



## Legislation Text

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**DATE:** October 10, 2017

**SUBJECT:**

**RESOLUTION AUTHORIZING AMENDMENT NO. 1 TO THE FIVE-PARTY AGREEMENT BETWEEN THE DISTRICT, THE CITY OF NATIONAL CITY, PASHA AUTOMOTIVE SERVICES, GB CAPITAL, AND ICF JONES & STOKES, INC. FOR NATIONAL CITY BAYFRONT PROJECTS ENVIRONMENTAL REVIEW CONSULTING SERVICES TO INCREASE THE AGREEMENT AMOUNT BY \$72,000 INCREASING THE AGGREGATE TOTAL OF THE AGREEMENT FROM \$603,000 TO \$675,000 AND MODIFYING THE DEFINED COST-SHARING PERCENTAGES**

**EXECUTIVE SUMMARY:**

On October 13, 2016, the Board of Port Commissioners (Board) directed staff to proceed with processing an environmental impact report (EIR), pursuant to the California Environmental Quality Act (CEQA), for the land use changes associated with the National City Marina District Balanced Land Use Plan (Balanced Plan); Pasha Automotive Services' (Pasha) Tidelands Avenue Closure project; a permanent alignment of Segment 5 of the Bayshore Bikeway in National City (Bayshore Bikeway); a recreational vehicle park and eventual hotel development proposed by GB Capital Holdings, LLC (GB Capital); a connector rail project proposed by Pasha; and a hotel and retail development on property owned by the City of National City (City), off of District tidelands (City Program). The locations of these six components of the EIR, which are collectively referred to as the "Project," are shown on Attachment A.

On February 7, 2017, the Board authorized a five-party agreement between the District, City, Pasha, GB Capital, and ICF Jones and Stokes (ICF) to prepare the EIR. The agreement was for a total amount of \$603,000 and a term of 24 months.<sup>1</sup> The costs to prepare the EIR, as described in the agreement, are to be shared by the four involved parties/project proponents - the District, the City, GB Capital, and Pasha - whereby the District and City are each responsible for 29% of the total EIR cost, and GB Capital and Pasha are each responsible for 21% of the total EIR cost. The agreement also states that the financial responsibility of the District and City, which together totals 58 percent (58%) of the total EIR cost (Agencies' Share), is to be paid with funds from the District's 2014-2018 Capital Improvement Program (CIP) for the National City Planning and Entitlement efforts; provided, however, if the Agencies' Share of the costs exceed the amount for the 2014-2018 CIP for the National City Planning and Entitlement efforts, the City and the District shall split the amount of the exceedance equally.

In July 2017, the City requested that the City Program component of the Project be revised to include two roadway modification scenarios involving Bay Marina Drive west of Marina Way - 1) narrowing the Bay Marina Drive to two lanes (currently four lanes), and 2) the full closure of Bay Marina Drive. The location of the proposed roadway modification is shown on Attachment A. These Project

revisions require additional work not anticipated in the original scope of work and thus require an amendment to the agreement. In addition, as this Project modification is requested by the City and agreed to by the District, District staff recommends the costs be borne by the Agencies, whose combined share is paid with funds from the District's 2014-2018 CIP budget for the National City Planning and Entitlement effort. The amendment to the scope, as well as the additional costs being paid by the District, results in modifications to the defined cost-sharing percentages - the District and City shares would be increased from 29% each to 31% each (increasing the total amount paid by the 2014-2018 CIP from 58% to 62%), and the share for Pasha and GB Capital would be reduced from 21% each to 19% each. The amendment to agreement is provided as Attachment B to this agenda sheet.

### **RECOMMENDATION:**

Adopt a resolution authorizing Amendment No. 1 to the five-party agreement between the District, City, Pasha, GB Capital, and ICF for National City Bayfront Projects environmental review consulting services to increase agreement amount by \$72,000 increasing the aggregate total of the agreement from \$603,000 to \$675,000 and modifying the defined cost-sharing percentages.

### **FISCAL IMPACT:**

The additional \$72,000 that is the subject of this agenda sheet is proposed to be paid entirely by the CIP budget for the National City Planning and Entitlement efforts. Funds for this item are included in the approved FY 17/18 CIP budget for National City Planning and Entitlement efforts.

In addition, Pasha and GB Capital are responsible for cost recovery fees in accordance with BPC Policy No. 106 - Cost Recovery User Fee Policy.

