



Legislation Details (With Text)

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Title: RESOLUTION CONSENTING TO A SUBLEASE BETWEEN LFS DEVELOPMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY, DBA INTERCONTINENTAL HOTEL AND GELATO & CO., A CALIFORNIA CORPORATION, DBA GELATO & FRIENDS, FOR A TEN (10) YEAR TERM WITH ONE (1) FIVE (5) YEAR OPTION, WITH CONDITIONS

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Date	Ver.	Action By	Action	Result
9/12/2018	1	Board of Port Commissioners	adopted	

DATE: September 12, 2018

SUBJECT:

RESOLUTION CONSENTING TO A SUBLEASE BETWEEN LFS DEVELOPMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY, DBA INTERCONTINENTAL HOTEL AND GELATO & CO., A CALIFORNIA CORPORATION, DBA GELATO & FRIENDS, FOR A TEN (10) YEAR TERM WITH ONE (1) FIVE (5) YEAR OPTION, WITH CONDITIONS

EXECUTIVE SUMMARY:

The San Diego Unified Port District (District) entered into a 66-year Lease¹ (Lease) with LFS Development, LLC, (Lane Field South) on June 1, 2016 to operate a 400-room single-branded InterContinental Hotel located between Pacific Highway and North Harbor Drive, north of Broadway, in the City of San Diego. Lane Field South is requesting approval of a sublease with Gelato & Co. dba Gelato & Friends (Gelato & Friends) to operate a gelato shop within the hotel building. The proposed sublease with Gelato & Friends is a ten-year term with one five-year option to extend conditioned upon consent of the sublease by the District’s Board of Port Commissioners (Board). The proposed sublease is consistent with the terms of the Lease and Board of Port Commissioners Policy No. 355 (BPC 355), and staff recommends the Board grant its consent.

RECOMMENDATION:

Adopt a Resolution consenting to a sublease between LFS Development, LLC, a Delaware limited liability company, dba InterContinental Hotel and Gelato & Co., a California corporation, dba Gelato & Friends, for a ten (10) year term with one (1) five (5) year option, with conditions.

FISCAL IMPACT:

Lane Field South began paying minimum annual rent to the District in the amount of \$231,378 on June 1, 2018. Once the hotel is operational, Lane Field South will begin paying percentage rent that ramps up annually for 24 years. The Gelato & Friends sublease is expected to generate approximately \$1,440 in rent to the District in the first operational year, which will increase annually as Lane Field South's percentage rent escalates.

This agenda item is subject to Board Policy No. 106 - Cost Recovery User Fee Policy.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s):

- A vibrant waterfront destination where residents and visitors converge.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Lane Field South's Lease with the District covers approximately 69,278 square feet of land area located between Pacific Highway and North Harbor Drive, north of Broadway, in the City of San Diego (Attachment A - Location Map). The Lease commenced on June 1, 2016 and has a term of 66 years, which expires on May 31, 2082. Lane Field South's leasehold is comprised of a 400-room single-branded InterContinental Hotel within a single tower, meeting space and banquet rooms, 686 parking spaces, and 32,850 square feet of retail space. Lane Field South's Lease is summarized on the attached Lease Information Summary (Attachment B - Lease Information Summary).

Gelato & Friends will operate a gelato shop on the first floor of the InterContinental Hotel (Attachment C - Sublease). Gelato & Friends will feature Italian gelato crafted with top quality ingredients and traditional desserts, pastries and gourmet coffee. This location will be the flagship location and they plan to continue to expand their business throughout California. The management team has an average of 20 years of experience in managing businesses and building new companies across several industries. Gelato & Friends' sublease with Lane Field South has a ten-year term with one five-year option to extend, conditioned upon consent of the sublease by the Board. Lane Field South will submit plans for the tenant improvements to the sublease area for District approval upon completion of the design. Gelato & Friends expects to generate approximately \$600,000 in gross sales in their first year of operations.

