



Legislation Text

File #: 2018-0258, **Version:** 1

DATE: July 17, 2018

SUBJECT:

ORDINANCE APPROVING SUBSTANTIALLY THE FORM OF GROUND LEASE BETWEEN THE DISTRICT AND RIDA CHULA VISTA, LLC FOR THE RESORT HOTEL AND CONVENTION CENTER PROJECT LOCATED IN THE CITY OF CHULA VISTA, FOR A 66-YEAR TERM, WITH CONDITIONS

EXECUTIVE SUMMARY:

The San Diego Unified Port District (District), the City of Chula Vista (City) and RIDA Chula Vista, LLC (RIDA) executed a disposition and development agreement (DDA) for the development of a 1,600-room resort hotel and convention center (RHCC) and the surrounding public infrastructure (the Phase 1A Infrastructure) (collectively, Project) located on approximately 36 acres of land within the Chula Vista Bayfront (CVB) in the City (Site). After over three years of collaboration between RIDA, the City and the District, the District and City approved the DDA in a joint meeting between the City Council and the Board of Port Commissioners (Board) on April 24, 2018¹, and the DDA became effective May 7, 2018. The DDA outlines the steps that must be completed before RIDA and the District will enter into a ground lease for the Site. Since the Board authorized the DDA on April 24, 2018, RIDA and District and City staff have been working diligently to implement the various steps set forth in the DDA including furthering the design of the RHCC and the design of the Phase 1A Infrastructure, and most importantly, finalizing the form of ground lease for the Site that is attached as Attachment B (Form Lease) which is the subject of this agenda. Once all of the conditions precedent set forth in the DDA are met, including the securing of both the public and private financing, the close of escrow will occur and the Form Lease will be executed as part of the closing. Staff will return to the Board in the coming months for the Board's consideration of any items needed to satisfy the requirements under the DDA, such as approving any Project design elements and any subleases, such as the subleases for the Convention Center.

Many of the economic provisions set forth in the Form Lease are the same as those previously approved by the Board on June 20, 2017 through the Non-Binding Letter of Intent filed with the District's Clerk as Document No. 67071 (Non-Binding LOI) . (see Attachment A: Non-Binding LOI). The LOI expired with the termination of the Exclusive Negotiating Agreement with RIDA, which terminated when the Board approved the DDA on April 24, 2018. Although the DDA attached a draft of the Ground Lease, RIDA and the District agreed that it was not the final form and that the District and RIDA would continue negotiating the terms of the ground lease for the Site following the approval of the DDA. Since the April meeting, District staff and RIDA have been working to finalize the Form Lease in order to bring it back to the Board for its consideration within the timelines set forth in the DDA. While the Form of Lease has changed since the DDA was approved, it continues to be consistent with partnership between the City, the District and RIDA that was envisioned in the DDA.

The terms in the Form Lease demonstrate the important partnership between the City, the District and RIDA as well as incorporating substantial comments from RIDA's lenders and Marriott International, Inc., the parent of the proposed hotel brand and operator, Gaylord Hotels (Gaylord). The major terms that were modified since the DDA was authorized by the Board in April are Force Majeure, Lease Encumbrance, Assignment, Eminent Domain, Damage or Destruction and Parking Improvements, mostly to incorporate comments from lender's counsel and to reflect new information provided by RIDA regarding the specifics of the Project. If the Board approves substantially the Form of Lease attached hereto as Attachment B, the District and RIDA will work towards finalizing the Form of Lease by filling in the blanks in the Form of Lease and attaching any blank exhibits to be attached to the Form of Lease attached hereto as Attachment B based on the guidance set forth therein and return to the Board only as needed prior to the closing of the escrow contemplated in the DDA. If any new terms are added to the Form of Lease attached as Attachment B or any terms of the Form of Lease attached as Attachment B are modified and have the effect of reducing rent, increasing the term of the Form Lease, reducing insurance coverage in favor of the District, or reducing any indemnity in favor of the District, staff will return to the Board for review and approval of those changes through a revised form of ground lease.

