

ORDINANCE NO. 3231-24

AN ORDINANCE OF THE CITY OF SUNNYVALE APPROVING AND ADOPTING A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN INTUITIVE SURGICAL, INC. AND THE CITY OF SUNNYVALE FOR THE DEVELOPMENT OF PROPERTY IDENTIFIED BY ASSESSOR'S PARCEL NUMBERS 205-49-005, 205-49-012, 205-40-002, AND 205-40-001 AND RESPECTIVELY KNOWN AS 932 KIFER ROAD, 950 KIFER ROAD, 945 KIFER ROAD, AND 955 KIFER ROAD.

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 et seq. (the Development Agreement Statute) which authorizes cities to enter into agreements for the development of real property in order to establish certain development rights in such property; and

WHEREAS, pursuant to Government Code Section 65865, the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements as set forth in Resolution No. 371-81; and

WHEREAS, on September 28, 2021, the City Council adopted Ordinance No. 3182-21 adopting the original Development Agreement; and

WHEREAS, the City has received an application to consider a First Amendment to the Development Agreement; and

WHEREAS, Applicant now proposes to make minor changes to the Project, including the addition of above-ground parking structure on an adjacent parcel located in the city of Santa Clara, the addition of an internal courtyard, the modification of a pedestrian bridge, and the reduction of the total building area by 6,000 square feet, which necessarily requires an amendment to the previously-approved original Development Agreement; and

WHEREAS, a copy of the proposed First Amendment to the Development Agreement is attached hereto and incorporated herein as Exhibit "A" to this ordinance; and

WHEREAS, in 2021, the City Council certified the Final SEIR(State Clearinghouse #2019012022) for the Lawrence Station Area Plan (LSAP) Amendments pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq., "CEQA"), the Guidelines for Implementation of the California Environmental Quality Act (14 California Code of Regulations, Sections 15000 et seq., the "State EIR Guidelines") and the City's Local Guidelines for Implementing CEQA (the "Local Guidelines"); and

WHEREAS, CEQA Guidelines Section 15164(a) provides that an agency "shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none

of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred”; and

WHEREAS, with respect to the proposed minor changes to the Project, none of the triggers set forth in CEQA Guidelines Section 15162 have occurred that would require the preparation of a subsequent EIR; and

WHEREAS, pursuant to CEQA Guidelines Section 15164, the City prepared an addendum to the Lawrence Area Station Plan Update/Intuitive Surgical Corporate Campus Project Final Subsequent Environmental Impact Report (Addendum); and

WHEREAS, pursuant to the Development Agreement Statute and City regulations, the Planning Commission held a duly noticed public hearing on July 8, 2024 and has found that the proposed First Amendment to the Development Agreement is consistent with the objectives of the general plan, compatible with the uses authorized for the Project Area, in conformity with public convenience and beneficial to the public welfare, and will not adversely impact the orderly development of property; and

WHEREAS, the City Council, after published notice, held a public hearing on August 27, 2024, concerning the proposed First Amendment to the Development Agreement, and has considered the reports and documents presented by City staff, the Planning Commission's recommendation, and the written and oral comments presented at the public hearing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS. The City Council hereby finds and declares that the above recitals are true and correct. The City Council finds that the provisions of the First Amendment to the Development Agreement are consistent with the City's General Plan and the LSAP as they will exist on the effective date of this ordinance, and hereby incorporates the findings regarding General Plan and LSAP conformity contained in the Planning Commission findings dated July 8, 2024. The City Council finds that the provisions of the First Amendment to the Development Agreement are compatible with the uses authorized in the regulations prescribed for the land use district in which the real property is located; are in conformity with public convenience and good land use practice; are not detrimental to the public health, safety and general welfare; are of a beneficial effect on the order development of property and the preservation of property values; and are consistent with the requirement of Resolution 371-81. The City Council finds that the Developer is providing a public benefit to the City by, among other things, making a substantial monetary contribution to the City through ongoing sales tax guarantees, design and construction of off-site street improvements and a publicly-accessible shared-use path, construction of an all-electric building in furtherance of the City's Climate Action goals, and designating the City as point of sale for sales tax purposes during construction, and other community benefits described in the original Development Agreement and the First Amendment to the Development Agreement. The City Council further finds that development of the Project will require several years to complete, and a development agreement is appropriate for the property to ensure that the Project will be completed.

