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Title: PRESENTATION AND DIRECTION TO STAFF ON POTENTIAL PUBLIC FINANCING MODEL FOR PUBLIC INFRASTRUCTURE AND PARKS AS A PART OF THE REDEVELOPMENT OF A PORTION OF THE CENTRAL EMBARCADERO DISTRICT BY 1HWY1, LLC (SEAPORT SAN DIEGO PROJECT)

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Attachments: 1. 21. 2022-0339 Attachment A, 2. 21. 2022-0339 Attachment B, 3. 21. 2022-0339 Attachment C, 4. 21. 2022-0339 BPC Agenda-Related - Seaport Village Comments, 5. 21. 2022-0339 C Carey - ARMS Seaport Project The Developer's Proposal, 6. 21. 2022-0339 BPC Agenda-Related - Seaport Village Comments 2

Date	Ver.	Action By	Action	Result
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DATE: October 11, 2022

SUBJECT:

PRESENTATION AND DIRECTION TO STAFF ON POTENTIAL PUBLIC FINANCING MODEL FOR PUBLIC INFRASTRUCTURE AND PARKS AS A PART OF THE REDEVELOPMENT OF A PORTION OF THE CENTRAL EMBARCADERO DISTRICT BY 1HWY1, LLC (SEAPORT SAN DIEGO PROJECT)

EXECUTIVE SUMMARY:

On February 22, 2016, the District issued Request for Proposals 16-04ME (RFP)¹ for the redevelopment of 70 acres of land and water situated between downtown and the San Diego Bay in the District's Central Embarcadero area (RFP Redevelopment Site). The RFP Redevelopment Site is bordered by the USS Midway Museum and Harbor Drive to the north, Manchester Grand Hyatt and Kettner Boulevard to the east, and San Diego Bay to the south and west. The RFP Redevelopment Site also includes Embarcadero Marina Park North, Ruocco Park and Tuna Harbor, but excludes the Fish Market leasehold. A location map is attached for reference (Attachment A - Location Map).

Following an extensive solicitation and due diligence process, at the November 8, 2016 meeting, the Board of Port Commissioners (Board) selected the developer team, 1HWY1, LLC (1HWY1), as the successful proposer. On October 2, 2017, the District entered into an Exclusive Negotiating Agreement (Original ENA) with Protea Waterfront Development, LLC (Protea), the managing member of 1HWY1 (which had yet to be formed), and Protea later assigned its rights and obligations under the Original ENA to 1HWY1 when 1HWY1 was formed. Under the Original ENA, the negotiating

period was set to expire on October 1, 2019. However, at the request of 1HWY1, the District granted extensions to 1HWY1 for delivery of its submittals and extended the negotiating period under the Original ENA on several occasions. Most recently, in December 2020, the District and 1HWY1 entered into an amendment to the Original ENA (Amendment No. 1) to extend the negotiating period to October 1, 2024 (Attachment B - ENA). The Original ENA, as amended by Amendment No. 1, is referred to herein as the “ENA”. Pursuant to Section 6.1 of the ENA, 1HWY1 has delivered to the District certain submittals for the proposed redevelopment of the RFP Redevelopment Site, which includes additional land and water acreage adjoining the RFP Redevelopment Site (Seaport San Diego Project or Project).

At the July 21, 2022 Board meeting, staff and 1HWY1 presented updates on the draft preliminary Project description (the proposed draft “Project Description”) to the Board based on feedback received from the Board and stakeholders at the March 8, 2022 Board meeting. Staff has continued to work with 1HWY1 over the past several months on revisions to the Project Description based on this feedback and any additional feedback from staff. Along with revisions to the Project Description, 1HWY1 has continued to work on evaluating Project feasibility. 1HWY1 is exploring several public financing options to pay for the cost of some of the public infrastructure and public realm components of the Project, which 1HWY1 has informed the District may total up to \$550M. 1HWY1 has stated that unforeseen site conditions, changes in economic outlook and construction cost volatility has impacted the cost of the Project. To address these, the 1HWY1 team is proposing to pursue various potential public financing options requiring contributions from other public agencies for the public infrastructure and public realm components of the Project which include park and public amenities as well as core infrastructure that includes public components. The proposed public financing structures that 1HWY1 has shared with the District are:

- Community Facilities District (CFD), a special tax district covering the designated Project area that imposes special taxes on the hotel and entertainment uses of the Project to fund designated public infrastructure or pay toward debt service for bonds used for the designated infrastructure;
- Enhanced Infrastructure Financing District (EIFD), tax increment financing that uses dedicated tax revenues generated from the designated Project area to pay for designated infrastructure directly or pay toward debt service for bonds used for the designated infrastructure; and
- Public Financing Authority (PFA), a joint powers authority that is formed solely by public agencies to issue bonds which would be secured by future revenue streams.

