



Legislation Text

File #: 2019-0145, **Version:** 1

DATE: May 14, 2019

SUBJECT:

A) RESOLUTION SELECTING STAY OPEN, INC. AS THE SUCCESSFUL PROPOSER OF THE REQUEST FOR PROPOSALS (RFP 18-19ME: SAN DIEGO BAY DEVELOPMENT OPPORTUNITY LOWER COST OVERNIGHT ACCOMMODATIONS) (RFP) AND CONCLUDING THE RFP, RESERVING CERTAIN RIGHTS THEREUNDER

B) RESOLUTION AUTHORIZING STAFF TO NEGOTIATE AN EXCLUSIVE NEGOTIATING AGREEMENT WITH STAY OPEN, INC.

EXECUTIVE SUMMARY:

Based on the direction of the Board of Port Commissioners (Board), on January 22, 2019, staff issued the Request for Proposals (RFP 18-19ME: San Diego Bay Development Opportunity Lower Cost Overnight Accommodations) (RFP) for the development and/or operation of lower cost overnight accommodations near San Diego Bay.¹

The project site identified in the RFP consists of nearly 3 acres on Pacific Highway in the City of San Diego, including an existing 10,000 square foot vacant space within the District's Annex Building and parking lot (Site) (Attachment A). Respondents were provided the flexibility to propose to use all or a portion of the Site and could propose to develop and/or operate the project.

After a comprehensive national marketing campaign that reached nearly one million people, the RFP was downloaded by 79 parties and, on March 7, 2019, the District received four proposals, three of which were deemed responsive from:

- Sleepbox, Inc., Boston, MA (Sleepbox) (Attachment B) - Responsive
- Shiva Management, Inc., on behalf of Hotel Investment Group (HIG) (Attachment C), San Diego, CA - Responsive
- CaRE Development, LLC, on behalf of Stay Open, Inc., (Stay Open) Los Angeles, CA (Attachment D) - Responsive
- M1B1, LLC, Kentwood, MI (Attachment E) - *Nonresponsive*

District Real Estate staff visited representative sites, identified in each of the responsive proposals, in the last week of March 2019. In collaboration with the District's Planning Department and the District's consultant, Jones Lang LaSalle (JLL), all of the responsive teams were interviewed on April 2, 2019. Based on the evaluation criteria in the RFP, and the panel's review of the proposals, staff recommends Stay Open, Inc. (Stay Open) as the top proposer for this RFP. As discussed in more detail in the Discussion section below, Stay Open's proposal is the most consistent with the District's

vision and goals as outlined in the RFP, which staff believes would result in the best strategic approach to providing lower cost overnight accommodations for the District. In addition to having the strongest Approach to Project, Stay Open has the strongest Project Team and Relevant Experience, demonstrated the highest Capability to Perform, and presented the most comprehensive Development and/or Operating Proforma, thus, in staff's opinion, making their proposal the strongest across the four primary evaluation criteria of the RFP.

Stay Open also proposed the lowest Average Daily Rate (ADR) of \$37 and the highest rent to the District of per square foot of \$43. In addition, Stay Open demonstrated the strongest ability to develop and operate lower cost overnight accommodations. Therefore, staff is recommending that the Board select Stay Open as the successful proposer of the RFP and conclude the RFP, reserving certain rights thereunder.

District staff and California Coastal Commission (Coastal Commission) staff worked closely on the RFP and shared summaries of the responsive proposals. In doing so, District staff communicated that the District's intent was that the ultimate project would comply with the California Coastal Act's provision regarding lower cost visitor and recreational facilities and may be able to use some or all of the \$6 million Lane Field's lower cost mitigation fee, both of which are more particularly described below. When District staff met with local Coastal Commission staff following the interviews to share an update, local Coastal Commission staff indicated that they felt that the Stay Open proposal met the District's goal of developing lower cost overnight accommodations. The Board has the discretion to accept, modify or reject staff's recommendation. If the Board selects Stay Open as the successful proposer, this would conclude the RFP process; however, staff recommends the District reserve all its rights under the RFP and as permitted under law. If the Board approves the staff recommendation, staff would execute a Right of Entry License Agreement (ROE) with Stay Open to conduct initial due diligence - while commencing exclusive negotiations in parallel - and staff would return to the Board in the future for any necessary approvals.

