DA-1-16 does not result in any new or substantially greater significant effects or require new mitigation measures not identified in the 2008 Initial Study (IS) and Mitigated Negative Declaration (MND) prepared for the Opus Office Center project and therefore the proposed amendment does not meet the conditions described in CEQA Guidelines Section 15162 requiring preparation of a subsequent MND; and

WHEREAS, on January 12, 2017 the Planning Commission of the City of Brisbane conducted hearings on the Addendum and DA-1-16, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the Addendum, staff memoranda and the written and oral evidence presented to the Planning Commission in support of and in opposition to the Addendum and DA-1-16; and

WHEREAS the Planning Commission determined that DA-1-16 does not result in any new or substantially greater significant effects or require new mitigation measures not identified in the 2008 Initial Study (IS) and Mitigated Negative Declaration (MND) prepared for the Opus Office Center project and therefore does not meet the conditions described in CEQA Guidelines Section 15162 for preparation of a subsequent MND; and

WHEREAS, the Planning Commission has found and determined that DA-1-16 is consistent with the Brisbane General Plan;

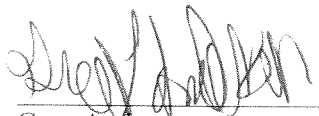
NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission hereby recommends to the Brisbane City Council that the proposed Ordinance approving DA-1-16 be adopted.

ADOPTED this 12th day of January, 2017 by the following vote:

AYES: Anderson, Munir, Parker

NOES: None

ABSENT: Do, Reinhardt

 23 Jan 2017

Greg Anderson
Acting Chairperson

ATTEST:



John A Swiecki, Community Development Director

City of Brisbane

Planning Commission Report

TO: Planning Commission For the Meeting of January 12, 2017

FROM: John Swiecki, Community Development Director

SUBJECT: **3000-3500 Marina Boulevard;** Development Agreement DA-1-16; First Amendment of Development Agreement DA-1-11 for the Opus Office Center; Marcus LoDuca, applicant; Sierra Point LLC, owner; APN 007-165-020

Background:

In 2008, the City Council granted land use approvals for development of an office project (Opus Office Center) encompassing approximately 445,000 square feet of building area in an 8 and 10-story building and a 5-level parking structure on vacant land at 3000-3500 Marina Boulevard in Sierra Point. The approvals consisted of a design permit, use permit, variance, and tentative parcel map approval. In 2011, City Council granted extensions of these approvals contingent upon construction of the project to LEED Gold standards. This requirement was formalized through the adoption of Development Agreement DA-1-11 approved by the City Council in 2012. In addition to formalizing this requirement, the approved DA extended the life of the project approvals for 10 years (until June 2022). The property owner is now interested in further extending the term of these approvals.

Additionally, over the past few years, the City has been exploring options regarding Parcel R at Sierra Point. As shown on the attached Exhibit, Parcel R is an approximately 3.4 acre City-owned mostly vacant site located easterly of the easterly terminus of Sierra Point Parkway. In 1984, the City entered into a long-term ground lease to a developer in exchange for an upfront payment that helped finance the Marina. The ground lease had a 80-year term (renewable at the leaseholder's option for another 19 years) and authorized the leaseholder to develop Parcel R with up to 50,000 square feet of commercial space.¹ However, subsequent to the execution of the ground lease, 12,500 square feet of retail uses of the allowable 50,000 square feet was re-allocated to the Sierra Point Biotech project,² thereby reducing the maximum buildable square footage on Parcel R to 37,500 square feet. The leaseholder of Parcel R is also the owner of 3000-3500 Marina Boulevard and has been unsuccessful in attracting tenants interested in developing or occupying Parcel R as planned. Given the lack of development interest, the City has been exploring options to regain control of Parcel R to allow it to be used for public benefit before the ground lease expires.

¹ Brisbane, City of, 1984. *Ground Lease Agreement*. Recorded March 29.

² OPUS West Corporation, 2008. *Amended Combined Site and Architectural Design Guidelines, Sierra Point*.

Discussion:

In order to address both the applicant's desire to extend the development approvals for 3000-3500 Marina Boulevard and the City's interest in regaining control of Parcel R, the applicant has proposed a first amendment (Case DA-1-16) to Development Agreement DA-1-11. As a reminder a development agreement is a negotiated contract between a private entity and the City and the terms are binding on both parties.