1HWY1 has proposed five different incremental funding sources generated from the Project that together could be used to pay for all of the public infrastructure using one or more of the above structures:

- Real property tax increment (City/County);
- Sales and use tax (City/County);
- Transient Occupancy Tax (TOT) and Tourism Marketing District (TMD) taxes (City/County);
- Special District Hotel Tax (New Project Generated); and
- Special District Entertainment Tax (New Project Generated).

1HWY1 will be presenting an overview of its public financing model to the Board at the October 11, 2022 Board meeting at which staff will be seeking direction from the Board (Attachment C - Public Financing Presentation).

Board action on the Project Description or overall proposed Project is not required at the October 11, 2022 Board meeting, as staff and 1HWY1 are only presenting an update to the Board on 1HWY1's proposed public financing model for certain components of 1HWY1's proposed Project. However, the Board may provide staff with direction on 1HWY1's presentation, including without limitation, feedback as it relates to the proposed public financing for components of 1HWY1's proposed Project or the economic feasibility of the proposed Project which will inform any additional due diligence to be performed by staff on the Project feasibility. Moreover, at the October 11, 2022 Board meeting, the Board will not be approving the design or the final financing structure for the proposed Seaport San Diego Project and the Board reserves its sole and absolute discretion to, among other things related to the Project, give direction regarding the proposed draft Project Description, the final financing structure for the proposed Seaport San Diego Project, or approve or disapprove any or all of the proposed Project at a later date. Additionally, pursuant to the California Environmental Quality Act (CEQA), the Board reserves its sole and absolute discretion to condition the proposed Project and adopt all feasible mitigation measures, a project alternative, including the no project alternative and a Statement of Overriding Considerations, if applicable, in the future once environmental review is conducted. Additionally, it is important to note that District staff has not completed its analysis of the information provided by 1HWY1, including without limitation, the content and legal compliance of the proposed draft Project Description, development concept, 1HWY1's public financing model, the Project's financial or physical feasibility or potential land use and entitlement implications.

RECOMMENDATION:

Receive Presentation and Provide Direction to Staff on Potential Public Financing Model for Public Infrastructure and Parks as a Part of the Redevelopment of a Portion of the Central Embarcadero District by 1HWY1.

FISCAL IMPACT:

Receiving a presentation on the Seaport San Diego Project with 1HWY1 for direction to staff on the proposed public financing will not have a direct fiscal impact. While the public financing model proposed by 1HWY1 may require potential action(s) from the District, the Board is not approving any of the proposed public financing components or the proposed public financing model at the October 11, 2022 Board meeting, and future Board action would be required prior to the District expending any cost related to the public financing model proposed by 1HWY1. Moreover, 1HWY1, as the "Developer" under the ENA, is responsible for costs and fees expended by 1HWY1 as part of its due diligence efforts, including without limitation, all processing fees and costs associated with application for, and processing of, the environmental review. The proposed development is expected to generate future revenues for the District which are currently being evaluated by staff as part of the due diligence process. If 1HWY1 requests an extension that goes beyond October 1, 2024, the District has the option to collect a non-refundable extension fee in an amount to be determined at that time.

COMPASS STRATEGIC GOALS:

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

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Background

At the July 21, 2022 Board meeting, staff and 1HWY1 presented updates on the proposed draft Project Description for the Seaport San Diego Project. During the open session meeting, there was public comment on the Project and the Board provided feedback to staff and 1HWY1. Staff has since been working with 1HWY1 on additional revisions to the Project Description in response to the feedback received, requirements for the submittals in the ENA and general staff feedback, as well as continuing to work on the project financials and feasibility.

1HWY1 has proposed pursuing several potential public financing options for the necessary public infrastructure and the proposed public amenities for the Project. 1HWY1 will be presenting their public financing model to the Board at the October 11, 2022 Board meeting and staff will be seeking direction from the Board on 1HWY1's proposal.

The 1HWY1 team is projecting this Project to be transformational to the San Diego waterfront and that it will have a large economic impact to the region through the number of jobs it will create and the revenues it will generate as rent to the District and taxes to the City of San Diego (City) and County of San Diego (County). According to projections provided by 1HWY1, the Project is expected to create over 25,000 full time equivalent construction jobs, generate a net fiscal impact of over \$1 billion to the City over 30 years, and a net fiscal impact of over \$400 million to the County over 30 years. 1HWY1 believes that public financing may be needed to provide all of the public amenities that are proposed in the Project Description.

