



Legislation Text

File #: 2018-0022, **Version:** 1

DATE: February 6, 2018

SUBJECT:

RESOLUTION AUTHORIZING AGREEMENT FOR AMENDMENT OF EXCLUSIVE NEGOTIATING AGREEMENT AMENDMENT NO. 3 WITH RIDA CHULA VISTA, LLC TO EXTEND THE NEGOTIATING PERIOD TO AUGUST 16, 2018

EXECUTIVE SUMMARY:

The Chula Vista Bayfront Master Plan¹ (CVBMP), encompassing the area depicted in Attachments A and B, 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. The master plan was collaboratively planned through an extensive public participation program that included over 100 community meetings and resulted in a comprehensive Environmental Impact Report 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 in August 2012.

On May 6, 2014, the Board adopted a resolution authorizing the issuance of a Request for Qualifications (RFQ) to develop Phase 1 of the CVB, which includes developing a 1,400 to 1,600-room resort hotel and an approximate 400,000 SF convention center on the 36.5-acre waterfront parcel H-3 (RHCC) in the Chula Vista Bayfront (CVB). After considerable local, regional, national, and international marketing efforts by District staff, City staff, and consultants, RFQ 14-24² was issued on June 30, 2014. One response to the RFQ was received from RIDA Development Corporation, and on October 14, 2014, the Board selected RIDA Development Corporation as the successful respondent to the RFQ and authorized staff to negotiate an Exclusive Negotiating Agreement (ENA) with RIDA Development Corporation³.

On February 10, 2015, the District entered into the ENA with RIDA Chula Vista, LLC, a Delaware limited liability company (RIDA), the entity formed by RIDA Development Corporation for the development of the RHCC. Pursuant to the terms of the ENA, the District had the right to administratively extend the negotiating period of the ENA by up to two 90 day periods. The District exercised these rights on February 6, 2016 and May 4, 2016. On August 9, 2016, the Board authorized an Agreement for Amendment of Exclusive Negotiating Agreement Amendment No. 1 (Amendment No. 1)⁴, extending the negotiating period to February 17, 2017. The Board authorized an Agreement for Amendment of Exclusive Negotiating Agreement Amendment No. 2 (Amendment No. 2)⁵ to the ENA on February 7, 2017, extending the negotiating period to February 16, 2018.

Since the authorization of Amendment No. 2 to the ENA, the Board and the City Council unanimously approved a Non-Binding Letter of Intent (LOI)⁶ with RIDA memorializing the basic economic terms and conditions upon which the District, City and RIDA may enter into a future agreement related to

the development of the RHCC. The LOI is subject to the provisions of the ENA and does not supersede the terms of the ENA. District staff and City staff continue to meet weekly to discuss a plan of finance and a definitive agreement. Meetings with RIDA occur monthly to discuss the proposed project terms for the development of the RHCC and in November 2017, as part of the ongoing negotiations, RIDA proposed a substantial improvement to the proposed project with an increase in hotel rooms beyond the number included in the LOI.

As such, staff is recommending the Board approve the Agreement for Amendment of Exclusive Negotiating Agreement Amendment No. 3 (Amendment No. 3) to extend the negotiating period of the ENA to August 16, 2018 (Attachment C) to allow staff more time to refine the proposed project with the recent improvements and negotiate a plan of finance and a definitive agreement.

RECOMMENDATION:

Adopt a Resolution Authorizing Agreement for Amendment of Exclusive Negotiating Agreement Amendment No. 3 with RIDA Chula Vista, LLC to Extend the Negotiating Period to August 16, 2018.

FISCAL IMPACT:

The requested Board action will not result in any direct fiscal impact to the District. The Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement (Financing Agreement)⁷ between the City and the District identifies possible current and future CVB revenue sources from the District and the City that may be applied to pay for certain public infrastructure to be constructed in connection with the development of the RHCC pursuant to a plan of finance to be negotiated by the City and the District pursuant to the terms of the Financing Agreement. RIDA and other private developers may also bear a portion of the development cost of infrastructure improvements.

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:

On May 6, 2014, the Board adopted a resolution authorizing the issuance of an RFQ to develop Phase 1 of the CVB, which includes developing the RHCC. After an extensive marketing campaign, responses were due on September 8, 2014. A response to the RFQ was received from RIDA Development Corporation. Based on its qualifications, experience and the development proposal, the Board selected RIDA Development Corporation on October 14, 2014 as the successful respondent to the RFQ and authorized staff to negotiate an ENA.

The ENA was negotiated through a collaborative effort between District staff, City staff and RIDA. The

ENA established a timeline of deliverables during the term of the agreement, including a proposal for the development of the RHCC. The ENA was entered into on February 10, 2015, and Amendment No. 1 was approved by the Board on August 9, 2016 extending the negotiating period to February 17, 2017. Amendment No. 2 was approved by the Board on February 7, 2017 extending the negotiating period to February 16, 2018.