DA-1-16 (attached as Exhibit 2) proposes the following:

- A. Establishing a new 10-year term for the development agreement (commencing upon its execution), superseding the current DA-1-11 expiration date of June 4, 2022, effectively extending the previous planning entitlements as well.
- B. Retaining the LEED Gold requirement established under DA-1-11.
- C. Clarifying procedures for City review of Research and Development (R&D) already permitted in the Sierra Point Commercial District (SPCRO) zoning district under Section 17.18.020.K of the Brisbane Municipal Code.
- D. Requiring the applicant to install solar panels on the roof of the parking structure.
- E. Requiring the applicant to quitclaim or otherwise terminate their existing leasehold and related development rights over "Parcel R" .
- F. Requiring the applicant to pay \$300,000 to the City of Brisbane for unspecified site preparation of Parcel R for unspecified future public use, and for the applicant to subsequently pay the City of Brisbane upon building permit issuance \$.50 cents/square foot of building area excluding the parking garage (subject to annual adjustment to reflect the change annually in the Engineering Cost Index), such funds to be used for unspecified future public improvements of Parcel R.

Recommendation:

That the Planning Commission adopt Resolution No. DA-1-16 recommending to the City Council that the proposed Ordinance Approving First Amendment to Development Agreement DA-1-11 for the Opus Office Center be adopted.

Environmental Determination:

As specified in Section 15162 of the CEQA Guidelines, an addendum to the Opus Office MND has been prepared and is attached which summarizes the revisions to the Opus Office Center project resulting from Case DA-1-16 and evaluates the impacts resulting from these revisions. The CEQA analysis is further discussed below.

In 2008 a Mitigated Negative Declaration was prepared for the Opus Office Center. This MND was also used for the approval of DA-1-11. In considering the current application, the CEQA Guidelines (Section 15164) allow for the preparation of an Addendum to an adopted MND "if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR (or MND) have

occurred." CEQA Guidelines Section 15162 identifies the following conditions that would require preparation of a subsequent MND:

- Substantial changes in the project are proposed which require major revisions to the MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- Substantial changes occur with respect to the circumstances under which the project is undertaken which require major revisions to the MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time of MND adoption, shows any of the following:
 - The project will have one or more significant effects not discussed in the MND;
 - The project will result in impacts substantially more severe than those disclosed in the MND;
 - Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponent declines to adopt the mitigation measure or alternative, or
 - Mitigation measures or alternatives that are considerably different from those analyzed in the MND would substantially reduce one or more significant effects on the environment, but the project proponent declines to adopt the mitigation measure or alternative.

An evaluation was performed to determine if any of the above- noted conditions would result from DA-1-16 triggering the preparation of a new or supplemental MND, and this analysis concluded that DA-1-16 does not result in any of the conditions set forth in CEQA Guidelines Section 15162.

Applicable Regulations:

Development agreements are authorized and governed by Sections 65864 *et seq.* of the California Government Code. In addition to these state laws, procedures and requirements for consideration and adoption of development agreements have been established by the Brisbane City Council, as set forth in Resolution No. 88-10 adopted on April 25, 1988.

Analysis and Findings:

Part 2 of Resolution 88-10, paragraph 2, states that "The Planning Commission shall not recommend approval unless it finds the provisions of the [development] agreement are consistent with the General Plan and any applicable specific plans."

The project complies with this finding. The uses currently permitted pursuant to the Development Agreement are consistent with the General Plan. The existing General Plan also anticipates build-out of Sierra Point pursuant to the approved Site and Architectural Design Guidelines. The proposed Development Agreement amendment does not alter the currently approved land uses, nor does it modify the approved design guidelines. Continued build-out of the site in accordance with prior approvals would be consistent with the General Plan.

It should also be noted that the proposed Development Agreement amendment does not modify any of the land use approvals for this project previously granted by the City, which already include a finding and determination that the project is consistent with the Brisbane General Plan. The proposed Development Agreement amendment will simply grant the developer the vested right to proceed with the project in accordance with such approvals, subject to compliance with the LEED Gold standard and the newly added requirement to install solar panels on the roof of the parking structure.

The prospective use of and future site modifications to Parcel R have not yet been determined and are not impacted by DA-1-16. The City will undertake its own planning and environmental review process in the future to determine a land use program and site design for Parcel R.

