



## Legislation Text

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**DATE:** May 8, 2018

**SUBJECT:**

### **CONTRIBUTION AND REIMBURSEMENT OF DEVELOPMENT IMPACT FEES RELATED TO THE LANE FIELD SOUTH PROJECT LOCATED IN THE CITY OF SAN DIEGO**

- A) RESOLUTION AUTHORIZING CONTRIBUTION AGREEMENT BETWEEN THE DISTRICT AND THE CITY OF SAN DIEGO FOR DEVELOPMENT IMPACT FEES IN THE AMOUNT OF \$2,181,407.74 RELATED TO THE LANE FIELD SOUTH PROJECT LOCATED IN THE CITY OF SAN DIEGO, WITH CONDITIONS**
- B) RESOLUTION AUTHORIZING REIMBURSEMENT AGREEMENT BETWEEN THE DISTRICT AND LFS DEVELOPMENT, LLC FOR DEVELOPMENT IMPACT FEES IN THE AMOUNT OF \$2,181,407.74 RELATED TO THE LANE FIELD SOUTH PROJECT LOCATED IN THE CITY OF SAN DIEGO, WITH CONDITIONS**

### **EXECUTIVE SUMMARY:**

The District entered into a 66-year Lease<sup>1</sup> (Lease) with LFS Development, LLC (Lane Field South) on May 4, 2016 to operate a 400-room single-branded Intercontinental Hotel located between Pacific Highway and North Harbor Drive, north of Broadway, in the City of San Diego (City). Lane Field South requested assistance from the District with securing a reimbursement of the Development Impact Fees (DIF) Lane Field South paid to the City to obtain building permits in connection with the development of the InterContinental Hotel, public parking, and public park/plaza on the Lane Field South property. As part of the Lease, Lane Field South was required to build a 55 foot setback park from West Broadway (Broadway Setback Park) and the 271 public parking spaces required by the Coastal Development Permit for the development of Lane Field South and Lane Field North (Parking Spaces, together with the Broadway Setback Park are collectively referred to as, the South Public Improvements). Contribution from the City's Downtown Development Impact Fee Fund for the South Public Improvements is provided in the 2015 Downtown Public Facilities Financing Plan. The City is willing to contribute the DIF paid by Lane Field South to the District in the amount of \$2,181,407.74 (LFS DIF Amount) because the amount paid by Lane Field South is fixed and is duplicative of impacts mitigated by the construction of the South Public Improvements and the North Embarcadero Visionary Plan (NEVP) contemplated cost sharing and contribution of public improvements.

If the Board authorizes the Contribution Agreement for North Embarcadero Visionary Plan Public Improvements (Contribution Agreement) and Reimbursement Agreement for North Embarcadero Visionary Plan Public Improvements (Reimbursement Agreement), upon completion of the South Public Improvements, the City will contribute the LFS DIF Amount paid by Lane Field South to the District through the Contribution Agreement and the District will reimburse the LFS DIF Amount received from the City to Lane Field South through the Reimbursement Agreement. The District will

benefit from this arrangement because Lane Field South is required to reinvest the LFS DIF Amount into the Lane Field South property through tenant improvements that directly benefit the property and public facing improvements. The Contribution Agreement and Reimbursement Agreement are interdependent, as the effectiveness of the Reimbursement Agreement is contingent upon the satisfaction of the following: (i) approval by the Board and execution by both the District and Lane Field South of the Reimbursement Agreement; and (ii) approval by the Board and Council for the City of San Diego (Council) of the Contribution Agreement and execution of the Contribution Agreement by both the City and the District. The Contribution Agreement was presented to the City's Infrastructure Committee for consideration on April 25, 2018 and was approved. The Contribution Agreement will be considered by the Council in mid to late June of 2018. Staff recommends that the Board authorize the Contribution Agreement and Reimbursement Agreement, conditioned upon the Council approving the Contribution Agreement in the same form as authorized by the Board.

### **RECOMMENDATION:**

- A) Adopt a Resolution Authorizing Contribution Agreement between the District and the City of San Diego for development impact fees in the amount of \$2,181,407.74 related to the Lane Field South Project located in the City of San Diego, with conditions.
- B) Adopt a Resolution Authorizing Reimbursement Agreement between the District and LFS Development, LLC for development impact fees in the amount of \$2,181,407.74 related to the Lane Field South Project located in the City of San Diego, with conditions.

### **FISCAL IMPACT:**

The proposed Board actions will have no fiscal impact to the District. If the Board authorizes the Contribution Agreement and Reimbursement Agreement, the Council approves the Contribution Agreement in the same form as authorized by the Board, and these agreements are fully executed by the corresponding parties, the District will only be required to reimburse Lane Field South such amounts of the LFS DIF Amount that the District actually receives from the City and not in excess of the LFS DIF Amount.

This agenda item is subject to Board of Port Commissioners Policy No. 106 - Cost Recovery User Fee Policy.

