



Legislation Text

File #: 16-742, Version: 1

An Ordinance adopting the Second Amendment to the Development Agreement for the Office/R&D Campus at 249 - 289 East Grand Avenue.

WHEREAS, pursuant to City Council Ordinance No. 1372-2006, the City of South San Francisco (“City”) and Alexandria Real Estate Equities, LLC (ARE)-San Francisco No. 12, LLC (“ARE-SF 12”) entered into a Development Agreement (“Development Agreement”) for the development of an office/R&D campus at 249 - 289 East Grand Avenue (“Project”), which was effective as of August 25, 2006; and

WHEREAS, the City Council certified the EIR (State Clearinghouse number 2005-042121) for the Project on July 12, 2006, including a Mitigation Monitoring and Reporting Program and a Statement of Overriding Consideration; and

WHEREAS, On June 24, 2013, the City Council adopted Ordinance No. 1473-2013 approving an amendment to the Development Agreement modifying certain aspects of the Project, including revising the parties to the agreement to include ARE-SF 12, ARE-San Francisco No.44, LLC, and ARE-San Francisco No.46, LLC (collectively known as “Owner” or “Applicant”) and revising the timeline for performance of certain obligations (“First Amendment”); and

WHEREAS, Owner has submitted an application requesting an additional modification to the Development Agreement to extend the duration of the term and staff recommends an extension from ten (10) to twelve (12) years, which would change the expiration date from August 25, 2016 to August 25, 2018 (“Second Amendment”); and

WHEREAS, the potential extension provided for under the Second Amendment would allow the Applicant to investigate potential modifications to the Project; and

WHEREAS, the modification to the duration of the Development Agreement as proposed in the Second Amendment is administrative and does not change the physical conditions or impacts from the entitled Project, nor would it result in a direct or reasonably foreseeable indirect physical change in the environment. Further, it can be seen with certainty that there is no possibility that extending the duration of the Development Agreement will have a significant effect on the environment. Therefore, under CEQA Guidelines Section 15060(c) and CEQA Guidelines Section 15061(b)(3), no further CEQA action is required; and

WHEREAS, on August 4, 2016, the Planning Commission for the City of South San Francisco held a lawfully noticed public hearing to consider the Second Amendment; and

WHEREAS, on August 4, 2016, the Planning Commission for the City of South San Francisco reviewed and carefully considered the information and recommended that the City Council adopt an ordinance approving the Second Amendment (“Ordinance”); and

WHEREAS, on August 24, 2016, the City Council for the City of South San Francisco held a lawfully noticed public hearing to consider the Second Amendment.

NOW, THEREFORE, BE IT ORDAINED that based on the entirety of the Record before it, as described below, the City Council of the City of South San Francisco does hereby ORDAIN as follows:

SECTION I. FINDINGS

I. General Findings

1. The foregoing recitals are true and correct and made a part of this Ordinance.
2. The Record for these proceedings, and upon which this Ordinance is based, includes without limitation, federal and state law; the California Environmental Quality Act, Public Resources Code § 21000, et seq. (“CEQA”) and the CEQA Guidelines, 14 California Code of Regulations § 15000, et seq.; the South San Francisco General Plan and General Plan Environmental Impact Report (EIR); the South San Francisco Municipal Code; the Project applications; the EIR, including the Draft and Final EIR prepared and certified for 249 East Grand Avenue Project and appendices thereto; all site plans, all associated documents, and all reports, minutes, and public testimony submitted as part of the Planning Commission's duly noticed August 4, 2016 meeting; and all reports, minutes, and public testimony submitted as part of the City Council's duly noticed August 24, 2016 meeting and any other evidence (within the meaning of Public Resources Code §21080(e) and §21082.2).
3. The modification to the duration of the Development Agreement as proposed in the Second Amendment is administrative. It does not change the physical conditions or impacts from the entitled Project, nor would it result in a direct or reasonably foreseeable indirect physical change in the environment. Further, it can be seen with certainty that there is no possibility that extending the duration of the Development Agreement will have a significant effect on the environment. Therefore, under CEQA Guidelines Section 15060(c) and CEQA Guidelines Section 15061(b)(3), no further CEQA action is required.
4. The proposed Second Amendment to the Development Agreement, attached hereto as Attachment 1, is incorporated by reference and made a part of this Ordinance, as if it were set forth fully herein.
5. The documents and other material constituting the record for these proceedings are located at the Planning Division for the City of South San Francisco, 315 Maple Avenue, South San Francisco, CA 94080, and in the custody of Planning Manager, Sailesh Mehra.