For long-term subleases (more than five years), BPC 355 states they must meet the following conditions as a requirement to consent of the sublease:

- Sublease must meet current District lease requirements;
- Provide that the subtenant shall be obligated to pay any master lease rent increases that are applicable to the subleased premises; and
- Provide that in the event of a conflict between the master lease and the sublease, the master lease shall prevail.

Since the sublease is consistent with BPC 355, staff recommends that the Board adopt a Resolution consenting to the sublease between Lane Field South and Gelato & Friends.

General Counsel's Comments:

The Office of the General Counsel has reviewed the sublease with Gelato & Friends and approves as to form and legality.

Environmental Review:

The District originally approved development of the Lane Field site for hotel, retail and office use as part of the North Embarcadero Alliance Visionary Plan (NEAVP). The potential environmental impacts of the proposed uses were analyzed in the Master Environmental Impact Report (MEIR) for the NEAVP, which was certified by the District on April 25, 2000 (Resolution 2000-82). Pursuant to State California Environmental Quality Act (CEQA) Guidelines Section 15179, the Board adopted Resolution 2006-131 on August 8, 2006, which found that: (1) no substantial changes have occurred with respect to the circumstances under which the NEAVP MEIR was certified; (2) the MEIR is adequate for use in the review of subsequent projects; and, (3) the mitigation measures contained in the NEAVP MEIR and Mitigation Monitoring and Reporting Program adopted by the Board under Resolution 2000-82 remain in effect and are applicable for subsequent projects described in the MEIR. The District subsequently prepared an Addendum to the MEIR for the Lane Field Development project as the environmental review for a Coastal Development Permit (CDP) for development of the Lane Field North and South parcels with a total of 800 hotel rooms and 80,000 square feet of retail space. The District adopted the Addendum on January 8, 2008. The proposed project is consistent with the project analyzed in the Addendum. The proposed Board action is not a separate "project" for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Accordingly, the proposed Board action consenting to a sublease for the operation of a gelato shop is merely a step in furtherance of the original project for which environmental review was performed, and no further environmental review is required.

In addition, the proposed Board action complies with Section 87 of the Port Act, which allows for visitor-serving commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed project is consistent with the Public Trust Doctrine.

Finally, the District authorized issuance of a CDP for the Lane Field Hotel project. The CDP was subsequently appealed by the California Coastal Commission (CCC). On January 8, 2009, the CCC determined the project complied with CEQA and approved the CDP for the Lane Field Hotel project (A-6-PSD-08-04/A-6-PSD-08-101). Furthermore, on April 13, 2011, the CCC approved the CDP for the NEVP Phase 1 project, with the understanding that an amendment to the Lane Field CDP would be required to include the Setback Park in the redesign of the hotel development. On February 6, 2013, the CCC authorized an amendment to the Lane Field CDP to incorporate the Setback Park as part of the project (A-6-PSD-08-04-A1). In November 2013, the CCC authorized an amendment to the Lane Field CDP to extend the expiration date to January 8, 2015 (A-6-PSD-08-004-E2). On September 22, 2015, the CCC authorized a second amendment to the Lane Field CDP to modify the project description and Public Access Plan concerning the publicly-accessible terrace and restaurant components of the project (A-6-PSD-08-004-A2). On January 11, 2016, the CCC authorized a third

amendment to the Lane Field CDP to modify project description to extend the required construction start date by six months from February 6, 2016 to August 6, 2016 (A-6-PSD-08-004-A3). Finally, on February 8, 2018, the CCC authorized a fourth amendment to the Lane Field CDP to incorporate a temporary electronic public art (CDP No. A-6-PSD-08-004-A4). The proposed Board action consenting to a sublease for the operation of a gelato shop is consistent with the project description in the CCC-issued CDP, as amended. No additional action under the California Coastal Act is required at this time.

Equal Opportunity Program:

Not Applicable

PREPARED BY:

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Attachments

Attachment A: Location Map

Attachment B: Lease Information Summary

Attachment C: Sublease

¹ San Diego Unified Port District Lease to LFS Development, LLC., on file in the Office of the District Clerk bearing Document No. 64976, filed May 24, 2016.