Staff recommends that the Board approve substantially the Form Lease attached hereto as Attachment B and authorize the Executive Director or her designated representative to execute the Form Lease attached hereto as Attachment B in substantially the same form attached as Attachment B at the close of the escrow contemplated in the DDA provided that (i) the close of escrow occurs in compliance with the terms of the DDA; (ii) the Form Lease executed by the Executive Director or her designated representative has all blanks filled in and all exhibits attached in accordance with the guidance set forth in the Form Lease attached hereto as Attachment B; and (iii) to the extent there are any new or modified terms in the Form Lease executed by the Executive Director or her designated representative, such new or modified terms do not have the effect of reducing rent, increasing the term of the Form Lease, reducing insurance coverage in favor of the District, or reducing any indemnity in favor of the District.

RECOMMENDATION:

Adopt an Ordinance Approving the Form of Ground Lease between the District and RIDA for the Project Located in the City of Chula Vista, for a 66-year Term, with Conditions

FISCAL IMPACT:

Under the terms of the Ground Lease, RIDA will pay a fixed ground rent schedule for the RHCC for 38 years, which is the anticipated term of the public financing. The fixed minimum annual rent schedule for this period is as shown below:

Lease Years 1-18	\$0
Lease Years 19-23	\$3.0 million
Lease Years 24-38	\$3.5 million

Due to the unique nature of the Project, and public fund contributions from both the District and the City, ground rent owed to the District will be \$0 for the first 18 years of the Lease. Given the level of risk associated with undertaking such a major new investment on the relatively undeveloped CVB, foregoing rent through Lease Year 18 enhances the RHCC project feasibility for RIDA.

In addition to the minimum annual rent paid to the District, commencing Lease Year 1, RIDA will pay the District and the City a participation payment based on surplus Net Operating Income (NOI) from the RHCC. Specifically, the District and RIDA will receive 20% of surplus NOI above an 11% Return on Investment (ROI) threshold for RIDA. Based on financial proforma projections, it is anticipated the District will begin to receive a participation payment beginning in Lease Year 9.

RIDA will commence paying the District the greater of minimum annual rent and percentage rent commencing on Lease Year 38. (See Attachment C, Lease Summary) Beginning in Lease Year 39, the proposed rent structure for the RHCC will be in line with or higher than the District's standard percentage rent categories for rooms, food, and beverage. The banquet percentage rent category has been broken out from the room rent category and is slightly lower than in typical District leases. Percentage rental rates for the remaining categories of revenue are consistent with the District's standard percentage rental rates.

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:

After over three years of collaboration, and as a necessary next step in implementing the DDA, the Lease should be approved because the right partners are ready to move forward with the right plan for the CVB, the Project economics represent a good deal for the public entities and for RIDA, and time is of the essence to ensure that the redevelopment of the CVB proceeds as soon as possible. After extensive due diligence efforts, the District and RIDA wish to finalize the Lease in an execution-ready form, pursuant to the economic terms approved by the Board and City Council in the Non-Binding LOI and the draft Lease included in the executed DDA.

Requirement to Prepare a Final Form Lease

Most of the economic provisions were previously approved by the Board as part of the Non-Binding LOI consented to on June 20, 2017. Attachment C is the Lease Information Summary that includes an overview of some of the major lease terms in the Form Lease.

A previous District practice has been to include a fully negotiated lease agreement as an attachment to an option agreement. In projects of this size and complexity, there are typically modifications to the lease required by both the District and lessee that are requested near the end of the option term once

the debt and equity partners have had the opportunity to review the transaction, which has been the District's experience on other large new hotel developments. Though this may be the case, substantial changes have been made to the draft lease attached to the DDA based on comments from RIDA's lender, Gaylord, and more information that has been collected since the DDA was consented to by the Board. There are a number of blanks and blank exhibits within the Form Lease that will be filled in or attached related to energy use, financing, title exceptions, parking, and subleases.

In addition, the District, City and RIDA may consider modifications to the Form Lease and/or Convention Center Subleases, in their sole and absolute discretion, which may be requested by lenders or financial or legal advisors to the District, City, or RIDA which do not substantially increase the obligations of the effected parties under the DDA, the Form Lease and/or Convention Center Subleases, and must be consistent with the requirements of the financing to be issued or provided by the City, District and/or the joint exercise powers authority (JEPA).