SECTION 2. FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT ADOPTED. The First Amendment to the Development Agreement, as set forth in Exhibit "A", is hereby adopted, subject to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager, in consultation with the City Attorney prior to execution thereof, including completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, and conformity to the General Plan and Lawrence Station Area Plan, and amended and approved by the City Council. The City Manager and the City Clerk of the City of Sunnyvale are hereby authorized and directed to execute and attest, respectively, the Agreement on behalf of the City of Sunnyvale.

SECTION 3. CEQA. The environmental effects of the Project subject to the proposed First Amendment to the Development Agreement were analyzed in an Environmental Checklist/Addendum to the Lawrence Station Area Plan Update/Intuitive Surgical Corporate Campus Project Final Subsequent Environmental Impact Report. The City Council has reviewed the Environmental Checklist/Addendum and finds that it reflects the independent judgment of the City Council and its staff. The City Council finds that in accordance with Public Resources Code Section 21083.3 and Section 15183 of the CEQA Guidelines, the proposed Project meets the criteria for streamlined environmental review. The First Amendment to the Development Agreement, which is the subject of this ordinance, incorporates and implements the Lawrence Station Area Plan Update/Intuitive Surgical Corporate Campus Project Final Subsequent Environmental Impact Report, the Environmental Checklist/Addendum, and the underlying Development Agreement, pursuant to this Ordinance. The Director of Community Development shall file a Notice of Determination with the County Clerk under Title 14, California Code of Regulations Section 15075.

SECTION 4. RECORDATION. The City Clerk is hereby directed to record the Development Agreement with the county recorder in compliance with the provisions of Government Code Section 65868.5.

SECTION 5. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION 6. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 7. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication of a notice once in The Sunnyvale Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on August 27, 2024, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on September 10, 2024, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

DAVID CARNAHAN
City Clerk
Date of Attestation: _____

LARRY KLEIN
Mayor

(SEAL)

APPROVED AS TO FORM:

REBECCA L. MOON
City Attorney

EXHIBIT A

RECORDING REQUESTED BY

CITY OF SUNNYVALE
City Attorney's Office
P.O. Box 3707
Sunnyvale, CA 94088

WHEN RECORDED MAIL TO

CITY OF SUNNYVALE
City Attorney's Office
P.O. Box 3707
Sunnyvale, CA 94088

Record at No Fee per Government Code section 6103 [Space above this line for Recorder's use only]

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
by and between
INTUITIVE SURGICAL, INC. and CITY OF SUNNYVALE

Project name: Intuitive Surgical Campus Expansion

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT, dated _____, 2024 (“First Amendment Effective Date”), at Sunnyvale, California (“First Amendment”) is entered into by and between Intuitive Surgical, a Delaware corporation (“Landowner”) and the CITY OF SUNNYVALE, a charter city, created and existing under the laws of the State of California (the “City”), pursuant to the authority of Sections 65864-65869.5 of the Government Code of the State of California, and City of Sunnyvale Resolution No. 371-81.

RECITALS

A. City and Landowner entered into that certain Development Agreement dated November 5, 2021, recorded as Document Number in 25216978 on January 11, 2022, in the Official Records of Santa Clara County (the “Original DA”) setting forth certain legal obligations pertaining to the Intuitive Surgical Campus Expansion, as more particularly described in the Original DA. The Original DA relates to certain real property located in the City of Sunnyvale, County of Santa Clara, State of California (“Property”). The Property is more particularly described in the Original DA.

B. The Project previously proposed underground parking. Pursuant to Special Development Permit 2022-7369, the Project was amended to provide parking in an above-ground parking structure to be constructed on an adjacent parcel located in the City of Santa Clara, State of California.

C. On ____, 2024, the City Council of the City by Ordinance No. _____, approved this First Amendment and authorized its execution.

D. The Parties hereto desire to amend the Original DA to: (i) memorialize certain Community Benefits obligated to the City by Landowner; and (ii) incorporate certain language to memorialize changes to the scope of the Project in accordance with Special Development Permit 2022-7369. Except as modified herein, the Parties intend for the Original DA to remain in full force and effect.

E. The Original DA, as amended by this First Amendment, shall hereinafter collectively be referred to as the "Agreement".

AGREEMENT

NOW THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5 and City of Sunnyvale Resolution No. 371-81, and in consideration of the mutual covenants and promises contained herein, the adequacy and sufficiency of which is hereby acknowledged, Landowner and City, each individually referred to as a "Party" and collectively as the "Parties", agree as follows:

1. Defined Terms. All capitalized terms used herein shall have the meanings given in the Original DA except as expressly otherwise provided herein.