II. Development Agreement

1. The Owner and City have negotiated a Second Amendment to the Development Agreement pursuant to Government Code section 65864 *et seq* and South San Francisco Municipal Code Chapter 19.60. The Second Amendment, as proposed, is consistent with the objectives, policies, general land uses and programs specified in the South San Francisco General Plan and any applicable specific plan because the extended duration will support the development of a project that the General Plan specifically contemplates in the Project site area; and
2. The Development Agreement, as proposed for amendment, complies with all applicable zoning, subdivision and building regulations and with the General Plan and any applicable specific plan because the Second Amendment only modifies the duration of the Development Agreement and does not alter any of the features of the previously entitled Project. The Project remains in compliance with all applicable zoning, subdivision and building regulations and with the General Plan and any applicable specific plan because the Project is compatible with the uses authorized in, and the regulations prescribed for the land use district in which the real property is located. Extending the duration of the Development Agreement under the Second Amendment does not in any way alter the fact that the Project site is physically suitable for the type and intensity of the land use being proposed. Extending the duration of the Development Agreement pursuant to the Second Amendment will support the development of a project that the General Plan specifically contemplates in the Project site area. Furthermore, the suitability of the site for the type of development authorized in the Development Agreement was analyzed thoroughly in the original Project approvals and environmental documentation prepared for the Project.
3. The Development Agreement, as proposed for amendment, states a duration for the Development Agreement in that the Second Amendment states that pursuant to Section 2 of the Development Agreement, the Development Agreement will expire twelve years from the Effective Date. Twelve years from the Effective Date of the Agreement is August 25, 2018.
4. The Second Amendment does not alter the provisions of the Development Agreement that contain the previously approved permitted uses of the property, the previously approved density and intensity of uses, the previously approved maximum height and size of proposed buildings, nor the specific provisions for reservation or dedication of land for public purposes. With adoption of the Second Amendment, the Development Agreement will still state the density and intensity of uses, the maximum height and size of the proposed buildings, and the reservation or dedication of land for public purposes, as memorialized in Section 3 of the Development Agreement as modified by the First Amendment.

SECTION II. AMENDMENTS.

The City Council hereby adopts the Ordinance amending the Development Agreement to extend the duration of the Development Agreement, as shown in the Second Amendment attached hereto and incorporated herein as Attachment 1. All other areas of the Development Agreement that are not amended by this Ordinance are not included in Attachment 1, and shall remain in full force and effect.

SECTION III. SEVERABILITY.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of this Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of South San Francisco hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION IV. PUBLICATION AND EFFECTIVE DATE.

Pursuant to the provisions of Government Code Section 36933, a summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting. This Ordinance shall become effective thirty (30) days from and after its adoption.

**SECOND AMENDMENT
TO DEVELOPMENT AGREEMENT**

This Second Amendment to Development Agreement (“Second Amendment”) is entered into by and between ARE-San Francisco No. 12, LLC (“ARE-SF 12”), ARE-San Francisco No.44, LLC, and ARE-San Francisco No.46, LLC (collectively known as “Developer”) and the CITY OF SOUTH SAN FRANCISCO, a municipal corporation (“City”) on this _____ day of _____, 2016.

RECITALS

A. Pursuant to the adoption of City Council Ordinance No. 1372-2006 (“DA Ordinance”), the City entered into a Development Agreement between City and ARE-SF 12 (“Development Agreement”) for the development of an Office/R&D project at 249 - 289 East Grand Avenue (“Project”). The Ordinance took effect on August 25, 2006. The corresponding Effective Date of the Development Agreement is August 25, 2006.