Changes to the Draft Form of Lease

Since the approval of the DDA in April, RIDA and District staff have been working to finalize the Form Lease. The sections below highlight the major ground lease terms that were modified since the DDA was approved in April:

Parking

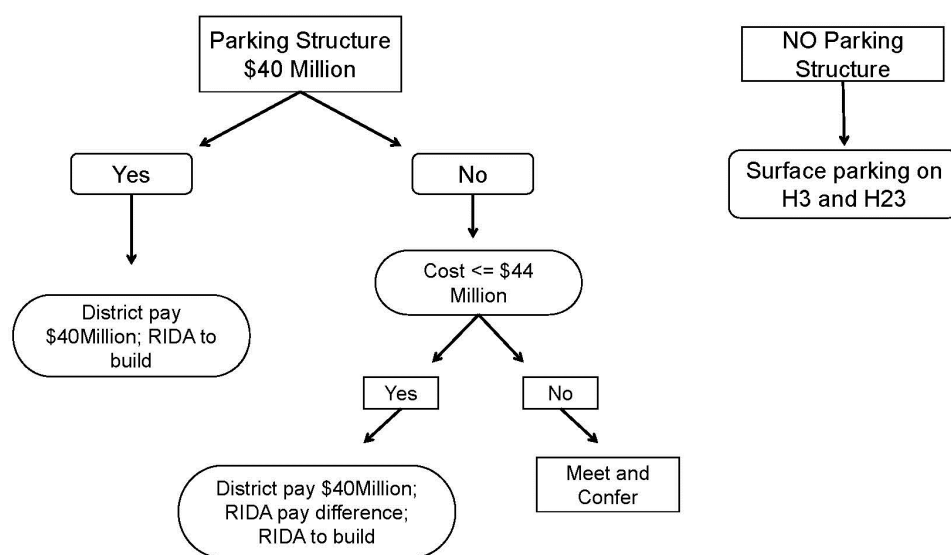
Currently, the Form Lease provides for a number of options with regard to the parking improvements. Since it is not yet determined if the District will elect to fund the parking structure to be located adjacent to the premises, different options are included in the Form Lease to cover the various parking improvement options: (a) 1,600 space parking structure; (b) parking spaces on the premises; or (c) surface parking on H23. If the District elects not to fund the parking structure, RIDA may construct the parking structure without contribution or subsidy from Landlord or elect to continue to use the surface parking on H23.

The Form Lease sets up a mechanism for RIDA and the District to select various parking improvement options:

1. The cost of the parking structure is less than or equal to \$44 Million, the District funds up to \$40 Million, RIDA pays the difference and builds the structure; or
2. The cost of the parking structure exceeds \$44 Million, RIDA pays the difference and builds the structure; or
3. The cost of the parking structure exceeds \$44 Million, RIDA does not elect to pay the difference and the parties meet and confer to discuss financing options, which may lead to either the District or RIDA building the structure.

There is a wide spectrum of options for the funding and construction of the parking improvements and the final option will be determined no later than the sixth anniversary of the Commencement Date of the Form Lease. The decision tree below provides a simplified explanation of the different

options for the parking improvements:



RIDA will pay the District a reduced rate for the use of surface parking and premises parking until such time as the parking improvements are completed. Otherwise, the parking rent structure is as follows:

- District pays for design and construction costs in an amount not to exceed \$40 million;
- RIDA pays for design and construction costs in excess of \$40 million (up to \$44 million);
- RIDA operates, maintains and pays for all costs of operations and maintenance of the parking improvements, with the District covering some of the energy related costs;
- RIDA pays 12.5% of gross parking revenues during lease years 1-38;
- RIDA pays 15% of gross parking revenues during lease years 39-66;
- If there is a sale or assignment of the lease during lease years 1-38, the parking rental rate paid to the District would increase from 12.5% to 15%; and
- If there is a sale or assignment of the lease during lease years 39-66, the parking rental rate paid to the District would increase from 15% to 20%.

Project Guarantees

RIDA is required to provide certain forms of guarantees related to the completion of the project improvements and subsequent alterations. In the draft lease included in the DDA, RIDA's obligation to complete all of the RHCC improvements and obtain the final certificate of occupancy was to be guaranteed by Ira Mitzner, CEO of RIDA, and if RIDA elects, other District-approved guarantors. Each completion guaranty was to expire upon the completion of the Project improvements and receipt of the final certificate of occupancy.

The Form Lease leaves a blank for the name of the guarantor for the completion guaranty of the RHCC. However, per the approved DDA, RIDA must identify a guarantor who must have a net worth of at least \$200 Million for the completion of the project improvements. Once identified, the District, the City and the JEPA will ultimately approve the guarantor identified by RIDA and will negotiate and execute a form of a completion guaranty by the close of escrow.

