



Legislation Text

File #: 2018-0381, **Version:** 1

DATE: September 12, 2018

SUBJECT:

ORDINANCE GRANTING AMENDMENT NO. 1 TO LEASE WITH DRISCOLL, INC. AT 2702 SHELTER ISLAND DRIVE TO EXTEND THE CONSTRUCTION COMPLETION DEADLINE OF THE LEASE TO JANUARY 1, 2019

EXECUTIVE SUMMARY:

In September 2016, the District executed a lease¹ with Driscoll, Inc. (Driscoll) located in America's Cup Harbor. The lease required Driscoll to complete construction of a boatyard by August 1, 2018. Although Driscoll was unsuccessful in meeting this requirement, significant progress has been made on the project with a limited number of construction improvements outstanding. The most significant cause of the project's delay is due to the unavailability of equipment and personnel to complete the waterside concrete finger piers. In addition to Driscoll already investing over \$800,000 of the \$1,000,000 project requirement, the District is at no financial loss due to the delayed project as Driscoll pays a flat monthly rent for this site which increased as of August 1, 2018. Given the significant progress of the project's completion, staff recommends Board approval of the Driscoll lease amendment to extend the construction completion deadline to January 1, 2019.

RECOMMENDATION:

Adopt an Ordinance granting Amendment No. 1 to lease with Driscoll, Inc. at 2702 Shelter Island Drive to extend the construction completion deadline of the lease to January 1, 2019.

FISCAL IMPACT:

This Board action will not result in any fiscal impact. Driscoll pays a flat rent in the amount of \$12,102.30 per month.

This agenda item is subject to Board of Port Commissioners Policy 106-Cost Recovery User Fee Policy.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.

DISCUSSION:

In September 2016, the District executed a twenty-year lease plus one ten-year option with Driscoll, Inc. located at 2702 Shelter Island Drive in America's Cup Harbor (Attachment A - Location Map). The lease required Driscoll to commence and diligently proceed to complete construction of a \$1,000,000 boatyard development project (Attachment B - Site Plan). Components of the project include construction of a two-story concrete boatyard administration building "Building E", a high bay metal boat shed "Building D", approximately 40,000 square feet of concrete paving, a water reclamation system including water tanks, two approximately 65-foot-long concrete finger piers for use by a new 35-ton travel lift, other docks, and related improvements.

The lease requires construction of the project to be completed by August 1, 2018. Although Driscoll was unsuccessful in meeting this requirement, significant progress has been made on the site with the majority of improvements being completed. The outstanding improvements include:

- Building E (65% complete)
- Two 65-foot-long concrete finger piers (construction not started)
- 35-ton travel lift (awaiting construction of finger piers)

Causes of Delay

The most significant cause of construction delay is the availability of Driscoll's in-water contractor, R.E. Staite, which is the same contractor the District is using for the in-water work at the Shelter Island Boat Launch Ramp project. On June 23, 2018, staff received a letter from R.E. Staite (Attachment C - Letter from R.E. Staite) requesting a delay to the construction of the in-water work at Driscoll's due to "conflicts with the Shelter Island Boat Launch Ramp project". Construction of the finger piers at Driscoll's was initially scheduled to commence in April 2018. R.E. Staite sought to delay its start until September 2018 to avoid safety concerns with the increased foot traffic on the adjacent public promenade during the summer, and the availability of equipment and personnel.

Delays were also caused by an encroachment onto its premises by a wall and fence footings from the adjacent property. This encroachment delayed the construction of Building E as a portion of the concrete paving had to be re-poured.

Expected Completion of Project

Staff met with Driscoll and R.E. Staite to determine the expected completion of the project. Driscoll and R.E. Staite estimate completion by early December 2018, but have requested an extension of the construction deadline until January 1, 2019 to accommodate further unexpected delays.

As per Driscoll's lease with the District, the construction completion deadline can only be extended by a vote of the Board of Port Commissioners.

Given the significant progress toward the project's completion, staff recommends Board approval of the Driscoll lease amendment to extend the construction completion deadline to January 1, 2019. Of the \$1,000,000 project cost requirement, Driscoll has already invested over \$800,000. Furthermore, Driscoll pays the District a flat monthly rent for the site which automatically increased from \$5,932.50 per month to \$12,102.30 per month as of August 1, 2018. The delay in the project does not result in a financial loss to the District.

General Counsel's Comments:

The Office of the General Counsel has reviewed and approved the proposed lease amendment as to form and legality.

Environmental Review:

The proposed Board action for an ordinance granting an amendment to the lease with Driscoll Inc. to extend the construction completion deadline was adequately covered as a component of the Kettenburg Marine Boatyard redevelopment analyzed in the Final Program Environmental Impact Report (FPEIR) for the "America's Cup Harbor Redevelopment Project and Port Master Plan Amendment for Shelter Island Planning District" (UPD #83356-EIR-332, Clerk's Document No. 44566), prepared and adopted/certified by the District on May 21, 2002. 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 FPEIR, the District finds and recommends that the approval of the amendment to the 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 FPEIR 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 FPEIR, (b) identifies significant impacts would not be more severe than those analyzed in the FPEIR, (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 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 complies with Section 87 of the Port Act, which allows for all 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 Board action is consistent with the Public Trust Doctrine.

Finally, proposed Board action was covered in the Coastal Development Permit for the Kettenburg Boatyard Project (CDP-2006-05; Clerk's Document No. 51016) approved by the District on August 8, 2006. The proposed Board action is consistent with the project in that CDP. No additional action under the California Coastal Act is required at this time.

Equal Opportunity Program:

Not Applicable.

PREPARED BY:

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Attachment(s):

Attachment A:	Location Map
Attachment B:	Site Plan
Attachment C:	Letter from R.E. Staite

¹ San Diego Unified Port District Lease to Driscoll, Inc., on file in the Office of the District Clerk bearing Document No. 65642, dated September 27, 2016.