

ORDINANCE NO. _____

**ORDINANCE APPROVING AN AGREEMENT BY AND BETWEEN THE
CITY OF DAVIS AND NISHI GATEWAY, LLC, RELATING TO THE
DEVELOPMENT OF THE PROPERTY
COMMONLY KNOWN AS THE NISHI PROPERTY**

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 with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

WHEREAS, in accordance with the Development Agreement Statute, the City of Davis (the "City") has enacted regulations (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute; and

WHEREAS, the Nishi Property (the "Nishi Property") is a component of the Nishi Gateway Mixed-Use Innovation District that also includes properties on West Olive Drive (collectively, the "Nishi Gateway Project"); and

WHEREAS, the Nishi Property is owned by Nishi Gateway, LLC, a California Limited Liability Corporation ("Developer"); and

WHEREAS, on February 16, , 2016, the City certified the Final Environmental Impact Report for The Nishi Gateway Project (the "Final EIR"); and

WHEREAS, prior to adopting this Ordinance, the City Council, on February 16, 2016, adopted Resolution No. 16-___, finding that, where feasible, mitigation measures have been imposed and modifications incorporated into the Project which avoid or substantially lessen all significant adverse environmental impacts and that social, economic and other benefits outweigh the remaining adverse environmental impacts that cannot be mitigated to a level of insignificance; and

WHEREAS, the City Council of the City of Davis adopted Resolution No. 16-___, which approved a general plan amendment for the Nishi Property's component of the Nishi Gateway Project; and

WHEREAS, the City Council of Davis adopted the Preliminary Development project entitlement for the Nishi Property, vested within the Development Agreement; and

WHEREAS, Developer desires to carry out the development of the Nishi Property consistent with the General Plan, as amended, and the Development Agreement and the vested entitlements referenced therein; and

WHEREAS, the Development Agreement will assure the City and its residents and the Developer that the Development will proceed as proposed and that the public improvements and other amenities and funding obligations, will be accomplished as proposed; and

WHEREAS, the Planning Commission held a duly noticed public hearing on January 6, 2016, on the Final EIR, the General Plan Amendment, and project entitlements, during which public hearing the Planning Commission received comments from the Developer, City staff, public agencies and members of the general public; and

WHEREAS, following the public hearing, the Planning Commission made a recommendation to the City Council on the Final EIR, the General Plan Amendment and the Development Agreement; and

WHEREAS, pursuant to Section 65867 of the Government Code, the City Council, on January 19, 2016, held a duly noticed public hearing on the Final EIR, the General Plan Amendment, project entitlements, and the Development Agreement, during which public hearing, the City Council received comments from the Developer, City staff, public agencies and members of the general public; and

WHEREAS, pursuant to “Measure R” as codified in Davis Municipal Code Chapter 41, the General Plan amendment for the Nishi Property will not become effective unless and until it is approved by an affirmative majority vote of the voters of the City, voting on the proposal; and

WHEREAS, the Nishi Property General Plan amendment, together its Baseline Project Features, will be submitted to the voters of the City at the June 7, 2016 election.

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

SECTION 1. This Ordinance incorporates, and by this reference makes a part hereof, the Development Agreement attached hereto as Exhibit A, subject to the provisions of Section 5 hereof.

SECTION 2. This Ordinance is adopted under the authority of Government Code Section 65864 et seq., and pursuant to “Development Agreement Regulations”.

SECTION 3. In accordance with the Development Agreement Regulations, the City Council hereby finds and determines, as follows:

- (a) The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, in that it establishes certain

development rights, obligations and conditions for the implementation of the Nishi Property;

- (b) The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the general plan designations which will apply to the Nishi Property;
- (c) The Development Agreement is in conformity with public convenience, general welfare and good land use practice;
- (d) The Development Agreement will not be detrimental to the public health, safety and general welfare;
- (e) The Development Agreement will not adversely affect the orderly development of property or the preservation of property values; and

SECTION 4. The foregoing findings and determinations are based upon the following:

- (a) The Recitals set forth in this Ordinance, which are deemed true and correct;
- (b) Resolution No. _____, adopted by the City Council on February 16, 2016, making findings as to the Final EIR for the Nishi Gateway Project, including the Statement of Findings and Facts and Statement of Overriding Considerations (Exhibit A thereto), and the Mitigation Monitoring and Reporting Program (Exhibit B thereto) approved by and incorporated in said Resolutions, which Resolutions and exhibits are incorporated herein by reference as if set forth in full;
- (c) The City's General Plan, as amended by the General Plan Amendment adopted by the City Council by Resolution No. _____ prior to adoption of this Ordinance;
- (d) All City staff reports (and all other public reports and documents) prepared for the Planning Commission, City Council, or others relating to the Final EIR, the General Plan Amendment, the Development Agreement, and other actions relating to the Property;
- (e) All documentary and oral evidence received at public hearings or submitted to the Planning Commission, or City during the comment period relating to the Final EIR, the General Plan Amendment, the Development Agreement, and other actions relating to the Property; and
- (f) All other matters of common knowledge to the City Council, including, but not limited to the City's fiscal and financial status; City general ordinances, policies and regulations.

SECTION 5. The City Council hereby approves the Development Agreement, attached hereto as Exhibit A, subject to the provisions of Section 6 hereof, and subject further 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, as approved by the City Council.

SECTION 6. The approval contained in Section 5 hereof is subject to and conditioned upon Resolution No. 16-___, adopted by the City Council approving the General Plan amendment, becoming effective, including approval of the General Plan Amendment by the voters, as required by Chapter 41 of the Municipal Code, the “Citizens’ Right to Vote on Future Use of Open Space and Agricultural Lands Ordinance.”

SECTION 7. Upon the effective date of this Ordinance as provided in Section 9 hereof, the Mayor and City Clerk are hereby authorized and directed to execute the Development Agreement on behalf of the City of Davis.

SECTION 8. The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the Development Agreement pursuant to the terms of the Development Agreement.

SECTION 9. This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption; provided, however, that if the actions referred to in Section 6 hereof are not effective on such date, then the effective date of this Ordinance shall be the date on which all of said actions become effective, as certified by the City Clerk.

INTRODUCED on the ___th day of _____, 2016, and PASSED AND ADOPTED by the City Council of the City of Davis on this ___rd day of _____, 2016, by the following vote:

AYES:

NOES:

ABSENT:

Daniel M. Wolk
Mayor

ATTEST:

Zoe S. Mirabile, CMC,
City Clerk