B. On June 24, 2013, the City Council adopted Ordinance No. 1473-2013 approving an amendment to the Development Agreement (“First Amendment”) to modify certain elements and timelines of the Project, including parties to the agreement to include the parties referenced above as Developer.

C. On July 25, 2016, the Developer requested a second amendment to the Development Agreement (“Second Amendment”) to extend the term in order for the Developer’s tenant to settle into the facilities and to plan for the next phase of development at the Project site.

D. On August 24, 2016 the City Council considered the proposed Second Amendment and adopted Ordinance No. _____ approving the Second Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties herein contained, the City and Developer agree as follows:

AMENDMENT TO AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and hereby incorporated herein.
2. **Defined Terms.** All capitalized terms not defined herein shall have the meanings ascribed to them in the Development Agreement.
3. **Section 2.** Section 2 of the Development Agreement is hereby amended to read as follows:
 2. **Duration**

This Agreement shall expire twelve (12) years from the Effective Date of this Agreement. In the event that litigation to which the City is a party against the Owner , or any of its officers, agents, employees, contractors, representatives or consultants, should delay implementation or construction of the Project on the Property, the expiration date of this Agreement shall be extended for a period equal

to the length of time from the time the summons and complain is served on the defendant(s) until the judgment entered by the court is final and not subject to appeal; provided, however, that the total amount of time for which the expiration date shall be extended as a result of such litigation shall not exceed five (5) years.

4. **Effect of Second Amendment.** Except as expressly modified by this Second Amendment, the Development Agreement shall continue in full force and effect according to its terms, and Developer and City hereby ratify and affirm all their respective rights and obligations under the Development Agreement, including but not limited to Developer's indemnification obligations as set forth in Section 13 of the Development Agreement. In the event of any conflict between this Second Amendment and the First Amendment or the Development Agreement, the provisions of this Second Amendment shall govern.
5. **Binding Agreement.** This Second Amendment shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the parties hereto. Any reference in this Second Amendment to a specifically named party shall be deemed to apply to any successor, administrator, executor, or assign of such party who has acquired an interest in compliance with the terms of this Second Amendment or under law.
6. **Recordation.** The City shall record a copy of this Second Amendment within ten (10) days following execution by all parties.
7. **Counterparts.** This Second Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute the same document.
8. **California Law.** This Second Amendment shall be governed by and interpreted in accordance with the laws of the State of California.
9. **Invalidity.** Any provision of this Second Amendment that is determined by a court of competent jurisdiction to be invalid or unenforceable shall be deemed severed from this Second Amendment, and the remaining provisions shall remain in full force and effect as if the invalid or unenforceable provision had not been a part hereof
10. **Headings.** The headings used in this Second Amendment are for convenience only and shall be disregarded in interpreting the substantive provisions of this Second Amendment.

IN WITNESS WHEREOF, this Second Amendment has been entered into by and between Developer and City as of the date and year first above written.

[SIGNATURES ON THE FOLLOWING PAGE]

CITY OF SOUTH SAN FRANCISCO

By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

ARE-SAN FRANCISCO NO. 12, LLC,
a Delaware limited liability company

By: Alexandria Real Estate Equities, L.P.,
a Delaware limited partnership, Managing Member

By: ARE-QRS CORP.,
a Maryland corporation, General Partner

By: _____
Name: _____
Title: _____
Date: _____

ARE-SAN FRANCISCO NO. 44, LLC,
a Delaware limited liability company

By: Alexandria Real Estate Equities, L.P.,
a Delaware limited partnership, Managing Member

By: ARE-QRS CORP.,
a Maryland corporation, General Partner

By: _____
Name: _____
Title: _____
Date: _____

ARE-SAN FRANCISCO NO. 46, LLC,
a Delaware limited liability company

By: Alexandria Real Estate Equities, L.P.,
a Delaware limited partnership, Managing Member

By: ARE-QRS CORP.,
a Maryland corporation, General Partner

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Jason Rosenberg,
City Attorney

ATTEST:

By: _____
Krista J. Martinelli, City Clerk