### **COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goals.

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- 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:**

#### **Previous Board Direction**

On April 14, 2016, the Board directed staff to proceed with processing an EIR, pursuant to CEQA, for the land use changes associated with the Balanced Plan, Pasha's Tidelands Avenue Closure project, and a permanent alignment of Segment 5 of the San Diego Association of Governments' (SANDAG) Bayshore Bikeway. On October 13, 2016, the Board directed staff to incorporate three more project components into the EIR: a connector rail project proposed by Pasha, a recreational vehicle park and

eventual hotel development proposed by GB Capital, and the City Program. The Balanced Plan, Tidelands Avenue Closure, Bayshore Bikeway, connector rail, GB Capital development, and City Program are collectively referred to as the Project. The locations of the six components of the EIR are shown on Attachment A.

### **Agreement for Environmental Review Consulting Services**

Staff from the District and City selected ICF to prepare the EIR. On February 7, 2017, the Board authorized the five-party agreement between the District, the City, GB Capital, Pasha, and ICF. As identified in the agreement, the costs to prepare the EIR are to be shared by the District, the City, GB Capital, and Pasha - whereby the District and City are each responsible for 29% of the total EIR cost, and GB Capital and Pasha are each responsible for 21% of the total EIR cost. The agreement also states that the District's and City's financial responsibilities, which together totals 58% of the total EIR cost (Agencies' Share), is to be paid with funds from the District's 2014-2018 CIP for the National City Planning and Entitlement efforts; provided, however, if the Agencies' Share of the costs exceed the amount for the 2014-2018 CIP for the National City Planning and Entitlement efforts, the City and the District shall split the amount of the exceedance equally.

The Burlington Northern Santa Fe (BNSF) railway is not financially participating in the preparation of the EIR because Pasha submitted the connector rail project and thus Pasha is the project applicant for that component of the EIR; however, BNSF has indicated that they are supportive of the connector rail project.

### **Proposed Amendment to Agreement for Environmental Review Consulting Services**

In July 2017, the City requested that the City Program component of the Project be revised to include two roadway modification scenarios involving Bay Marina Drive - (1) narrowing Bay Marina Drive to two lanes (currently four lanes) west of Marina Way, and (2) full closure of Bay Marina Drive west of Marina Way. The location of the proposed roadway modification is shown on Attachment A. These Project revisions require additional work not anticipated in the original scope of work and thus require an amendment to the agreement. In addition, as this Project modification is requested by the City and agreed to by the District, District staff recommends the additional \$72,000 associated with the amendment to agreement be borne by the Agencies, which would require modifications to the cost-sharing percentages defined in the agreement. With the amendment to the agreement, the Agencies' Share would increase from 58% of the total EIR cost to 62% of the total EIR cost, or 31% each for the District and City. This would in turn reduce the GB Capital and Pasha percentages from 21% each to 19% each. District staff recommends that the \$72,000 be paid with funds from the District's 2014-2018 CIP budget.

The amendment to agreement is provided as Attachment B to this agenda sheet.

### **Staff Recommendation**

Staff recommends the Board authorize an amendment to the five-party agreement with the District, City, Pasha, GB Capital, and ICF for environmental review consulting services to revise the City Program component to add two scenarios related to Bay Marina Drive, and increase the total agreement amount by \$72,000 and revise the defined cost-sharing percentages.

### **General Counsel's Comments:**

The General Counsel's Office has reviewed the agenda sheet and attachments as presented to it and

approves them as to form and legality.

**Environmental Review:**

The proposed Board action does not constitute an “approval” or a “project” under the definitions set forth in CEQA Guidelines Sections 15352 and 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and therefore, is not subject to CEQA. The Board’s authorization of this agreement will only facilitate the continuation of the environmental review process for the Project. No further action under CEQA is required.

In addition, the proposed Board action allows for the District to implement its obligations under the Port Act and/or other laws. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

Finally, the proposed Board action 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 it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a CDP or exclusion is not required for the proposed Board action.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:**

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**Attachments:**

Attachment A: EIR Project Components  
Attachment B: Draft Amendment No. 1 to Five-Party Agreement

<sup>1</sup> Agreement for Environmental Review Consulting Services, filed on February 23, 2017, on file in the Office of the District Clerk bearing Document No. 66173.