RECOMMENDATION:

- A) Adopt a Resolution selecting Stay Open, Inc. as the Successful Proposer of the RFP and Conclude the RFP, Reserving Certain Rights Thereunder; and
- B) Adopt a Resolution authorizing Staff to Negotiate an Exclusive Negotiating Agreement with Stay Open, Inc.

FISCAL IMPACT:

Receiving staff's presentation will not have a direct fiscal impact to the District. If the Board selects Stay Open and directs staff to commence exclusive negotiations, staff will commence negotiations with Stay Open and return to the Board for any necessary approvals. Although a lease has not yet been negotiated, the rent structure proposed by Stay Open could result in ground rent to the District estimated at approximately \$200,000 per year for the first ten years of operations.

COMPASS STRATEGIC GOALS:

As a part of its efforts to provide lower cost overnight accommodations and at the Board's direction, the District initiated a public solicitation process for development and/or operation of the Site. The provision of lower cost visitor and recreational facilities, including without limitation overnight

accommodations, is a shared goal of the District and Coastal Commission to ensure that all Californians and visitors from a variety of backgrounds and incomes are able to enjoy a full range of coastal experiences on and around San Diego Bay. With a variety of lower cost overnight accommodation product types emerging, it was vital to assess the market and commence a competitive process to ensure that the ultimate project is consistent with the District's goals. This agenda item supports the following Strategic Goals.

- 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 Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Background and In-Lieu Mitigation Fees for Lower Cost Overnight Accommodations

In 2013, after an appeal, the Coastal Commission issued a Coastal Development Permit (CDP) for the Lane Field Hotel Development on the North Embarcadero. Special Condition #2 of the CDP required the hotel developer to pay a "lower cost overnight accommodations mitigation fee" in the amount of \$6,000,000 - \$3,000,000 for the Lane Field North hotel tower and \$3,000,000 for the Lane Field South hotel tower. Each fee was due prior to the hotel tower receiving its certificate of occupancy. In April 2014, the District and Coastal Commission entered into a Memorandum of Agreement (MOA) that provided the framework by which the funds were to be collected, managed, and expended by the District¹. Per the MOA, the funds are earmarked for the establishment of "lower cost overnight visitor accommodations such as hostel beds, tent campsites, cabins or campground units, at appropriate locations on Port Tidelands within the City of San Diego." Expenditure of any of these funds requires written approval from the Executive Director of the Coastal Commission. The MOA was included as Attachment F to the RFP.

Pursuant to the terms of the MOA, Lane Field North and Lane Field South have each deposited \$3,000,000 into an interest-bearing account at the District. Further, the MOA states that "if any portion of the fee remains five years after it is deposited, the Coastal Commission may require that the funds be transferred to another entity that will provide lower cost visitor amenities in the County of San Diego coastal zone jurisdiction" - which would be January 21, 2021 for the \$3,000,000 funds associated with Lane Field North and July 26, 2023 for the \$3,000,000 funds associated with Lane Field South.

Additionally, the CDP for the Shelter Pointe Hotel (Kona Kai Resort) Expansion Project, which was issued by the District in 2013, required that the permittee pay an in-lieu fee for lower cost overnight visitor accommodations at a rate of \$31,000 per room for 25% of the new hotel rooms, which totals approximately \$307,500 for the proposed 41 new rooms. Payment of this fee to the District by Kona Kai Resort occurred in 2018. Thus, the District is currently holding approximately \$6.3 million in in-lieu fees in an interest-bearing account for the development of lower cost overnight accommodations on City of San Diego Tidelands.

Given the availability of funds for the establishment of lower cost overnight accommodations, at the

December 5, 2017 Board meeting staff recommended the Board direct staff to pursue an intrinsically lower cost overnight accommodations facility on the Site. At that Board meeting, the Board directed staff to issue an RFP for lower cost overnight accommodations at the Site.