In addition, RIDA must provide either performance or payment bonds or a corporate guaranty for the construction of both the RHCC project and any major alterations made by the contractor of the improvements. Any bond must be issued by a surety company licensed and admitted to transact business in the State of California. Any bond must be in an amount equal to no less than 100% of the estimated hard construction cost for the RHCC or any major alternation and the corporate guaranty must be reasonably acceptable to Landlord.

Major Lease Terms

The following are major lease terms unique to the partnership with RIDA. The Form Lease demonstrates a collaborative effort between the parties and is in a form that will allow for a world-class project within the CVB.

Force Majeure

A Force Majeure Event means the occurrence of any number of events that delay the construction of the project, including but not limited to: labor strikes, extreme weather, days of precipitation, natural disasters, fires, inability to secure labor or materials, acts of war, or delays in issuing approvals for the RHCC project, individually or in any combination. To be considered a Force Majeure Event, such event must be beyond the reasonable control of the tenant and such event and/or such collateral effect prevents the tenant from the performance of its obligations under the Lease. Qualifying Force Majeure Events cannot cause the Outside Construction Completion Date to extend beyond the term of the Lease.

Delays to the Completion of the Project

Since portions of the improvements under the Lease will be financed by debt issued by the District and the City, protections were built in that if after five years from the start of construction, the improvements are not completed, RIDA will pay the District a monthly Tenant Public Financing Payment (TPFP). The payment is calculated by subtracting existing revenues within the CVB pursuant to the Amended and Restated Financing Agreement (defined as existing and designated future lease revenues from the CVB, transient occupancy tax (TOT) for the existing and future RV

Park, and revenues from the Municipal Services Agreement (MSA)) plus the District's annual support payment from the annual debt service. The payment, if received by the District, would cover any missing project-related revenues generated had the Project been open and operating. The calculation is as follows:

TPFP = Annual Debt Service - (Existing Revenues + District Support Payments)

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Lease Encumbrance

Due to RIDA's substantial investment in the Project, it is anticipated that the private financing will be structured as a combination of equity, debt from financial institutions and a mezzanine loan. It is envisioned debt financing will come from a consortium of lenders yet to be identified by RIDA with a lead bank serving as the collateral agent. The mezzanine loan will be provided by key money from Marriott or its affiliate. The breakdown of the equity and loan amounts will be determined closer to the close of escrow date of the DDA.

In addition, due to the complex nature of the Project, the Lease allows for two new lender types:

1. A trust company that is organized and doing business under the laws of any state or the United States of America, regularly acts as a collateral agent or indenture trustee for indebtedness that is secured by commercial or industrial property, and is subject to supervision or examination by federal or state authority; and
2. A trustee, servicer or authorized agent that is established to form a single asset trust to issue certificates or other beneficial interests in a loan: (a) that is controlled by any of the District-standard lending institutions, (b) that in each case is authorized under the Laws to exercise corporate trust powers and to accept the trust conferred, (c) that is subject to supervision and examination by federal or state authority, and (d) whose regular on-going business includes serving as a trustee, servicer or an authorized agent for real property secured financing for commercial or industrial properties.

Any lender must be a financial institution in good legal standing under the laws of its jurisdiction of incorporation having assets exceeding One Billion Dollars (\$1,000,000,000).

Assignment

RIDA may assign all or portions of the Lease upon a written notice to the District and with the District's approval of the transferee (Transferee) pursuant to an assignment and assumption agreement. An assignment can occur once all the Project improvements have been completed except in certain circumstances. The District will evaluate and reasonably consent to the assignment once the following conditions and requirements are met:

- Transferee must have at least 10 years of experience owning or managing a hotel with at least 500 rooms and meeting space;
- The Transferee must use the Project in accordance with the approved permitted use only;
- The Transferee is reputable and has no pattern of discriminatory employment practices or non-compliance with Environmental Laws;

- The assignment must meet the criteria of the outside public financing authority for so long as the financing remains outstanding and provided that such criteria will not be more stringent as of the commencement date of the Lease;
- The hotel brand must remain Gaylord for up to 3 years from the later of the completion of the Project improvements or receipt of the final certificate of occupancy; and
- There is no pending event of default.

