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Title: RESOLUTION AUTHORIZING THE CHULA VISTA BAYFRONT PROJECT FUNDING AGREEMENT BY AND AMONG THE COUNTY OF SAN DIEGO, THE CITY OF CHULA VISTA, THE SAN DIEGO UNIFIED PORT DISTRICT AND THE CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY FOR A \$25 MILLION CONTRIBUTION, WITH CONDITIONS

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DATE: October 8, 2019

SUBJECT:

RESOLUTION AUTHORIZING THE CHULA VISTA BAYFRONT PROJECT FUNDING AGREEMENT BY AND AMONG THE COUNTY OF SAN DIEGO, THE CITY OF CHULA VISTA, THE SAN DIEGO UNIFIED PORT DISTRICT AND THE CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY FOR A \$25 MILLION CONTRIBUTION, WITH CONDITIONS

EXECUTIVE SUMMARY:

The Chula Vista Bayfront Master Plan¹ (CVBMP) is the result of a decade-long joint planning effort by the San Diego Unified Port District (District), the City of Chula Vista (City), and a broad coalition of stakeholders. Phase 1A of CVBMP includes the resort hotel and convention center (RHCC), located on approximately 36 acres of land within the CVBMP (Site), and is the catalyst project for the Chula Vista Bayfront (CVB) with the goal to not only provide a world-class hotel and convention center to the region, but also provide a revenue vehicle to allow the District and the City to build future parks, restore sensitive habitat, and construct public infrastructure on the CVB. The RHCC and the public infrastructure component of the Phase 1A (Phase 1A Infrastructure) are collectively referred to herein, as the "Project". The District and the City are collectively referred to as, the "Public Entities". The Phase 1A Infrastructure includes items such as Harbor Park, Sweetwater Signature Park, improvements to E Street, F Street, G Street, and H Street, Gunpowder Point Drive Relocation, the Sweetwater Buffers, the H-3 Utility Corridor and Site Prep, and the G Street Sewer Pump Station.

On April 24, 2018, the District and the City approved a Disposition and Development Agreement (DDA) with RIDA Chula Vista, LLC (RIDA) that outlined the steps necessary to enter into the lease of the Site and start construction of the Project ultimately leading to the development and operations of

a world-class hotel and convention center. Details of the Project financing, specifically the contribution by the District and the City (Public Financing) and RIDA's private investment (Private Financing), are described below. The Public Financing is anticipated to be delivered to the Project through future bond offerings that will be issued as part of the closing of escrow contemplated in the DDA. In brief, the District, the City, and RIDA are estimated to contribute the following amounts based on the conceptual outline of the plan of finance for the Project that is attached to the DDA:

- Convention Center (District/City): \$240 Million
- Phase 1A Infrastructure (District/City): \$63 Million
- Parking (District): \$40 Million
- RHCC (RIDA): \$785 Million
- **TOTAL PROJECT COST: \$1.128 Billion**

The Public Entities continue to work toward solving the financial feasibility of the Project. On September 9, 2019, the District, the City, and the Chula Vista Bayfront Facilities Financing Authority (Authority) reached out to the County of San Diego (County) to request a \$25 Million contribution (Contribution) to be used toward the construction of the Phase 1A Infrastructure. In response, staff is negotiating the Chula Vista Bayfront Project Funding Agreement (Funding Agreement) with the County of San Diego (County), the City, and the Authority to provide for the Contribution toward the Project to be delivered by the County in three separate installments of \$8,333,333 over a period of approximately three years following the commencement of construction of the RHCC or July 1, 2020, whichever is earlier. The County would not be required to make the Contribution if the construction of the RHCC does not commence.