RFP Process and Marketing

The Site, adjacent to the Port Administration Building, is ideal for lower cost overnight accommodations due to its proximity to nearby transit and local attractions. In drafting the RFP, District staff worked closely with local Coastal Commission staff to identify potential product types that may be considered intrinsically lower cost overnight accommodations, including:

- Hostel
- Budget/Economy Hotel/Motel
- Micro Concept Accommodations (e.g. Capsule/Pod)
- Other Budget Friendly Accommodations

As noted in the RFP, some or all of the \$6.3 million in in-lieu fees may be approved for use by the developer and/or operator that is the successful proposer associated with this RFP. This will help accomplish the goal of ensuring that all Californians and visitors from a variety of backgrounds and incomes are able to enjoy the area's full range of coastal experiences. Use of the fee will also avoid it potentially being used off Tidelands.

In December 2018, staff took a proactive approach to generating interest in this exciting opportunity by developing a national marketing campaign reaching nearly one million people through conference promotions and by utilizing print, digital, social and earned media. After pre-marketing the Site in early 2019, the RFP was issued on January 22, 2019, seeking a developer and/or operator, but strongly encouraged collaboration amongst respondents to form teams including both. An information exchange was held on February 4, 2019, which almost 40 interested parties attended. On March 7, 2019, the District received four proposals from across the country that included budget/economy, hotel/motel and micro concept accommodations (e.g. capsule/pod) and of those proposals, three were deemed responsive. The four proposals were submitted by:

- Sleepbox, Boston, MA - Responsive
- HIG, San Diego, CA - Responsive
- Stay Open, Los Angeles, CA - Responsive
- M1B1, LLC, Kentwood, MI - *Nonresponsive*

Site Visits and Interviews

During the last week of March 2019, Real Estate staff visited representative sites identified in each proposal, which included:

- Sleepbox: Sleepbox Lounge - Dulles International Airport, Washington D.C.
- HIG: Holiday Inn Express - San Diego (Mission Valley), CA
- Stay Open: Jucy Snooze - Christchurch, NZ

It should be noted that the Sleepbox Lounge was not yet open at the time of the site visit and the Jucy Snooze visit was via Skype.

By meeting with each of the teams and experiencing a project with a similar scope that they have developed and currently operate, staff was able to gain a better understanding of what to expect from each team as a partner. Staff participating in the site visits took notes that were shared with the full interview panel for consideration.

The full interview panel included the Real Estate staff managing the RFP, who participated in the site visits, as well as representatives from Planning and JLL. On April 2, 2019 the panel interviewed the three responsive teams. The panel then debriefed on April 3, 2019, to discuss the proposals, site visits and interviews holistically. Summaries of the proposals and the panel's observations are provided below, as well as on Attachment F - Lower Cost Accommodations Proposal and Financial Summaries. Additionally, the JLL Hotels and Hospitality Report (Attachment G), provides a market analysis of the ADR and occupancy rates proposed by each team, which was prepared by JLL's Hotels & Hospitality Group.

Considerable Preference for Risk MitigationThe RFP included a section that referenced Board Policy No. 360 which states that projects including one hundred (100) hotel rooms or more may be given considerable preference if the proposer identifies ways to mitigate for certain risks. If a proposer wished to receive considerable preference under Board Policy No. 360, they were to complete Attachment H to the RFP, which would identify risks and associated mitigation strategies.

HIG was the only proposed project that included one hundred (100) hotel rooms or more and they did not submit Attachment H requesting considerable preference. When asked about this on their site visit, HIG stated that, based on their experience, they did not believe the risks would be an issue for the proposed project.

Proposal Summaries (see Attachment F)

Sleepbox

Approach to Project: The Sleepbox proposal contemplated the use of 31,500 square feet including the Annex building, Annex building rooftop and a portion of the adjacent parking lot as a micro hotel concept. The microconcept would include 48 "boxes" that include a twin or queen bed, fold-out desk, mood light, chargers, wifi and an entertainment tablet, which would provide accommodations for up to 70 total guests. The micro hotel also includes a separate bathroom area, which is shared but provides private shower and restroom space with high end finishes, similar to a luxury airport lounge. The expected ADR upon stabilization in year four is \$79. The proposal also contemplated adding a garden space for guests and creating a courtyard with a food and beverage program in front, as well as rooftop activation, both of which would be available to the public.

