



## Legislation Text

---

File #: 2019-0150, Version: 1

---

**DATE:** May 14, 2019

**SUBJECT:**

**RESOLUTION AUTHORIZING AMENDMENT NO. 1 TO THE AGREEMENT WITH R.I. PROPERTIES, INC., DBA RETAIL INSITE FOR COMMERCIAL REAL ESTATE BROKER SERVICES FOR SEAPORT VILLAGE, TO INCREASE THE MAXIMUM AMOUNT PAYABLE UNDER THE AGREEMENT BY \$400,000 FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED \$600,000, AND WAIVING BOARD OF PORT COMMISSIONERS POLICY NO. 114 - PAYMENT OF COMMISSIONS FOR THE LEASING OF TIDELANDS. ALL FUNDS REQUIRED FOR FUTURE FISCAL YEARS WILL BE BUDGETED IN THE APPROPRIATE FISCAL YEAR, SUBJECT TO BOARD APPROVAL UPON ADOPTION OF EACH FISCAL YEAR'S BUDGET.**

### **EXECUTIVE SUMMARY:**

At the July 17, 2018 Board of Port Commissioners (Board) meeting, the Board selected and authorized an agreement (Agreement)<sup>1</sup> with R.I. Properties, Inc. dba Retail Insite (Retail Insite) to provide commercial real estate broker services for Seaport Village (Attachment A) for the period from July 18, 2018 through June 30, 2021 in an amount not to exceed \$200,000.

At the February 12, 2019 Board meeting, staff presented an update to the Board on the interim management and operations of Seaport Village which included current leasing efforts with Retail Insite and proposed leasing initiatives for the Board's consideration to secure tenancies quickly to increase occupancy, attract additional foot traffic and generate higher revenue to the District. The Board provided feedback to staff to consider longer lease terms of up to five years and creative deal structures involving tenant improvement allowances to attract and secure leases with high caliber, prospective tenants with compatible uses. Staff has begun to implement these interim strategies with Retail Insite as part of leasing and marketing efforts which has generated an increased level of interest in the vacancies at Seaport Village. These strategies also support the following key principles to set the framework for long-term success with the future vision for the redevelopment of the Central Embarcadero:

- Invest in creation of leasable spaces to attract high caliber tenants;
- Create excitement and energy to enhance visitor experience;
- Strengthen existing tenant relationships to secure lease renewals; and
- Preserve flexibility based on the 1HWY1 Seaport San Diego Project anticipated timeline.

To execute on the District's leasing initiatives, additional funding for potential commission fees is required in the amount of \$400,000 for the Agreement. It should be noted that a maximum amount of up to \$200,000 would be payable per year under the amended Agreement for a total aggregate amount not to exceed \$600,000. Since the existing Agreement scope of services and commission fee

structure only contemplates shorter term leases, Retail Insite has provided staff with an expanded scope of services to encompass the entirety of the District's leasing efforts to fill vacancies at Seaport Village. The expanded scope of services would allow Retail Insite to oversee all new lease proposal negotiations at Seaport Village for lease terms of up to five years, including relocations of existing tenants. In addition, Retail Insite has proposed a revised compensation structure to reflect market rates for commissions on the expanded scope of services as the current compensation structure would not provide for fair and reasonable commissions on lease terms of up to five years.

The expanded scope of services and compensation structure proposed as part of this amendment will enable Retail Insite to identify and source prospective tenants from a larger and stronger tenant base that supports the vision for Seaport Village and also enables the District to negotiate leases that provide increased rental income to the District during this interim phase. Based on staff's review of comparable market rates for leasing commissions and analysis of Retail Insite's expanded scope of services and revised compensation structure, staff recommends the Board authorize an amendment to the Agreement with Retail Insite to increase the maximum amount payable under the agreement by \$400,000 for a total aggregate amount not to exceed \$600,000.

### **RECOMMENDATION:**

Adopt a Resolution authorizing Amendment No. 1 to the Agreement with R.I. Properties, Inc. dba Retail Insite for Commercial Real Estate Broker Services for Seaport Village, to increase the maximum amount payable under the Agreement by \$400,000 for a total aggregate amount not to exceed \$600,000 and waive Board of Port Commissioners Policy No. 114.

### **FISCAL IMPACT:**

The preliminary Fiscal Year 2020 budget includes \$200,000 of the proposed \$400,000 increase to the Agreement in the Real Estate Development Professional Services expense account (#620100) and is subject to Board approval at the upcoming annual budget adoption meeting. Funds required for future fiscal years will be budgeted in the appropriate fiscal year and cost account, subject to Board approval upon adoption of each fiscal year's budget.

### **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:**

In an effort to maximize the District's leasing potential at Seaport Village, staff is recommending an amendment to the Agreement with its broker, Retail Insite. At the February 12, 2019 Board meeting, the Board provided feedback to staff to consider longer lease terms of up to five years and creative deal structures involving tenant improvement allowances to attract and secure leases at Seaport

Village. Since the existing Agreement scope of services and commission fee structure only contemplates shorter term leases, Retail Insite has provided staff with an expanded scope of services which would allow Retail Insite to oversee all new lease proposal negotiations at Seaport Village for terms of up to five years, including relocations of existing tenants. Under this revised structure, Retail Insite would have the ability to manage and evaluate new lease proposals for vacant spaces from both prospective tenants *and* existing District tenants (including tenants of Seaport Village) to source and secure tenancies quickly to increase occupancy, attract additional foot traffic and generate higher revenue to the District. It should be noted that the expanded scope of services would not include facilitation and negotiation of renewals with existing tenants of the District as staff will continue to oversee all lease renewals in house.