### **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:**

The Lease covers approximately 69,278 square feet of land area located between Pacific Highway

and North Harbor Drive, north of Broadway, in the City (Attachment A - Location Map). The Lease commenced on June 1, 2016 and has a term of 66 years, which expires on May 31, 2082. Upon completion, Lane Field South's leasehold will consist of a 400-room single-branded Intercontinental Hotel within a single tower, meeting space and banquet rooms, 686 parking spaces, and approximately 32,850 square feet of retail space. The Lease is summarized on the attached Lease Information Summary (Attachment B - Lease Information Summary).

### Background

On February 22, 2017, to obtain building permits, Lane Field South paid the City the LFS DIF Amount for the Lane Field South project. With the opening of the project scheduled for Summer 2018, Lane Field South met with the City last year to discuss ways in which Lane Field South might be reimbursed for the LFS DIF Amount. Since Lane Field South did not qualify for the City's customary reimbursement procedure, the City offered an alternative path to reimbursement through a contribution to the District of the LFS DIF Amount. The South Public Improvements are integral to the implementation of the NEVP and can be funded through a contribution from the City's Downtown Development Impact Fee Fund provided in the 2015 Downtown Public Facilities Financing Plan. For so long as the South Public Improvements exist, the general public will be able to use the South Public Improvements in accordance with any applicable federal, state, and local laws, rules, policies and regulations, including without limitation those of the District, and subject to any rights of Lane Field South and any permittee of the South Public Improvements.

If the District is willing to facilitate the reimbursement of the LFS DIF Amount to Lane Field South, the District must enter into two separate agreements, the Contribution Agreement (Attachment C) between the City and the District, and the Reimbursement Agreement (Attachment D) between the District and Lane Field South. The agreements follow the same format and reference each other. In order for the Reimbursement Agreement to be effective, Lane Field South would need to execute the Reimbursement Agreement, the Board would need to authorize staff to enter into both the Reimbursement Agreement and Contribution Agreements, and the Council must approve the City to enter into the Contribution Agreement. The City has informed staff that the City approval is a two-step process. First, the Contribution Agreement must be considered by the Infrastructure Committee, and if approved by the Infrastructure Committee, it would be considered by the Council at its next Council meeting. On April 25, 2018, the Infrastructure Committee considered and approved the Contribution Agreement. If the Board authorizes the Reimbursement Agreement and Contribution Agreement, the Contribution Agreement will be considered next by the Council in mid to late June of 2018.

### Contribution Agreement

The City is willing to contribute the LFS DIF Amount to the District in the form of a Contribution Agreement. Following is the process for payment to the District as contemplated by the Contribution Agreement:

- Lane Field South notifies District of completion of the South Public Improvements. Staff anticipates completion in late August or early September, 2018.
- Within ten (10) days of the notice, District conducts a site inspection to determine whether the

South Public Improvements are complete.

- If the South Public Improvements are complete, within seven (7) days of the site inspection, the District delivers a letter to Lane Field South confirming the South Public Improvements are complete in accordance with the District's approvals (Confirmation Letter).
- District delivers to the City both the Confirmation Letter and a request for payment of the LFS DIF Amount within two (2) days of the delivery of the Confirmation Letter to Lane Field South.
- Within sixty (60) days of receipt of the request for payment and Confirmation Letter, the City shall deposit with the District the LFS DIF Amount.

The effectiveness of the Contribution Agreement is contingent upon the approval of the Contribution Agreement by both the Board and Council and execution of the Contribution Agreement by both the City and District.

#### Reimbursement Agreement

The Reimbursement Agreement sets forth the mechanism through which the District would reimburse Lane Field South the LFS DIF Amount if it receives it from the City pursuant to the Contribution Agreement. Below are the basic terms of the Reimbursement Agreement for payment to Lane Field South when and if funds are received from the City:

- Lane Field South notifies District of completion of the South Public Improvements.
- Within ten (10) days of the notice, District conducts a site inspection to determine whether the South Public Improvements are complete.
- If the South Public Improvements are complete, within seven (7) days of the site inspection, the District delivers to Lane Field South the Confirmation Letter.
- District delivers to the City both the Confirmation Letter and a request for payment of the LFS DIF Amount within two (2) days of the delivery of the Confirmation Letter to Lane Field South.
- Within thirty (30) days of the District's receipt of any portion of the LFS DIF Amount, the District shall reimburse the entire portion received to Lane Field South.

The effectiveness of the Reimbursement Agreement is contingent upon the satisfaction of the following: (i) approval by the Board and execution by both the District and Lane Field South of the Reimbursement Agreement; and (ii) approval by the Board and Council of the Contribution Agreement and execution of the Contribution Agreement by both the City and District.