Project Team and Relevant Experience: While Sleepbox as a company was only formed in 2016, the proposal indicated that the proposed team and its members possessed experience in the last 10 years with projects related to the envisioned scope of development and had worked on a minimum of three similar projects. However, through the site visits and interviews, staff became concerned with the level of development and operations experience the team and its members possessed.

The representative site identified in the proposal, Sleepbox Lounge in Dulles Airport, was not open at the time of the site visit due to permitting delays, but did open shortly thereafter. The proposed team as a whole has not worked on any projects together, although some of the team was involved in the development of the Sleepbox Lounge. While Sleepbox's CEO, Mikhail Krymov developed the Sleepbox concept approximately 10 years ago, he sold the boxes to clients who integrated them into projects of their own. Additionally, the Radisson Blu, which was submitted as a similar project Mr. Krymov designed, did not involve any other team members and did not demonstrate an ability to develop and/or operate lower cost overnight accommodations. The proposed architecture firm, Sargenti, focuses on retail, rather than hospitality, and has not worked with Sleepbox on a hotel yet as none have been built. No members of the team have experience with the California Environmental Quality Act (CEQA) review or Coastal Act permitting, but they indicated they were open to hiring local experts in those fields, if they felt they needed them.

While the team members of Sleepbox were able to demonstrate some individual experience, they were unable to demonstrate related or collective experience on a project that they have developed and/or operated with a similar scope since, as the team stated, they are still in "start-up" mode. Therefore, staff believes that recommending or selecting Sleepbox for the development and operation of their first hotel may pose a risk for the District, until the team has had more experience with development and operations of a lower cost overnight accommodations project.

Capability to Perform: Sleepbox's proposal stated that the team would apply to use \$3.5 million of the \$6.3 million in-lieu fees, which is the entire cost of the proposed project. When asked in the interview how they would finance the project if they were unable to use all or a portion of the in-lieu fees, they indicated they would use their financing partner, Shiboomi, but it is not clear if Shiboomi is a current partnership or only on an as-needed basis. No letters of interests from equity partners or lenders were submitted.

Development and/or Operating Proforma: Sleepbox did not identify a development fee,² but included a proposed 15% operating fee which combined management, brand, booking and marketing fees. Sleepbox proposed to use equity to fund predevelopment costs and reimburse themselves with the in-lieu fees. Sleepbox will apply to use \$3.5 million of the \$6.3 million in-lieu fees to fund the proposed project for development costs. Development costs were not initially identified in the proposal, however, it was later clarified by Sleepbox that the development costs would be \$3.2 million, which is less than the amount of in-lieu fees they proposed to apply for. While a food and beverage program was contemplated in the proposal, revenue was not initially identified as the program had not yet been developed but an estimate was provided later. The estimated total potential ground rent to the District over a 10-year period is \$922,000, which is \$20 per square foot, as per the projections in Sleepbox's proforma.

HIG

Approach to Project: The HIG proposal contemplated the use of 130,680 square feet, which is the entire Site, excluding the Annex building. HIG proposed an Avid Hotel as their concept, which they identified as a new "economy" brand by Intercontinental Hotel Group that the team classified as the "little brother" to Holiday Inn Express. The four-story hotel concept would include 200 rooms that consist of king and double queen bedrooms and suites, and 20 suites with kitchenettes for extended stay. The expected ADR upon stabilization in year four is \$98. As per Attachment G, the proposed

ADR is also well below similarly positioned midscale hotels, which raises concerns that ultimately the ADR would increase over time and not remain lower cost. The proposal also contemplated a limited continental breakfast, fitness center and pool for guests. The HIG proposal was the only proposal that did not include any public amenities or a true food and beverage program.

Although HIG's proposal stated, "The Avid brand was created for the economy guest", it was through due diligence and analysis after the site visits and interviews that staff became aware that the Avid brand is considered a mid-scale brand, not economy, according to Smith Travel Research (STR). A mid-scale brand does not meet the requirement of the RFP as identified on page 1 and Attachment A of the RFP.

