



Legislation Details (With Text)

File #: 2021-0040 **Version:** 1 **Name:**
Type: Action Item **Status:** Passed
File created: 1/25/2021 **In control:** Board of Port Commissioners
On agenda: 2/11/2021 **Final action:** 2/11/2021
Title: RESOLUTION AUTHORIZING THE SAN DIEGO UNIFIED PORT DISTRICT TO ENTER INTO AN EASEMENT WITH NORTH C.V. WATERFRONT L.P., SUBJECT TO REASONABLE INDEMNITY PROVISIONS, AS APPROVED BY THE GENERAL COUNSEL, FOR THE IMPLEMENTATION OF THE H-23 PHASE 2 GRADING PROJECT LOCATED IN THE CITY OF CHULA VISTA

Sponsors:

Indexes:

Code sections:

Attachments: 1. 6. 2021-0040 Attachment A, 2. 6. 2021-0040 Attachment B, 3. 6. 2021-0040 Draft Resolution

Date	Ver.	Action By	Action	Result
2/11/2021	1	Board of Port Commissioners	adopted	

DATE: February 11, 2021

SUBJECT:

RESOLUTION AUTHORIZING THE SAN DIEGO UNIFIED PORT DISTRICT TO ENTER INTO AN EASEMENT WITH NORTH C.V. WATERFRONT L.P., SUBJECT TO REASONABLE INDEMNITY PROVISIONS, AS APPROVED BY THE GENERAL COUNSEL, FOR THE IMPLEMENTATION OF THE H-23 PHASE 2 GRADING PROJECT LOCATED IN THE CITY OF CHULA VISTA

EXECUTIVE SUMMARY:

At the January 19, 2021 meeting of the Board of Port Commissioners (Board), the Board approved the Site H-23 Phase 2 Grading Project (Project), which is part of the final phase of the CIP South Campus Pavement and Demolition Project for the Chula Vista Bayfront redevelopment and needed to complete the final phase of the demolition of the South Campus. The Board action authorized the approval of the plans and specifications (Plans) and the awarding of the contract for the Project to Sierra Pacific West, Inc. in the amount of \$886,616.33 (Contract).

The authorization of the award was conditioned on the future execution and Board approval of an easement agreement (Easement) (Attachment A - Form of Easement between SDUPD and Pacifica) with North C.V. Waterfront L.P. a subsidiary of Pacifica Companies (Pacifica), the landowner adjacent to parcel H-23 within the Chula Vista Bayfront Master Plan, for an underground stormwater drain (See Attachment B - Site Location Map). Staff recommends the Board approve a resolution authorizing the Executive Director or his designee to enter into the Easement substantially in the form of Attachment A, including the indemnity provisions included therein, with Pacifica for the implementation of the Project and conditioned upon the execution of the Easement by Pacifica.

RECOMMENDATION:

Adopt a resolution authorizing the Executive Director or his designee to enter into the Easement substantially in the form of Attachment A, including the indemnity provisions included therein, with Pacifica,, as approved by the General Counsel and conditioned upon the execution of the Easement by Pacifica, for the implementation of the H-23 Phase 2 Grading Project located in the City of Chula Vista.

FISCAL IMPACT:

This agenda item is expected to have a fiscal impact of approximately \$25,000 in or about year three of the Easement for costs associated with removing the underground stormwater drain line being installed on Pacifica's property pursuant to the Contract.

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 healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.

DISCUSSION:

In 1999 the District entered into a Relocation Agreement with Rohr, Inc. (Rohr), the City of Chula Vista, and the Redevelopment Agency of the City of Chula Vista (Relocation Agreement). The Relocation Agreement provides, among other things, that the District be responsible for the demolition and removal of structures and associated infrastructure located on the South Campus, including the demolition of buildings, foundations, pavement, storm drains, utilities and appurtenances.

In 2017 the Board authorized a Partial Settlement Agreement (Settlement Agreement) with Rohr which provided that Rohr would perform the demolition and removal of the remainder of the improvements on the last portion of the South Campus, Site H-23, with the District reimbursing Rohr for the associated costs. The Settlement Agreement stated that Rohr's costs for demolition and removal of the improvements would be calculated by actual quantities of the demolished components multiplied by pre-agreed unit rates plus an allowable markup for the contractor and Rohr overhead and fees.

