



**DATE:** April 18, 2017

**CATEGORY:** Consent

**DEPT.:** Community Development and Public Works Departments, and City Attorney's Office

**TITLE:** **Amendment to Broadreach Capital Partners Disposition and Development Agreement and Ground Lease**

### **RECOMMENDATION**

Authorize the City Manager to execute an amendment to the Disposition and Development Agreement and Ground Lease with Broadreach Capital Partners for the Moffett Gateway/Ameswell site to extend the permit and construction timeline for a period of up to five months.

### **BACKGROUND**

On June 24, 2014, Council approved Broadreach Capital Partners (Broadreach) as the best qualified development team for the Moffett Gateway project. On November 17, 2014, Council approved the negotiated business terms between the City and Broadreach and authorized the City Manager to execute a Disposition and Development Agreement (DDA) and Ground Lease. On December 16, 2014, Council approved modified business terms, including rent, development fee provisions, and conveyance of an access easement and authorized the City Manager to execute minor amendments to the DDA and Ground Lease that did not have a net financial impact of greater than \$100,000. The DDA and Ground Lease for development of a hotel and office project were executed on April 1, 2015. Council approved the Moffett Gateway hotel and office project on October 25, 2016 (second reading).

Broadreach continues to move the development forward. Broadreach submitted their City Building Application on December 20, 2016, and is currently in the resubmittal and staff comments phase. The Planned Community Permit (PCP) and Development Review Permit (DRP) project conditions require approvals of third-party agencies, including the Environmental Protection Agency (EPA), Caltrans, PG&E, Santa Clara County Airport Land Use Commission, Santa Clara County Health Department, and

Santa Clara Valley Water District. The City's building permit cannot be issued until Broadreach receives these required approvals from these outside agencies.

The Moffett Gateway/Ameswell project is more complex than either party realized when the DDA and Ground Lease were signed in 2015. Notably, the project requires significantly more coordination and review by third-party agencies for on-site and off-site improvements related to the project. New items requiring third-party review include improvements on PG&E property, off-site traffic improvements and storm drain relocation in the Caltrans right-of-way, and on-site and off-site drainage improvements. Broadreach has been working with these agencies since 2015 to solicit input and incorporate their requirements into the project design. Broadreach submitted construction documents to PG&E in January 2017 and March 2017. PG&E has strict guidelines when constructing improvements near substations, overhead transmission lines, and natural gas mains. The Moffett Gateway/Ameswell project has to account for all three conditions, including improvements being made on PG&E property, and this necessitates review from numerous PG&E divisions.

Broadreach submitted construction documents to Caltrans in February 2017. All improvements along Moffett Boulevard, including a new traffic signal and pedestrian sidewalk, must be approved by Caltrans because Moffett Boulevard is a State of California right-of-way. Off-site drainage improvements and a sound wall along Highway 101 are also part of the project.

The EPA is the lead environmental regulator at the project site, which is included as part of the Middlefield-Ellis-Whisman study area. Broadreach submitted the soil management plan and groundwater monitoring plan to the EPA in December 2016 and the vapor intrusion plan in January 2017.

Representatives from Broadreach are pursuing approvals from these other agencies and anticipate receiving approvals in the second half of 2017.

Broadreach has introduced a new brand identity for the Moffett Gateway project and the hotel. The Moffett Gateway project will now be known as Ameswell Mountain View and the hotel as The Ameswell Hotel. An office development in Sunnyvale has been using the "Moffett Gateway" name, which has led to some confusion in the real estate market. The new brand identity connects the project to Mountain View and the Ames Research Center, while creating a unique brand for the project and hotel. In addition, while the PCP and DRP require Broadreach to offer LEED Gold® for the office building, they have chosen to proceed with a LEED Platinum® certification.

## **ANALYSIS**

The DDA outlines responsibilities of both the City and Broadreach in developing the 255-room hotel, 200,000 square foot Class A office building, and six-level, above-grade parking structure that will be shared by office and hotel users of the site. The office building and parking garage will be constructed on City property. The hotel will be built on land Broadreach will purchase from Caltrans. A 2.5-acre public park will be created via an easement across land from both properties. The Ground Lease is an agreement between the City and Broadreach which allows the developer to build on both public and private land.