The Contribution would be paid to the Authority and used by the District, the City and the Authority to pay for the construction of the Phase 1A Infrastructure. The Contribution would be repaid to the County through a percentage of the property tax revenue generated from the CVBMP (Property Tax Increment) that is actually received by the County, as may be supplemented by a payment from the District if the amount received by the County in any given year of the term is less than the projected Property Tax Increment for such year of the term of the Agreement (Shortfall Payment). The principal of the Contribution may also be paid down by any amount of funds contributed by the City from amounts awarded to the City through current litigation between the City and the County (Redevelopment Litigation) and any funds received by the County in excess of the projected Property Tax Increment if they are equal or greater than the outstanding balance of the Contribution. The balance of the Contribution that is not paid by the Property Tax Increment, a Shortfall Payment, or the Redevelopment Litigation would accrue interest at a rate of three percent. The District, the City, and the Authority would have fifteen years to pay the Contribution plus any applicable interest. To make sure the District and the City are made whole for any amounts each pays towards the Contribution, the Funding Agreement would require that the District and the City amend the Revenue Sharing Agreement dated April 24, 2018 (District Clerk No. 68392) to provide for the priority reimbursement to the City and the District for such amounts that they contribute toward the Contribution subject to future negotiation between the City and the District. These amounts can include Shortfall Payments, contributions from the Redevelopment Litigation, and the cost and expense from performing the indemnification obligations under the Funding Agreement. As part of the Funding Agreement, the District, the Authority and the City would also be required to collectively indemnify, defend, and hold harmless the County, its officers, directors, employees and agents (Indemnified Parties) for any loss, cost, claim, liability or expense that directly arises out of the County's funding of the Chula Vista

Bayfront Project pursuant to the Funding Agreement, except for losses, costs, claims, liability or expense that is adjudged to be attributable to the County's negligence or willful misconduct. The City Council is scheduled to consider the Funding Agreement on October 8, 2019, the Authority is scheduled to consider the Funding Agreement on October 9, 2019, and the County is scheduled to consider the Funding Agreement on October 15, 2019.

Staff believes the Contribution is critical to the success of the CVBMP. Staff recommends that the Board authorize staff to enter into the Funding Agreement substantially in the form presented the Board at the Board meeting.

RECOMMENDATION:

Adopt resolution authorizing the Funding Agreement for a \$25 Million contribution, with conditions.

FISCAL IMPACT:

The proposed Board action would result in the County contributing \$25 million to the Authority to be used for the construction of the Phase 1A Infrastructure, which would reduce the \$63 Million projected to be contributed by the District, the City, and the Authority pursuant to the conceptual outline of the plan of finance attached to the DDA. Repayment of the Contribution may be made at any time and annual payments would be credited toward the Contribution from the future property tax increment generated within the CVBMP, any contribution from the City related to the Redevelopment Litigation, and any Shortfall Payments made to the County. If the Contribution is not repaid until the end of the 15-year term, the total amount repaid to the County for the Contribution would be approximately \$33,788,000. In addition, the District, the City, and the Authority would collectively indemnify the County for any loss, cost, claim, liability, or expense (including reasonable attorneys' fees) directly arising out of the County's funding of a project on the CVBMP pursuant to the Funding Agreement for the term of Funding Agreement, which is estimated to last fifteen years. The Funding Agreement would require the District and the City to amend the Revenue Sharing Agreement to provide for the priority reimbursement to the District and the City of any payment made by either the District or the City to the County under the Funding Agreement through the future revenues to be generated from the RHCC; provided, however, the District would be responsible for paying the County the District payment and fulfilling its collective indemnity obligations with the City and Authority regardless of whether there are revenues generated from the RHCC sufficient to reimburse the District. An amendment to the Revenue Sharing Agreement reflecting the provision required in the Funding Agreement and a Plan of Finance describing the updated proposed financing structure for the Public Financing will be presented to the Board in the future, for its consideration and approval.

COMPASS STRATEGIC GOALS:

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

- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

The CVBMP was collaboratively planned through an extensive public participation program that included over 100 community meetings and resulted in a comprehensive Environmental Impact Report (EIR) and Port Master Plan Amendment, which was approved by the Board of Port Commissioners (Board) in May 2010 and certified by the California Coastal Commission (CCC) in August 2012.