Project Team and Relevant Experience: HIG's proposal indicated that the project team has worked together on developing and operating other lower cost hotel projects over the past 10 years, including the Holiday Inn Express in Mission Valley, which staff visited. While the project was nicely appointed, it did not seem like a comparable as the hotel manager indicated they were running at a \$154 ADR and they did not provide any public access or amenities on site. The team also indicated they have never had to develop a project that required CEQA review and they had experience with one project in the Coastal zone but ultimately abandoned the project. It was difficult to assess the related experience of the key personnel as the authorized representative on the project, Bhavesh Patel, sent his son and another gentleman to represent him on the site visits and interviews, with no prior notice to staff. Since neither of these gentlemen were identified as key personnel in the proposal, staff requested that Mr. Patel confirm these gentlemen were authorized to speak on his behalf. Ultimately Mr. Patel replaced himself with his son as the authorized representative. His experience was relatively unknown beyond being involved in the family hotel business since a young age.

Capability to Perform: HIG's proposal stated "At this time, In-Lieu Fee Funds are not being requested in order to develop this project;" however, the representatives on the site visit indicated that they planned to apply to use all \$6.3 million and would use a conventional bank loan to finance the rest of the project. When asked in their interview how they would finance the project if some or all of the in-lieu fees were not available to them, they initially stated that they would abandon the project and then said they could also consider value engineering the project. No letters of interest from lenders or equity partners were submitted.

Development and/or Operating Proforma: HIG proposed an \$800,000 development fee with a 4% management fee and a 10% franchise fee. HIG proposed to use equity and a conventional bank loan to fund the predevelopment costs and the \$30.2 million in total development costs although, as previously mentioned, no letters of interest from lenders or equity partners were submitted. Following the site visit when HIG indicated that they did want to apply to use the in-lieu fees, although the proposal stated they did not, they sent over a revised proforma reflecting the use of these funds, if granted, towards the total development costs. The estimated total potential ground rent to the District over a 10-year period is \$2.96 million, as per the projections in HIG's proforma, but it should be noted that HIG did not propose to begin making ground rent payments until year four of operations. HIG's estimated rent per square foot would be \$16, as per the projections in their proforma, which is the lowest rent per square foot of all three proposals.

Stay Open

Approach to Project: The Stay Open proposal contemplated the use of 34,220 square feet including the Annex building, rooftop and a portion of the adjacent parking lot as a micro hotel concept. The micro hotel concept would include 33 rooms with a total of 226 pods/beds. Each room would consist of eight to 12 pods per room or a private ensuite room. The pods/beds are a capsule style, designed as shared accommodations, but each individual pod can be completely closed for privacy. Each pod contains a queen bed, light, mirror, temperature control, charging station, free wifi and secure luggage storage. The private ensuite rooms consist of a private bathroom and a mix of twin and queen beds. The expected ADR upon stabilization in year four is \$37 as the weighted average - \$35 per pod/bed and \$116 per ensuite room. The micro hotel would also include a separate shared bathroom area and private bathrooms for the ensuite rooms with “Equinox-like” finishes. The proposal also contemplated adding a rooftop restaurant, amenity and lounge space for events, which would be open to the public, focusing on connecting locals and guests through social experiences.

Project Team and Relevant Experience: Stay Open’s team demonstrated a balanced level of experience between the two lead partners, CaRE and JUCY Snooze. CaRE has experience in hospitality development, including adaptive reuse similar to the proposed project, in Southern California. JUCY Snooze has a depth of experience in providing unique experiences to travelers through their camper van business in the United States, Australia and New Zealand and the development and operation of their JUCY Snooze shared accommodations in New Zealand. With the JUCY Snooze in Christchurch, New Zealand identified as a representative site, the team offered a virtual site visit over Skype. The team has also worked with their San Diego based architect and construction firms, carrierjohnson + CULTURE and Kunzik & Sara, both of which attended the interviews. Since the team has limited direct experience with CEQA and Coastal Act permitting on prior projects, they proposed to retain an experienced land use attorney to assist them through the entitlements.

