



## **CITY COUNCIL AGENDA REPORT**

**Meeting Date: June 17, 2021**

**From: Clay Holstine, City Manager**

**Subject: Agreement to Pay Consultants' Costs Concerning a Proposed Project in Sierra Point**

### **Recommendation**

Approve the attached Agreement for HCP Life Science REIT, Inc. ("Healthpeak") to pay Consultants' Costs concerning Healthpeak's proposal to redevelop a 16 acre site in Sierra Point and authorize the execution of the Agreement.

### **Background**

Healthpeak has informed the City it intends to redevelop an approximately 16 acre site (2000 Sierra Point Parkway and 8000 Marina Boulevard) (the "Project Site") which currently has two existing towers, 8 and 12 stories, a small parking structure and extensive surface parking. Healthpeak intends to redevelop the Project Site, consistent with the City's General Plan and Zoning Ordinance, to remove the surface parking and parking structure, construct a new, larger parking structure and two new towers (9 and 14 stories) and increase the available open space from 3.2 acres to 8.5 acres (the "Project").

To allow for development of the Project, Healthpeak intends to apply to the City for approval of land use entitlements, which will include a comprehensive environment document (collectively, the "Project Approvals").

As is typical with these kinds of projects, Healthpeak will pay for outside consultant costs, such as the consultant who will prepare the environmental documentation, and for all reasonable costs and expenses the City incurs in connection with processing the applications as set forth in the attached Agreement to Pay Consultants' Costs. The Agreement is discussed in greater detail below.

### **Discussion**

Over the next few weeks, the City will select the consultant (and sub-consultants) who will prepare the environmental document for the Project. Following the execution of an agreement between the City and the consultant ("Consultant Agreement"), Healthpeak will deposit with the City 10% of the amount to be paid to the consultant, which funds will be deposited into a City reserve account ("Reserve Account").

In addition, Healthpeak will pay not only for the environmental consultant and subconsultants who will prepare the environmental impact report and related documents but also for reasonable costs incurred by outside legal counsel retained by the City related to the Project, reasonable costs for

outside planning services not provided by City staff, and other expenses, such as the cost of publication and mailing notices, necessarily incurred to process the Project.

The City will bill Healthpeak quarterly for the consultants' costs. Because of the lag time, the City will use the funds that are in the Reserve Account to pay the consultants' costs. As payments are received from Healthpeak, the Reserve Account will be backfilled. If, however, the Reserve Account drops below 50% of the original deposited amounts, and then is not replenished timely, under the Agreement the City may halt work on the Project until the funds have been received.

The Agreement will end once final action has been taken on the Project. The Agreement will be suspended if Healthpeak requests it or, as described above, there is a funding issue.

### **Fiscal Impact**

There is no negative financial impact to the City by entering into this Agreement.

Attachment: Agreement (between the City of Brisbane and Healthpeak for Healthpeak) To Pay Consultants' Costs

Stuart Schillinger for  
Clay Holstine, City Manager

## **AGREEMENT TO PAY CONSULTANT COSTS**

**THIS AGREEMENT**, dated \_\_\_\_\_, 2021, by and between the City of Brisbane, a municipal corporation (“City”), and HCP Life Science REIT, Inc., a Maryland corporation (“Healthpeak”), is made with reference to the following facts:

A. Healthpeak has informed the City it intends to redevelop the approximately 16-acre site located at 2000 Sierra Point Parkway and 8000 Marina Boulevard, in Brisbane, California (the “Project site”). The Project site is comprised of two existing towers, 8 and 12 stories, a small parking structure to the east, and extensive surface parking to the north.

B. Healthpeak has also informed the City it is contemplating a proposal to redevelop the Project site consistent with the City’s General Plan and Zoning Ordinance, generally as follows: (i) removal of surface parking lots to the north and the existing parking structure to the east; (ii) construction of a new, larger parking structure and two new towers, 9 and 14 stories; and (iii) increase the available open space from approximately 3.2 acres to 8.5 acres (the “Project”).

C. To allow for development of the Project, Healthpeak intends to apply to City for approval of land use entitlements, which will include a comprehensive environmental document and land use entitlements and permits as may be required (collectively, the “Project Approvals”).

D. City is willing to undertake processing the applications for the Project Approvals so long as Healthpeak pays all reasonable costs and expenses City incurs in connection therewith, including the cost of City staff time and the cost for consultants. To ensure that funds are readily available for payment of such costs, Healthpeak has agreed to fund an account (the “Project Reserve Account”) maintained by City, as hereinafter set forth.

**NOW, THEREFORE, the parties agree as follows:**

1. **Project Reserve Account.** Within ten (10) business days of the execution of an agreement between the City and the environmental consultant (which may include work to be provided by sub-consultants) to prepare the environmental impact report and related documents for the Project (“Consultant Agreement”), which Consultant Agreement may be amended from time to time, Healthpeak shall deposit in the Project Reserve Account 10% of the full amount of the costs due under the Consultant Agreement (“Consultant Deposit”). City shall keep separate records of the Project Reserve Account showing all deposits made by Healthpeak and all disbursements from the account made by City, and such records shall be available to Healthpeak for inspection at any time during City’s regular business hours. Beginning within ninety (90) days of the initial deposit, the City shall send to Healthpeak a statement of the Project Reserve Account’s deposits and disbursements on a quarterly basis. Although separate accounting records of the Project Reserve Account shall be maintained by City, City shall not be required to segregate the Project Reserve Account into a separate fund and no interest shall be payable to Healthpeak thereon.