2. Reach Codes. Section 2.1.4 of the Original DA is hereby amended and restated in its entirety to read as follows (deleted text is shown in ~~strike through~~; added text is shown in **bold**):

“2.1.4 Reach Codes. Although the project would otherwise be exempt from the Reach Codes, Landowner shall meet or exceed the following minimum Reach Code standards in effect on the Enactment Date in furtherance of the goals of the City's Climate Action Playbook (2019) (the "CAP"); all electric buildings; installation of a solar PV system of approximately ~~13.5~~**3.27** megawatts; and provision of EV infrastructure for 100% of the vehicle parking spaces with EV charging stations or EV capable for the future, as provided in Section 4.2.4.”

3. Community Benefits. Section 2.1 of the Original DA is hereby amended by adding the following new Subsection 2.1.6:

“2.1.6 Parking Garage Fee. Landowner shall pay to City a one-time fee in the amount of Two Million Dollars (\$2,000,000) for ongoing loss of property tax, one time construction tax, and one time use tax for the parking garage built outside of City's jurisdictional limits, as provided in Section 4.2.6. Landowner is not required to pay the City any additional permitting fees, construction taxes, or other fees associated with development not located in the City.”

4. Permitted Square Footage. Section 4.1 of the Original DA is hereby amended and restated in its entirety to read as follows (added text is shown in **bold**):

“4.1 Permitted Square Footage. Pursuant to the Development Approvals, the Conditions of Approval, and this Agreement, Landowner is allowed to construct on the Property two new three-story office/research and development/ manufacturing buildings

totaling 1,211,000 square feet (including 113,000 square feet of basement space); an 11,000 square foot amenity building; a central utility plant totaling 12,000 square feet; and a five-level, above-ground parking structure, a bridge over Kifer Road connecting two buildings, and, on-site landscaping and amenities including a Class I Shared-Use Path, all as more particularly described in Special Development Permit 2019-7557, **Special Development Permit 2022-7369**, and Exhibit C, conditioned upon Landowner meeting the requirements of the Applicable Area Plan, the Conditions of Approval, and the provisions of this Agreement. In consideration of the obligations of the Landowner and the benefits to the City for the development of the Property, the City agrees that Landowner or successor thereto is allowed up to 1,211,000 square feet, so long as the Community Benefits are part of the Project, as allowed under the Area Plan and the City's Zoning Code.”

5. Reach Codes. Section 4.2.4 of the Original DA is hereby amended and restated in its entirety to read as follows (deleted text is shown in ~~strike through~~; added text is shown in **bold**):

“4.2.4 Reach Codes. Although the project would otherwise be exempt from the Reach Codes, Landowner shall meet or exceed the following minimum Reach Code standards in effect on the Enactment Date in furtherance of the goals of the City's CAP; all electric buildings; installation of a solar PV system of approximately ~~13.5~~**3.27** megawatts; and provision of EV infrastructure for 100% of the vehicle parking spaces with EV charging stations or EV capable for the future.”

6. Landowner Obligations. Section 4.2 of the Original DA is hereby amended by adding the following new Subsection 4.2.6:

“4.2.6 Parking Garage Fee. Landowner shall pay City a one-time fee of Two Million Dollars (\$2,000,000) for ongoing loss of property tax, one time construction tax, and one time use tax for the parking garage built outside of City's jurisdictional limits (“Parking Garage Fee”). Landowner shall pay the Parking Garage Fee to City prior to the issuance of the building permit for the North Site. Landowner is not required to pay the City any additional permitting fees, construction taxes, or other fees associated with development not located in the City.”

7. Replacement of Exhibit C. Exhibit C to the Original DA is hereby deleted and replaced with Exhibit C attached hereto.

8. Interpretation. Except as expressly modified by this First Amendment, the Original DA remains in full force and effect. In the case of any conflict between the provisions hereof and the terms of the Original DA, the provisions hereof shall control.

9. Recordation. The City Clerk shall cause the recordation of this First Amendment in the Official Records of the County of Santa Clara, State of California.

10. Counterparts. This First Amendment may be executed in counterparts, each of which shall, irrespective of the date of its execution and delivery, be deemed an original, and the counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the day and year first above written.

"City"

CITY OF SUNNYVALE,
A Charter City

By: _____
Tim Kirby
City Manager

Date: _____

Attest:

David Carnahan, City Clerk

Approved as to Form:

Rebecca Moon, City Attorney

"Landowner"

INTUITIVE SURGICAL INC., a
Delaware corporation

By: _____
John Lucas
VP, Real Estate & Workplace
Services

Date: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ (here insert name and title of the officer), personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(is), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ (here insert name and title of the officer), personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ices), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "C"

Site Plan

[See attached]