The Public Entities entered into a financing agreement for the CVBMP on May 8, 2012² (Financing Agreement). The Financing Agreement set forth the framework for the financing and development of the public improvements and infrastructure within the CVBMP, specifically the Phase 1A Infrastructure, by the District and City to promote public access to, and engagement with, the water, while enhancing the quality and protection of key habitat areas, with the ultimate goal of creating a world-class bayfront through strong planning and design, economic feasibility and community outreach. In the Financing Agreement, the Public Entities outlined various anticipated sources of funds (*i.e.*, ground lease revenues, tourism occupancy taxes) and anticipated cooperative efforts to be performed by each of the Public Entities. As the design and implementation of the RHCC has evolved, the District and the City have further refined each entity's anticipated revenue sources and such changes have been memorialized in the Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement dated June 20, 2017 (A&R Financing Agreement). Both the Financing Agreement and A&R Financing Agreement anticipated as a funding source for the public improvements a form of incremental property tax revenue, whether through bonds issued by an Enhanced Infrastructure Financing District (EIFD), or if an EIFD is not formed, through an amount equal to the City's share of such property tax revenues generated from the RHCC.

In September 2019, the District, the City and the Authority sent a formal request to the County requesting a \$25 Million contribution toward the Phase 1A Infrastructure. The County expressed a desire to assist the District, the City, and the Authority in contributing toward the Phase 1A Infrastructure.

The following is a summary of the major terms that are anticipated to be included in the Funding Agreement to be presented the Board at the Board meeting:

Term Category	Term
Total Contribution	Up to \$25 Million.
County Payments	Three equal payments of \$8.3 Million each paid over a period of approximately three years following the commencement of the construction of the RHCC.
Contribution Schedule	First Payment due on the later of: (a) 30 days after start of RHCC; or (b) July 1, 2020; Second Payment due on July 1, 2021; and Third Payment due on July 1, 2022.
Repayment Schedule	Starting with the Second Payment year, Property Tax Increment will be used to repay the Contribution.
Repayment Term	15 Years subject to County actually receiving tax increment amounts.
Interest Rate	3% on the outstanding balance of the Contribution.

District Payment Obligation	If annual tax increment is less than the projected tax increment, the District must pay the County the difference for that year within 90 days of written notice.
City Payment Obligation	Contribute County's portion of disputed amounts related to current litigation involving the City and County.

Staff is recommending the Board authorize staff to enter into the Funding Agreement, in substantially the form presented to the Board at the Board meeting, as it is an important piece of funding to execute the CVBMP. Further, the terms of the repayment of the Contribution are favorable as future revenues generated from the Project can be used.

RECOMMENDATION

Staff believes the Contribution is critical to the success of the CVBMP. Staff recommends that the Board authorize staff to enter into the Funding Agreement in substantially the form presented to the Board at the Board meeting. The Board has the discretion to approve, modify, or reject staff's recommendation.

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 action, including without limitation, a resolution authorizing a funding agreement for public infrastructure on the Chula Vista Bayfront, was adequately covered in the Final Environmental Impact Report (FEIR) for the Chula Vista Bayfront Master Plan (CVBMP) (UPD #83356-EIR-658; SCH #2005081077; Clerk Document No. 56562), certified by the District on May 18, 2010 (Resolution No. 2010-78), the Addendum to the FEIR, which was adopted by the Board on August 13, 2013 (Resolution No. 2013-138), and the Second Addendum to the FEIR, which was adopted by the Board on April 10, 2018 (Resolution No. 2018-0069). 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.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the FEIR and Addendums, the District finds and recommends that the proposed Board action does not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the FEIR and Addendum due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light that (a) shows the project will have one or more significant effects not discussed in the FEIR and Addendum, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR and Addendum, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and (d) no changes to mitigation measures or alternatives have been identified or are required. Pursuant to CEQA Guidelines §15162(b), the District finds and recommends that no further analysis or environmental documentation is necessary.

Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

The proposed Board action complies with Sections 21 and 35 of the Port Act which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed actions are consistent with the Public Trust Doctrine.

The proposed Board direction does 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 they will not result in, 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, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District’s certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The proposed Board action in no way limits the exercise of the District’s discretion under the District’s CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

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Attachment(s): None.

¹. SDUPD Clerk’s Office Document No. 59406 filed October 5, 2012, Port Master Plan Amendment

². SDUPD Clerk’s Office Document No. 59001 filed May 30, 2012, Chula Vista Bayfront Master Plan Financing Agreement between City of Chula Vista and San Diego Unified Port District