Several letters of support were provided with the Stay Open proposal, including: the Mayor of Queenstown, New Zealand; the New Zealand Consulate General; and the Chief Aeronautical and Commercial Officer of the Christchurch Airport. Overall, Stay Open’s project team and key personnel demonstrated the strongest level of experience in developing and operating lower cost overnight accommodations.

Capability to Perform: Stay Open’s proposal stated that the team would apply to use all of the \$6.3 million in-lieu fees and they would use equity for the remaining project costs. When asked in the interview, if some or all of the in-lieu fees were not available how they would finance the project, they indicated they would analyze their equity and debt sources to identify the most cost-effective tool to use at the time. The principals of Stay Open have financed over \$40 million of JUCY Pod Hotel developments and \$750 million of US-based hotels, including Pier South Resort, a Marriott Autograph Collection hotel in Imperial Beach, CA. The team also manages over \$250 million of limited partner equity on behalf of over 500 domestic investors and foreign EB-5 investors. Letters of interest and credit references were submitted by George Smith Partners, CBIZ and CalPrivate Bank. Due to Stay Open’s extensive history of financing hotel projects and their access to a breadth of equity and debt sources, Stay Open demonstrated the highest capability to perform.

Development and/or Operating Proforma: Stay Open proposed a \$272,000 development fee, an operating fee that would ramp up to 11% for management, brand, sales and marketing and a technology fee of \$55 per pod per year. Stay Open proposed to apply to use the \$6.3 million of in-lieu

fees towards the total project cost of \$10.6 million and would use equity to fund predevelopment costs and the delta on the project costs beyond any in-lieu fee funds they may receive. The estimated potential ground rent to the District over a 10-year period is \$1.92 million, which is \$43 per square foot, based on the projections in Stay Open's proforma, which is the highest rent per square foot of all three proposals.

Staff Recommendation

Based on the analysis of the proposals, site visits, interviews and financials, staff recommends that the Board select Stay Open as the successful proposer, conclude the RFP process and authorize staff to commence exclusive negotiations with Stay Open.

Stay Open demonstrated the strongest ability to develop and operate lower cost overnight accommodations, based on a history of success in the hospitality industry by its partners, CaRE and JUCY Snooze. JUCY Snooze is a similar product in New Zealand to what is being proposed by Stay Open in the United States. Stay Open shared with staff some of the market research (Understanding your West Coast USA Customer, Page 169 of Attachment D) they have undertaken as they bring this new concept to the United States, which is ultimately what prompted the changes to the brand name and color palette. Stay Open is currently developing two projects in Hollywood and Santa Monica, CA, which are expected to come online prior to the proposed San Diego project, also allowing the team the opportunity to refine the experience they curate to this new market.

Considering the vision and goals of the RFP and the ultimate project, staff identified several important components in each proposed project and compared all three. As demonstrated in the chart below, while Sleepbox and HIG met some of the goals, criteria and vision, staff's analysis suggests Stay Open meets all of the goals, criteria and vision for this Site.

District Goals	Sleepbox	HIG	Stay Open
Intrinsically Lower Cost Product Type	X		X
Lowest ADR			X
Provision of Public Amenities	X		X
Food & Beverage Program	X		X
Comprehensive Marketing Plan			X
10 Years + Team Experience		X	X
Experience with CEQA & Coastal			X
Developing & Operating Lower Cost Accommodations		X	X
Experience Financing Lower Cost Accommodations		X	X
Demonstrated Access to Debt & Equity			X
Willingness to Finance Project Without In-Lieu Fees	X		X

Feedback from Coastal Commission Staff

District staff has met with local Coastal Commission staff on a number of occasions regarding the RFP and the proposals received. Prior to issuing the RFP, District staff met with Coastal Commission staff to review the RFP and regarding the product types to get feedback on their consistency with Coastal Commission staff's expectations for lower cost overnight accommodations. District staff then met again with local Coastal Commission staff to provide an overview of the proposals and solicit

feedback and questions to consider during interviews. When District staff met with local Coastal Commission staff following the interviews to share an update, local Coastal Commission staff indicated that they felt that the Stay Open proposal met the District's goal of developing lower cost overnight accommodations on the Site.