Attachments:

1. ~~Vicinity Map~~ (not included)
2. ~~Draft Planning Commission Resolution No. DA-1-16~~ (not included)
3. ~~Proposed Ordinance Approving Amendment to Opus Office Center Development~~ (not included)
4. ~~Agreement DA-1-11 (including proposed Development Agreement Amendment)~~ (not included)
5. ~~December 2016 Opus Office MND Addendum (A) and Technical Appendix (B)~~ (not included)

UNAPPROVED DRAFT BRISBANE PLANNING COMMISSION
Action Minutes of January 12, 2017
Regular Meeting

A. CALL TO ORDER

Director Swiecki called the meeting to order at 7:32 p.m.

B. ROLL CALL

Present: Commissioners Anderson, Munir, and Parker.

Absent: Chairperson Do and Vice Chairperson Reinhardt.

Staff Present: Community Development Director Swiecki and Senior Planner Johnson.

Due to the absence of Chairperson Do and Vice Chairperson Reinhardt, Director Swiecki, acting as Commission Secretary, asked the Commissioners present to select an Acting Chairperson, pursuant to the Planning Commission's adopted procedural rules. It was the consensus of the Commission to appoint Commissioner Anderson as the Acting Chairperson for the duration of the meeting.

C. ADOPTION OF AGENDA

Commissioner Parker moved and Commissioner Munir seconded to adopt the agenda. The motion was approved 3-0.

D. CONSENT CALENDAR

1. APPROVAL OF DRAFT ACTION MINUTES

- i. December 1, 2016 special meeting

Commissioner Munir moved and Commissioner Parker seconded to adopt the consent calendar. The motion was approved 3-0.

E. ORAL COMMUNICATIONS (limit to a total of 15 minutes)

There were none.

F. WRITTEN COMMUNICATIONS

Acting Chairperson Anderson reviewed written communications received from the Bay Area Monitor and Sustainable San Mateo County.

G. NEW BUSINESS

1. **PUBLIC HEARING: Development Agreement DA-1-16;** Proposal to amend Development Agreement DA-1-11 by extending the term of the planning permits for the Opus Office Center (3000-3500 Marina Boulevard) for 10 additional years, requiring the installation of solar panels on the Office Center parking garage, and requiring the property

owner to relinquish the long term ground lease over Parcel R (Assessor's Parcel Number 007-165-060 (por)) back to the City of Brisbane and pay fees to the City of Brisbane for future unspecified improvements of Parcel R; Marcus LoDuca, applicant; Sierra Point LLC, owner; APN 007-165-020.

Director Swiecki presented the staff report. He introduced Judith Malamut of LSA Associates, consultants to the City, who prepared the 2008 Initial Study and Mitigated Negative Declaration as well as the 2016 addendum to those documents. Ms. Malamut reviewed the data, methodology, and conclusions of the 2016 addendum.

Commissioner Munir asked how the updated traffic study was prepared, and how the Highway 101 North and South on-ramps would be impacted.

Ms. Malamut addressed how the addendum analyzed traffic impacts based on current traffic count data and significance thresholds.

Acting Chairperson Anderson asked whether shuttle service would definitely be provided.

Director Swiecki noted there was an existing shuttle in use, and the new businesses would help fund the existing shuttle service.

Acting Chairperson Anderson asked if staff had projected the buildings' energy usage and the amount of renewable energy that could be generated from solar panels.

Director Swiecki said the addendum analyzes a "worst case" scenario that doesn't incorporate the use of renewable energy. A system for the garage rooftop has not yet been designed.

Commissioner Parker asked if the applicant would need to revise the development agreement if they changed the project in the future.

Director Swiecki said any substantial revisions to the approved project design would require additional City and environmental review.

Acting Chairperson Anderson opened the public hearing.

Marcus LoDuca, applicant, spoke in favor of the application. Mr. LoDuca pointed out the substantial public benefits the City would be receiving in the form of regaining control of Parcel R and generating funds to improve Parcel R for public purposes, in exchange for extending entitlements for 5 additional years.

In response to a Commission question, Tom Schaal, Sierra Point LLC representative indicated the owner has every intention of actively pursuing completion of the project. He added the additional time is desired in the event market conditions do not warrant moving forward with construction in the near term.

Commissioner Parker moved and Commissioner Munir seconded to close the public hearing. The motion was approved 3-0.

After deliberation, Commissioner Munir moved adoption of Resolution DA-1-16, seconded by Commissioner Parker. The motion was approved 3-0.