Early Termination

RIDA has the right to terminate the Lease in the following two scenarios:

1. Condemnation: If a) of all of the Site or Project, or a portion thereof, that exceeds Two Hundred Million Dollars (\$200,000,000) and prevents RIDA from reasonably and economically using the remainder of the Site or the Project, for the same intended use as at the time of the condemnation; or b) where the Site, the Project or any portion thereof, need to be repaired or restored as a result of a condemnation, the cost of such repair or restoration exceeds ten percent (10%) of the then current fair market value of all of the Site and Project, then RIDA may terminate if the amount that RIDA has received as part of the award from the condemnation (less any amount that RIDA is required to pay to the their lender) is fifty percent (50%) or less of the cost of such repair or restoration, and the lender is not required to contribute toward the repair or restoration. The lender must consent to the early termination.
2. Destruction or Casualty: If (a) there is damage or destruction to the Initial Project Improvements during the last three (3) years of the Term, the cost of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Initial Project Improvements as determined by the Demolition and Remediation Report, and District has delivered to RIDA a Landlord End of Term Election that requires that RIDA demolish the Initial Project Improvements or (b) there is damage or destruction to the Initial Project Improvements, the cost of repairing said damage or destruction exceeds One Hundred Million Dollars (\$100,000,000) and a Permitted Mortgage Lender requires that any or all of the property damage insurance proceeds are used to repay any indebtedness that is secured by Permitted Lease Encumbrance, or (c) there is damage or destruction to the Initial Project Improvements and the repairing of said damage or destruction would violate any Law.

RIDA has the right to terminate the Lease or delay the Project in the event there are pre-existing hazardous materials and the cost to develop the Project due to contamination caused by pre-existing hazardous materials exceeds \$10 Million.

Conclusion

Staff recommends that the Board approve substantially the Form Lease attached hereto as Attachment B and authorize the Executive Director or her designated representative to execute the Form Lease attached hereto as Attachment B in substantially the same form attached as Attachment B at the close of the escrow contemplated in the DDA provided that (i) the close of escrow occurs in compliance with the terms of the DDA; (ii) the Form Lease executed by the Executive Director or her designated representative has all blanks filled in and all exhibits attached in accordance with the guidance set forth in the Form Lease attached hereto as Attachment B; and (iii) to the extent there are any new or modified terms in the Form Lease executed by the Executive Director or her

designated representative, such new or modified terms do not have the effect of reducing rent, increasing the term of the Form Lease, reducing insurance coverage in favor of the District, or reducing any indemnity in favor of the District.

Next Steps

Design review is currently underway, and it is anticipated that the design process will be completed mid to late 2019. The CDP for the Project is expected to be presented to the Board as soon as Fall 2018.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda sheet as presented to it.

Environmental Review:

The proposed Board actions for approving the form of ground lease between RIDA Chula Vista, LLC and the District for a 66-year term for a resort hotel and convention center was adequately covered in the Chula Vista Bayfront Master Plan Final EIR (State Clearinghouse No. 2005081077), prepared and adopted/certified by the District on May 2010. The proposed project 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 Final EIR, the District finds and recommends that the approval of the form of ground lease 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 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, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR, (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. Because none of these factors have been triggered and the adoption of the Disposition and Development Agreement does, the District has the discretion to require no further analysis or environmental documentation (CEQA Guidelines §15162(b)). 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.

In addition, the proposed Board action allows for the District to implement its obligation under Section 87(a)(2) of the Port Act because it approves the form of a ground lease for a resort hotel and convention center in the Chula Vista Bayfront Master Plan area. 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.

The proposed Board direction or 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 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 Board’s direction or 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):

Attachment A:	Non-Binding Letter of Intent, dated June 14, 2017
Attachment B:	Proposed Final Form Lease
Attachment C:	Lease Information Summary

1. SDUPD Clerk’s Office Document No. 68398 filed May 14, 2018, Disposition and Development Agreement by and among the San Diego Unified Port District, the City of Chula Vista, and RIDA Chula Vista, LLC
2. SDUPD Clerk’s Office Document No. 56523 filed May 20, 2010, Chula Vista Bayfront Master Plan Settlement Agreement by and among the Bayfront Coalition, San Diego Unified Port District and City of Chula Vista, the Redevelopment Agency of the City of Chula Vista