Next Steps

The Board has the discretion to accept, modify or reject staff's recommendation. If the Board selects Stay Open as the successful proposer of the RFP and concludes the RFP process, the RFP process would conclude, but the District would reserve all of its rights under the RFP and as permitted under law. If the Board approves staff's recommendation and selects Stay Open, staff would execute a ROE with Stay Open to conduct due diligence to ensure their project is feasible from a construction and cost perspective. Following interviews, staff asked each team to provide the scope of due diligence they would need to conduct and circulated a standard form of ROE. Stay Open provided minimal comments to the District's standard form, which have been reviewed by the General Counsel's office, so staff is in a position to quickly proceed with executing the ROE. If selected, Stay Open estimates their due diligence period not to exceed 90 days, during which time staff would begin negotiations on an Exclusive Negotiating Agreement. Additionally, District staff would continue to discuss the process with Coastal Commission staff to clarify use of the funds. The MOA requires that the District and Coastal Commission staff work together to identify a project proposal that is eligible to use the funds.

Staff will return to the Board for any necessary approvals during this time and is targeting returning to the Board to obtain authorization to commence environmental review under CEQA and processing a Port Master Plan Amendment² by the end of 2019. Once this is done, the District is required to request a determination from the Coastal Commission Executive Director that the proposed project can use the funds. After the Executive Director's approval and the Board's approval disbursement may occur.

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:

This item would provide direction to select Stay Open as the successful proposer and begin negotiations with Stay Open for an Exclusive Negotiating Agreement. The Board's selection and direction for exclusive negotiations does not constitute an "approval" of a "project" under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because it would not result in any direct or indirect physical changes to environment. CEQA requires that the District adequately assess the environmental impacts of its projects. While the Board may give direction to staff, including without limitation, direction that certain alternatives analyzed, such direction to staff will not bind the District to a definite course of action prior to CEQA review. Moreover, direction not to proceed with a proposed proposer would not be a project under CEQA. Full CEQA analysis will be completed prior to the District's commitment to a project, approval of any entitlements, concept approval, or long-term agreements necessary for the implementation of a project, in whole or in part. Moreover, the Board reserves its discretion to adopt any and all

feasible mitigation measures, alternatives to the project, including a no project alternative, a statement of overriding consideration, if applicable, and approve or disapprove the project and any permits or entitlements necessary for the same. Those decisions may be exercised in the sole and absolute discretion of the Board. Based on the totality of the circumstances and the entire record, the Board's direction and action do not commit the District to a definite course of action prior to CEQA review being conducted. Therefore, no further CEQA review for this item is required.

In addition, the proposed Board direction and action allow 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 direction and/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 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. However, the District's projects require processing under the District's CDP Regulations. If a proposal or component thereof moves forward, the Board will consider the same after the appropriate documentation under District's CDP Regulations has been completed and authorized by the Board, if necessary. The Board's direction in no way limits the exercise of the District's discretion under the District's CDP Regulations.

Equal Opportunity Program:

No SBE participation goal was established for this solicitation. The proposer will be required to submit an SBE Plan, including goals for applicable design, construction and lease opportunities.

PREPARED BY:

Tara Henos
Asset Manager, Real Estate

Penny Maus
Department Manager, Real Estate

Attachment(s):

Attachment A:	Site
Attachment B:	Sleepbox, Inc Proposal
Attachment C:	Shiva Management, Inc. Proposal
Attachment D:	CaRE Development, LLC Proposal
Attachment E:	M1B1, LLC Proposal
Attachment F:	Lower Cost Accommodations Proposal and Financial Summaries
Attachment G:	JLL Hotels & Hospitality Report

¹ On file in the Office of the District Clerk bearing Document No. 61732, filed April 23, 2014.

² A Port Master Plan Amendment would be required because overnight accommodations are considered an “appealable” project under Section 30715 of the Coastal Act, and per Section 30711 of the Coastal Act, appealable projects need to be listed on the Planning District’s “Project List” in the Port Master Plan.