Combined, these transactional documents require development to be achieved within specific time frames that were based on the parties' good-faith estimates regarding the development timeline for this project and based on the information that was available at that time. The DDA and Ground Lease include provisions such as Construction Delay Rent and even termination rights for undue delays in obtaining the necessary building permits for development, final inspection of the shell and core of the office building, and a Certificate of Occupancy for the hotel. For example, as currently worded, if Broadreach fails to obtain building permits by August 1, 2017, Broadreach would owe the city Construction Delay Rent in the amount equal to the office building minimum base rent which is \$108,000 per month until the building permit is issued. Also, if the final inspection of the shell and core of the office building has not been completed by April 1, 2019, the City is owed Construction Delay Rent in the amount equal to the office building minimum base rent of \$108,000 per month until the inspection is completed. Lastly, if the Certificate of Occupancy for the hotel has not been issued by April 1, 2019, Broadreach would owe the City monthly Transient Occupancy Tax (TOT) in the amount of approximately \$155,000 until the Certificate of Occupancy is issued.

Broadreach has been working in good faith to ensure the project is completed within the agreed-upon time frames. However, the approval processes of third-party agencies, including the EPA, Caltrans, PG&E, Santa Clara County Airport Land Use Commission, Santa Clara County Health Department, and Santa Clara Valley Water District is beyond the control of the developer and may not be completed within the timelines set forth in the DDA and Ground Lease. Because of the complexity of the project, City review is time consuming as well. Broadreach has requested a five-month extension to the established timelines during which time it will be able to secure the necessary approvals from the outside agencies and obtain a building permit from the City. An amendment to the DDA and Ground Lease is required to extend the timelines.

Staff has reviewed Broadreach's request. Based on facts that include Broadreach's submittal of their building permit application on December 20, 2016 and revised construction drawings on March 15, 2017, submittal of project documents to third-party agencies in a timely manner, and the fact those approvals are not within Broadreach's control, staff considers the request for an extension to be reasonable and thus recommends modifying the schedule to extend the timelines up to an additional five months as requested by the developer so it can obtain the outside agency approvals required by the PCP and DRP.

### **FISCAL IMPACT**

Broadreach's obligation to pay minimum base rent for the office site commences upon issuance of building permits. If the City agrees to the requested extension, Broadreach will have until December 1, 2017 to obtain building permits and begin paying the City minimum base rent. Therefore, the City may not receive minimum rent payments until December 1, 2017, resulting in a potential revenue loss of up to \$432,000.

The fiscal impact of the Construction Delay Rent is less certain and will depend on the actual timeline for construction. If the request is granted, the due date for Construction Delay Rent on the office building would be extended for five months, so that Broadreach would not owe Construction Delay Rent for the office until September 1, 2019. Each month of Construction Delay Rent is \$108,000 for a potential impact of up to \$540,000. Broadreach would not owe Construction Delay Rent for the hotel until September 1, 2019, as it is tied to the Certificate of Occupancy. The Construction Delay Rent is based on the estimated lost TOT and each month of TOT is estimated at \$155,300, for a potential impact of up to \$776,000 for the five-month extension. It is possible that the permits could be issued earlier and construction completed faster, thereby limiting the lost revenue.

### **ALTERNATIVES**

1. Do not amend the DDA and Ground Lease at this time.
2. Do not defer Construction Delay Rent and Broadreach shall compensate the City for TOT and office minimum base rent revenues per the DDA and Ground Lease.
3. Collaborate with third-party agencies to ensure prompt approval of project.

**PUBLIC NOTICING**

The meeting agenda and Council report have been posted on the City's website and announced on Channel 26 cable television. Interested parties, including the Moffett Boulevard Neighborhood Group and the North Whisman Neighborhood Association, have also been sent a copy of the agenda and Council report.

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