Since Amendment No. 2, the Board and the City Council unanimously approved the LOI with RIDA memorializing the basic economic terms and conditions upon which the District, City and RIDA may enter into a future agreement related to the development of the RHCC. In November 2017, as part of the ongoing negotiations, RIDA presented staff with revised terms which substantially improved the proposed project by increasing the number of hotel rooms beyond the number included in the LOI. The new number of proposed hotel rooms is not in excess of the hotel rooms permitted under the CVBMP. Due to the recent changes, District staff, City staff and RIDA need to engage in further negotiations before a definitive agreement can be presented to the Board.

Next Steps

If the Board accepts staff's recommendation to approve Amendment No. 3 to the ENA, during the extended negotiating period of the ENA, District staff and City staff, along with their consultants, will negotiate with RIDA the terms of the definitive agreement. As a parallel ongoing effort, District and City staffs will continue to work collaboratively to develop a plan of finance. To continue to advance the implementation of the CVBMP, staff recommends the Board approve Amendment No. 3 to the ENA with RIDA.

General Counsel's Comments:

The General Counsel's Office has reviewed the agenda sheet and Amendment No. 3 to the ENA as presented to it and approves them as to form and legality.

Environmental Review:

The proposed Board action to authorize Amendment No. 3 to the ENA with RIDA does not constitute an "approval" or a "project" under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because the Board's authorization does not constitute a binding commitment to approve a proposed lease, development or any other associated discretionary approvals. Any further negotiated lease, Option to Lease, similar binding document or discretionary entitlements/permits (collectively, Entitlements) would require Board or District approval (s) and CEQA compliance prior to said approval(s). CEQA requires that the District adequately assess the environmental impacts of Entitlements, as well as the reasonably foreseeable activities that may result therefrom, prior to the approval of the same. Accordingly, if negotiations are completed, and before the Board considers approval of any Entitlements, the District will conduct CEQA review of any potential environmental impacts from the proposed Entitlements and any reasonably foreseeable activities that may occur as a result of the same. Such CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of feasible mitigation measures or adopting an alternative, including without limitation, a "no project alternative," as well as a Statement of Overriding Considerations, if applicable. The current Board action in no way limits the exercise of this discretion. At this time, no further action under CEQA is required.

Nonetheless, implementation of the CVBMP, including the requested Board action to authorize Amendment No. 3 to the ENA with RIDA, has been addressed by the Chula Vista Bayfront Master Plan and Port Master Plan Amendment Final Environmental Impact Report (FEIR) (UPD #83356-EIR -658, SCH #2005081077), which was certified by the Board on May 18, 2010 (Resolution No. 2010-78) and the Addendum to the FEIR, which was adopted by the Board on August 13, 2013 (Resolution No. 2013-138). The proposed Board action implements the previously approved CVBMP and was fully contemplated in FEIR certified by the Board and Addendum to the FEIR adopted by the Board. The proposed Board action is not a separate “project” for California Environmental Quality Act 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 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 Sections 30 and 87 of the Port Act, which allow for the Board to manage the business of the District and allows for all 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 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 Coastal Development Permit or exclusion is not required. However, the District’s leases and activities that may arise from those leases require processing under the District’s CDP Regulations. If a proposed lease is negotiated, the Board will consider approval of a proposed lease after the appropriate determination under District’s CDP Regulations is made, which could include a Coastal Development Permit. The current Board action in no way limits the exercise of the District’s discretion under the District’s CDP Regulations.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

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Program Manager, Real Estate

Attachment(s):

Attachment A: CVBMP Illustrative Graphic
Attachment B: CVBMP Parcel Map

**Attachment C: Agreement for Amendment of Exclusive Negotiating Agreement Amendment No.
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1. Final Environmental Impact Report for the Chula Vista Bayfront Master Plan and Port Master Plan Amendment (UPD #83356-EIR-658, SCH #2005081077), dated June 18, 2010, on file in the Office of the District Clerk bearing Document No. 56562.
2. RFQ 14-24 Chula Vista Bayfront Development Opportunity for Waterfront Convention Destination Resort Hotel, issued June 30, 2014, on file in the Office of the District Clerk bearing Document No. 62033.
3. Exclusive Negotiating Agreement between San Diego Unified Port District and RIDA Chula Vista, LLC, dated February 10, 2015, on file in the Office of the District Clerk bearing Document No. 62899.
4. Agreement for Amendment of Exclusive Negotiating Agreement Amendment No. 1, dated August 9, 2016, on file in the Office of the District Clerk bearing Document No. 65707.
5. Agreement for Amendment of Exclusive Negotiating Agreement Amendment No. 2, dated January 25, 2017, on file in the Office of the District Clerk bearing Document No. 66141.
6. Non-Binding Letter of Intent between San Diego Unified Port District, the City of Chula Vista, and RIDA Chula Vista, LLC, dated June 14, 2017, on file in the Office of the District Clerk bearing Document No. 67071.
7. Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement between the City of Chula Vista and the San Diego Unified Port District dated June 20, 2017, filed in the Office of the District Clerk on August 2, 2017 as Document No. 67068.