#### Requirement to Reinvest in Lane Field South (Hotel and Public Improvements)

An important feature of Lane Field South's request for reimbursement is that they intend to use the funds to enhance the Lane Field South development. As a result, Lane Field South has agreed - and District staff has required - that any LFS DIF Amount that is reimbursed to Lane Field South by the

District will be reinvested back into the Lane Field South hotel and any adjacent public improvements that benefit the premises. Additionally, all improvements will require approval consistent with Board Policy No. 357. Following is the specific requirement for reinvestment from Section 4 of the Reimbursement Agreement:

“Tenant shall use no more than fifty percent (50%) of the total DIF Amount that the Port delivers to the Tenant under this Agreement for tenant improvements that directly benefit the Property (‘Tenant Improvements’) and the remainder of the total DIF Amount not used for Tenant Improvements for public facing improvements (‘Public Facing Improvements,’ together with the Tenant Improvements, the ‘Project Improvements’). Tenant shall present proposed Project Improvements for Port staff review and approval in conformance with Port’s Board Policy No. 357 prior to Tenant’s expenditure of the DIF Amount for such Project Improvements and write ‘Lane Field DIF Improvements’ on the application submitted to the Port under this Section 4.”

### Conclusion

Staff recommends the Board adopt the resolution authorizing the Contribution Agreement with the City for the contribution of the LFS DIF Amount in the total amount of \$2,181,407.74, conditioned upon the Council approving the Contribution Agreement in the same form as authorized by the Board, and adopt the resolution authorizing the Reimbursement Agreement with Lane Field South for the reimbursement of the LFS DIF Amount in the total amount of \$2,181,407.74, conditioned upon the Council approving the Contribution Agreement in the same form as authorized by the Board.

### **General Counsel’s Comments:**

The General Counsel’s Office has reviewed this agenda sheet, the Contribution Agreement, and the Reimbursement Agreement as presented to it and approves them as to form and legality.

### **Environmental Review:**

The District originally approved development of the Lane Field site for hotel, retail and office use as part of the North Embarcadero Alliance Visionary Plan (NEAVP). The potential environmental impacts of the proposed uses were analyzed in the Master Environmental Impact Report (MEIR) for the NEAVP, which was certified by the District on April 25, 2000 (Resolution 2000-82). Pursuant to State California Environmental Quality Act (CEQA) Guidelines Section 15179, the Board adopted Resolution 2006-131 on August 8, 2006, which found that: (1) no substantial changes have occurred with respect to the circumstances under which the NEAVP MEIR was certified; (2) the MEIR is adequate for use in the review of subsequent projects; and, (3) the mitigation measures contained in the NEAVP MEIR and Mitigation Monitoring and Reporting Program adopted by the Board under Resolution 2000-82 remain in effect and are applicable for subsequent projects described in the MEIR. The District subsequently prepared an Addendum to the MEIR for the Lane Field Development project as the environmental review for a Coastal Development Permit (CDP) for development of the Lane Field North and South parcels with a total of 800 hotel rooms and 80,000 square feet of retail space. The District adopted the Addendum on January 8, 2008. The proposed project is consistent with the project analyzed in the Addendum. 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.) 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 Section 87 of the Port Act, which allows for visitor-serving 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 project is consistent with the Public Trust Doctrine.

Finally, the District authorized issuance of a CDP for the Lane Field Hotel project. The CDP was subsequently appealed by the California Coastal Commission (CCC). On January 8, 2009, the CCC determined the project complied with CEQA and approved the CDP for the Lane Field Hotel project (A-6-PSD-08-04/A-6-PSD-08-101). Furthermore, on April 13, 2011, the CCC approved the CDP for the NEVP Phase 1 project, with the understanding that an amendment to the Lane Field CDP would be required to include the Setback Park in the redesign of the hotel development. On February 6, 2013, the CCC authorized an amendment to the Lane Field CDP to incorporate the Setback Park as part of the project (A-6-PSD-08-04-A1). In November 2013, the CCC authorized an amendment to the Lane Field CDP to extend the expiration date to January 8, 2015 (A-6-PSD-08-004-E2). On September 22, 2015, the CCC authorized a second amendment to the Lane Field CDP to modify the project description and Public Access Plan concerning the publicly-accessible terrace and restaurant components of the project (A-6-PSD-08-004-A2). On January 11, 2016, the CCC authorized a third amendment to the Lane Field CDP to modify project description to extend the required construction start date by six months from February 6, 2016 to August 6, 2016 (A-6-PSD-08-004-A3). Finally, on February 8, 2018, the CCC authorized a fourth amendment to the Lane Field CDP to incorporate a temporary electronic public art (CDP No. A-6-PSD-08-004-A4). The proposed Board action is consistent with the project description in the CCC-issued CDP, as amended. No additional action under the California Coastal Act is required at this time.

### **Equal Opportunity Program:**

Not applicable.

### **PREPARED BY:**

James Hammel  
Asset Manager, Real Estate

### **Attachments**

Attachment A: Location Map  
Attachment B: Lease Information Summary  
Attachment C: Contribution Agreement  
Attachment D: Reimbursement Agreement

<sup>1</sup> Lease by and between the San Diego Unified Port District and LFS Development, LLC, on file in the Office of the District Clerk bearing Document No. 64976, filed May 24, 2016.