### ***Background***

On July 17, 2018, the Board adopted a resolution selecting and authorizing an Agreement with Retail Insite for the period from July 18, 2018 through June 30, 2021 with two one-year options to extend, in an amount not to exceed \$200,000. The Board also waived Board of Port Commissioners Policy No. 114, Payment of Commissions for the Leasing of Tidelands, as it is inconsistent with Retail Insite's negotiated commission fee structure.

Under the Agreement scope of services, Retail Insite lists and markets vacant space at Seaport Village and provides the District with comprehensive marketing and advertising plans, leasing services (excluding negotiation and facilitation of leases with proposals that the District, its manager or ultimate developer pursue independently, which includes all existing tenants of Seaport Village and the District), evaluation of lease proposals, recommendations on rates and terms and bi-weekly progress reports on prospective tenants and leasing activity. To date, Retail Insite has successfully sourced a retail tenant for Seaport Village and continues to present staff with competitive letters of intent for review and consideration on a regular basis.

In accordance with the Agreement, for leases negotiated with terms over one year, Retail Insite receives the *lesser* of six percent (6%) of the total base lease consideration (Minimum Annual Rent) (excluding option terms and excluding operating expense reimbursements) or nine dollars (\$9.00) per rentable square foot of leased area. For leases with terms less than one year (and renewals of those leases), Retail Insite receives fifty percent (50%) of the total Minimum Annual Rent (excluding operating expense reimbursements), but not to exceed nine dollars (\$9.00) per rentable square foot of leased area. It should be noted that renewal commissions for leases with terms less than one year shall not exceed nine dollars (\$9.00) in the aggregate.

### ***Revised Scope of Services and Compensation Structure***

The scope of services and compensation structure under the existing Agreement contemplates shorter term leases as evidenced by Retail Insite's "plug and play" strategy to source and secure tenancies quickly at Seaport Village to fill vacant spaces. To achieve the District's leasing initiatives based on the Board's feedback at the February 12, 2019 meeting, Retail Insite's existing Agreement scope of services and compensation structure would need to be amended. Retail Insite has proposed a revised compensation structure to reflect market rates for commissions on lease terms of up to five years, which is competitive and consistent with prevailing practices in the commercial real estate industry. For the satisfactory performance and completion of services under the amended Agreement for new leases negotiated, Retail Insite would receive the *greater* of six percent (6%) of the total

Minimum Annual Rent (excluding option terms and excluding operating expense reimbursements) or \$7,500 per lease. This revision would provide fair and reasonable commission fees to Retail Insite on lease terms of up to five years since the existing commission structure limits commissions to the rentable square footage of leased area. For relocations of existing tenants, Retail Insite would receive the *greater* of three percent (3%) of the total Minimum Annual Rent (excluding option terms and excluding operating expense reimbursements) or \$3,750 per lease. A side-by-side comparison of Retail Insite's current and proposed compensation structure is provided in the chart below.

Retail Insite Compensation Structure		
	Current	Proposed
New Leases	6% or \$9 per RSF <sup>(1)</sup> <i>the lesser of</i>	6% <sup>(2)</sup> <i>or a minimum of \$7,500</i>
Relocations	-----	3% <sup>(3)</sup> <i>or a minimum of \$3,750</i>

(1) For new leases with terms greater than or equal to twelve months. For leases under twelve months, the compensation structure shall be equal to 50% of total base lease consideration but not to exceed \$9.00 per RSF. Renewals shall be 50% of each renewal amount after the initial term not to exceed a total of \$9.00 per RSF in the aggregate.

(2) For new leases with terms less than, equal to, or greater than twelve months

(3) Relocations of existing tenants at Seaport Village

\*Note: The current and proposed compensation structures exclude option terms and operating expenses reimbursements

In order to maximize the District's leasing potential for Seaport Village, additional funding for potential commission fees is required in the amount of \$400,000 for the Agreement. It should be noted that a maximum amount of up to \$200,000 would be payable per year under the amended Agreement for a total aggregate amount not to exceed \$600,000. The expanded scope of services and compensation structure proposed as part of this amendment will enable Retail Insite to identify and source prospective tenants from a larger and stronger tenant base that supports the vision for Seaport Village and also enables the District to negotiate leases that provide increased rental income to the District during this interim phase.

In accordance with Board Policy No. 110, the existing Agreement must be amended and presented to the Board for authorization (Attachment B). Therefore, staff recommends the Board authorize Amendment No. 1 to the Agreement with Retail Insite to increase the maximum amount payable under the agreement by \$400,000 for a total aggregate amount not to exceed \$600,000 and waive Board of Port Commissioners Policy No. 114.

### General Counsel's Comments:

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

### Environmental Review:

The proposed Board action, including without limitation, a resolution selecting and authorizing an agreement for commercial real estate broker services for the continued operation of an existing

commercial facility, 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 no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of Board’s action that requires the District or the Board’s discretionary approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a “no project alternative” or adopting a Statement of Overriding Consideration, if required. The current Board direction in no way limits the exercise of this discretion. Therefore, no further CEQA 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.

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 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:**

Due to limited known sub opportunities, no SBE goal was established for this agreement.

### **PREPARED BY:**

Alexa Paulus  
Asset Manager, Real Estate

Lucy Contreras  
Program Manager, Real Estate

### **Attachment(s):**

Attachment A: Seaport Village Site Map

Attachment B: Draft Amendment No. 1 to Agreement No. 163-2018 with R.I. Properties, Inc.  
dba Retail Insite

---

<sup>1</sup>Agreement between San Diego Unified Port District and R.I. Properties, Inc., dba Retail Insite for Real Estate Broker Services on file in the Office of the

District Clerk as Document No. 68690.