During the final phase of the demolition work, it was determined the costs were quickly approaching the District's associated budget limit and the District determined the remaining work of grading and stabilizing the site could be performed by the District at a lower cost than proposed by Rohr. The District and Rohr agreed to conclude the work required by the Settlement Agreement following demolition of the remaining improvements and to authorize final reimbursement of Rohr for work completed up to that point. The balance of the work, consisting of grading and stabilizing Site H-23, will be completed as part of the Project, which will be the final phase of the CIP South Campus Pavement and Demolition Project for the Chula Vista Bayfront redevelopment.

When designing the stormwater plan for the Project, the District's Engineering Department, along with its consultant Rick Engineering, identified a potential conflict with the initially planned location of the stormwater drain line on tidelands that would have required the rerouting of major San Diego Gas & Electric gas lines. By obtaining the Easement from Pacifica over Pacifica's adjacent parcel (the Pacifica Parcel), a portion of the stormwater drain line will be initially installed and tied into existing infrastructure within the Pacifica Parcel. The Easement does contain a reasonable indemnity requiring the District to indemnify Pacifica for damages caused by the District during construction and/or maintenance of the stormwater improvements. The portion of the stormwater improvements on the Pacifica Parcel will eventually be replaced by Pacifica's completion of new stormwater and drainage facilities installed as part of certain road and infrastructure improvements expected to be constructed on the Pacifica Parcel within the next three years. The stormwater system installed by Pacifica on its parcel will tie into that portion of the stormwater improvements being installed on tidelands as part of the Project. Once the initially installed stormwater improvements located on the Pacifica Parcel are no longer needed, the Easement does require the District to pay for their removal. The anticipated cost of such removal is approximately \$25,000.

Since the Easement benefits the District by avoiding costly rerouting of gas lines as well as Pacifica due to the construction of stormwater improvements that will benefit Pacifica's future anticipated road and infrastructure project, entering into the Easement is a win-win solution for both parties. Pacifica has been and continues to be a good neighbor and partner in the implementation of the Chula Vista Bayfront Master Plan and recognizes the benefit of working collaboratively through the complexities that come with implementing large-scale redevelopment.

Construction of the Project is expected to commence in early March 2021 and be completed by end of June 2021. To allow for the completion of the Project, staff recommends authorizing the Executive Director or his designee to enter into the Easement substantially in the form included as Attachment A following the execution thereof by Pacifica.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda sheet as well as the proposed Easement with Pacifica and the applicable indemnity provisions and approves as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, a resolution authorizing the District to enter into an easement and accompanying indemnity, was adequately covered in the Final Environmental Impact Report (FEIR) for the Chula Vista Bayfront Master Plan (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), the Second Addendum to the FEIR, which was adopted by the Board on April 10, 2018 (Resolution No. 2018-0069), and the Third Addendum to the FEIR, which was adopted by the Board on December 8, 2020 (Resolution No. 2020-116). 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 Addendums due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; 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 Addendums, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR and Addendums, or (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 3) 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, 35, and 87 of the Port Act which allow for the Board to pass resolutions, to do all acts necessary and convenient for the exercise of its powers, and for the use of tidelands for the construction, reconstruction, repair, and maintenance of highways, streets, roadways, bridges, belt line railroads, parking facilities, power, telephone, telegraph or cable lines or landings, water and gas pipelines, and all other transportation and utility facilities or betterments incidental, necessary, or convenient for the promotion and accommodation of any of the uses set forth in this section. 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 action was covered in the Coastal Development Permit (CDP) for Site Preparation at Chula Vista Bayfront (CDP-2017-01; Clerk Document No. 66187) approved by the District on January 25, 2017, amendment number 1 to the CDP (Clerk Document No. 69788) issued on November 1, 2018, and amendment number 2 to the CDP (Clerk Document No. 70814) issued on January 6, 2020. The proposed Board action is consistent with the project in that CDP and amendments. No additional action under the California Coastal Act is required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

Sean Jones
Asset Manager, Real Estate

Attachment(s):

Attachment A: Form of Easement between SDUPD and Pacifica
Attachment B: Site Location Map