2. **Consultants' and Other Costs ("Actual Costs").** For the cost of services related to the City's processing of the Project Approvals, Healthpeak shall pay to the City (a) the actual costs incurred by the City for all environmental consultants (including the primary consultant and any subconsultants retained by the primary consultant) who will prepare the environmental impact report and related documents pursuant to the Consultant Agreement, (b) the actual and reasonable costs incurred by outside legal counsel retained by the City for services related to the Project, (c) the actual and reasonable costs incurred by consultants or other outside services retained by the City for planning services related to the Project Approvals, and (d) other out of pocket expenses reasonably and necessarily incurred by City in connection with the Project Approvals including, but not limited to, the cost of publication and mailing of notices of hearings, and the cost of surveys, plans, drawings and documents (collectively, the "Actual Costs"). Before the City retains consultants or other outside services for planning services related to the Project, City shall meet and confer with Healthpeak concerning the City's retention thereof.

3. **Healthpeak's Payment of Actual Costs.** On a quarterly basis, beginning thirty days after the execution of the Consultant Agreement, City shall invoice Healthpeak for the Actual Costs as set forth in Section 2 (the "Quarterly Invoiced Amount"). Healthpeak shall pay the Quarterly Invoiced Amount within 30 days of receipt of the invoice from City, which payment shall be deposited into the Project Reserve Account.

4. **Use and Reinstatement of the Project Reserve Account.** City shall use the Project Reserve Account to pay the Actual Costs. If at any time a disbursement from the Project Reserve Account would result in the balance being less than 50% of the Consultant Deposit or, in the sole discretion of the City, inadequate to cover foreseeable Actual Costs to be incurred by the City within the following quarterly period, plus a reasonable margin as deemed appropriate by the City based on the anticipated nature of the expenses, City shall provide written notice of such fact to Healthpeak and Healthpeak, within 15 days after receipt of such notice, shall deposit with the City such additional amount as may be necessary to restore the balance of the Consultant Deposit to an amount indicated by the City in the notice. If Healthpeak should fail or refuse to deposit the additional funds, City and its consultants shall be entitled to suspend all further review and work on the Project.

5. **Suspension of Review.** Healthpeak may suspend any further review by City of the Project by providing written notice to the City. Healthpeak shall pay City any of the costs incurred by the City pursuant to Sections 2 and 3 of this Agreement prior to City's receipt of Healthpeak notice to suspend further review.

6. **Termination of Agreement.** Upon completion of all processing of applications for Project Approvals as evidenced by final action having been taken by the City, or by Healthpeak written withdrawal of such applications and/or suspension of review pursuant to Section 5 herein, this Agreement shall terminate and any balance remaining in the Project Reserve Account after payment in full of all costs and expenses owed to City under the terms of this Agreement shall be refunded to Healthpeak within sixty (60) days.

7. **Notices.** Any notice or demand required or permitted to be given hereunder shall be in writing and shall be either personally delivered or sent by certified mail, return receipt requested, to the address of the other party as follows:

To City: City of Brisbane  
Attn: Director of Community Development  
50 Park Place  
Brisbane, CA 94005

To Healthpeak: HCP Life Science REIT, Inc..  
Attn: Scott Bohn  
1920 Main Street, Suite 1200  
Irvine, CA 92614

With a copy to: HCP Life Science REIT, Inc.  
Attn: Legal Department  
1920 Main Street, Suite 1200  
Irvine, CA 92614

PMA, Inc.  
Attention: Devin Bertsch  
1 Tower Place, Suite 200  
South San Francisco, CA 94080

8. **Limitation on Effect of Agreement.** The execution of this Agreement by City shall not constitute the granting by City, or the commitment to grant, any form of land use entitlement, permit or approval, or any agreement or commitment by City to take any action with respect to the Project or any other acts or activities relating to the subsequent independent exercise of discretion by the City. Any such subsequent action shall be considered by the City Council, in its sole and unfettered discretion, following the conduct of all legally required procedures, including, without limitation, all environmental review processes as may be required by the California Environmental Quality Act.

9. **Miscellaneous Provisions.**

(a) **Costs of Suit.** In the event legal action between the parties shall become necessary in order to enforce or interpret this Agreement, or any provision contained herein, the prevailing party shall be entitled to recover all costs and expenses as may be incurred in connection therewith, including reasonable attorney's fees.

(b) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes and cancels any prior agreements or understandings, whether written or oral.

(c) **Choice of Law; Jurisdiction; Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Jurisdiction and venue of litigation arising from this Agreement shall be in the County of San Mateo, State of California.

(d) **Amendments.** This Agreement can only be modified by a written amendment hereto executed by both parties.

(e) **Counterparts.** This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(f) **Electronic Signatures.** The counterparts of this Agreement may be executed and delivered by facsimile or other means of electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

CITY OF BRISBANE,  
a municipal corporation

HCP LIFE SCIENCE REIT, INC.,  
a Maryland corporation

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Karen Cunningham, Mayor

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Scott Bohn, Senior Vice President & Co-  
Head of Life Science

Attest:

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Ingrid Padilla, City Clerk

Approved as to form:



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Michael H. Roush  
Legal Counsel