Public Financing Options

Since 1HWY1's original submittal to the RFP in 2016, 1HWY1 has stated that much has changed regarding their understanding of the RFP Redevelopment Site and the economic cost of the Project. In the time since 1HWY1's original submittal to the RFP there have been several conditions that have economically impacted the Project which include:

- Additional shoreline stabilization due to historical liquefiable fill;
- An active earthquake fault identified on the site;
- Very complicated utility relocation;
- Expanded underground parking to allow for more above-ground public access;
- Real estate industry impacted due to COVID-19 pandemic; and
- Construction cost volatility

Due to these factors, 1HWY1 believes that public financing may be necessary to deliver some of the proposed public infrastructure and public amenities for the Project. Based on the current proposed Project Description, the portion of the public infrastructure and public amenities that 1HWY1 is seeking public financing for include: predevelopment, shoreline stabilization, site work, electrical,

marina infrastructure and revetments, the proposed promenade and green belt, piers and breakwater, Midway Cove, beaches and wetlands and associated site work. For these components, 1HWY1 has informed the District that it would be seeking up to \$550M in public financing.

1HWY1 has proposed five different incremental funding sources generated from the Project that together could be used to pay for all of the public infrastructure:

- Real property tax increment (City/County);
- Sales and use tax (City/County);
- TOT and TMD taxes (City/County);
- Special District Hotel Tax (New Project Generated); and
- Special District Entertainment Tax (New Project Generated).

The special taxes on hotels and entertainment would account for approximately 45% (\$250 million) of the funding necessary for the public infrastructure and public realm components, and the real property tax, sales and use tax and TOT/TMD make up the remaining 55% (\$300 million).

The 1HWY1 team has indicated to the District that they are considering several different public financing structures that utilize the different sources mentioned above to fund the public infrastructure and public realm components of the Project which include the following:

- CFD, a special tax district covering the designated Project area that imposes special taxes on the hotel and entertainment uses of the Project to fund designated public infrastructure or pay toward debt service for bonds used for the designated infrastructure;
- EIFD, tax increment financing that uses dedicated tax revenues generated from the designated Project area to pay for designated infrastructure directly or pay toward debt service for bonds used for the designated infrastructure; and
- PFA, a joint powers authority that is formed solely by public agencies to issue bonds which would be secured by future revenue streams.

Separately, 1HWY1 is also considering local, state and federal grants.

In the past few months, staff and 1HWY1 have had preliminary discussions with the City regarding some of these public financing options, as they require potential participation by the City, but since the conversations are preliminary and ongoing, City staff has not provided an official response. The County would also be a required participant, but staff and 1HWY1 have not yet engaged County staff. 1HWY1 will be presenting the various public financing options discussed above at the October 11, 2022 Board meeting, and staff is seeking direction from the Board on this matter.

Next Steps

Following the October 11, 2022 meeting, staff will continue conducting due diligence on the Project feasibility, including any due diligence on the public financing model based on the Board's direction. Staff will also continue working with 1HWY1 on revisions to the draft Project Description and related ENA submittals.

Staff anticipates returning to the Board at the November 8th, 2022 Board meeting for preliminary project review and to request that the Board authorize staff to commence environmental review for

the Project.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda sheet as presented to it and approves it as to form and legality.

Environmental Review:

The proposed Board actions, including without limitation, a presentation and direction to staff on potential public financing options for infrastructure and parks as a part of the redevelopment of a portion of the central embarcadero district by 1HWY1, LLC, do not constitute a project under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the proposed Board actions requiring the District or the Board's discretionary approval resulting in a physical change to the environment would be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The exercise of this discretion is in no way limited by this proposed Board actions. Therefore, no further CEQA review is required.

The proposed Board actions comply with Section 35 of the Port Act, which authorizes the Board to do acts necessary and convenient for the exercise of its power. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

The proposed Board actions do not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because there will not be, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development would remain subject to its own independent review pursuant to the District's certified CDP Regulations, Port Master Plan (PMP), and Chapters 3 and 8 of the Coastal Act. The exercise of the District's discretion under the District's CDP Regulations is in no way limited by the proposed Board actions.

Diversity, Equity, and Inclusion Program:

This agenda sheet had no direct impact on District workforce or contracting reporting at this time.

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Attachment(s):

Attachment A: Location Map

Attachment B: 1HWY1 Exclusive Negotiating Agreement

Attachment C: Public Financing Presentation