



Legislation Text

File #: 2019-0245, **Version:** 1

DATE: September 16, 2019

SUBJECT:

RESOLUTION CONSENTING TO A SPA OPERATIONS AND SUB-MANAGEMENT AGREEMENT BETWEEN HYATT CORPORATION, AS AGENT OF HST SAN DIEGO HH LP, A DELAWARE LIMITED PARTNERSHIP (DBA MANCHESTER GRAND HYATT SAN DIEGO), AND SANFORD SPAS, LLC, A FLORIDA LIMITED LIABILITY COMPANY (DBA MARILYN MONROE SPAS), FOR ONE FIVE-YEAR TERM WITH TWO FIVE-YEAR OPTIONS TO EXTEND.

EXECUTIVE SUMMARY:

The District entered into a sixty-six (66) year amended and restated lease (Lease) with Manchester Grand Resorts, L.P. (dba Manchester Grand Hyatt) on June 5, 2001 for the operation of two hotel towers providing over 1,600 guest rooms, meeting and banquet space, 909 restaurant seats, and 1,150 parking spaces, located at the southeast corner of Harbor Drive and Kettner Boulevard, in the City of San Diego.

Manchester Grand Hyatt leases the hotel and subleases the leased premises to HST San Diego HH LP (dba Manchester Grand Hyatt San Diego). Hyatt Corporation (Hyatt) manages and operates the hotel on behalf of Manchester Grand Hyatt San Diego pursuant to a hotel management agreement consented to by the District. Hyatt is serving as agent for Manchester Grant Hyatt San Diego.

Hyatt requests the District's consent to a Spa Operations and Sub-Management Agreement (SOSA) to allow Sanford Spas, LLC (dba Marilyn Monroe Spas), to establish and operate a full-service spa providing a wide variety of treatments, procedures, and services to hotel guests and the general public on a portion of the leased premises.

The SOSA was entered into by Hyatt and Marilyn Monroe Spas and was effective September 30, 2018. Hyatt and Marilyn Monroe Spas are requesting the Board of Port Commissioners' (Board) consent to the SOSA. If approved by the Board, the SOSA between Hyatt and Marilyn Monroe Spas would be for a term of five (5) years, having commenced on September 30, 2018 and ending September 29, 2023. The agreement includes two five (5) year options to extend the term.

The SOSA is consistent with the terms and conditions established in the Lease and Board of Port Commissioners Policy No. 355 (BPC 355).

RECOMMENDATION:

Adopt a Resolution consenting to a the Spa Operations and Sub-Management Agreement between Hyatt Corporation, as agent of HST San Diego HH LP (dba Manchester Grand Hyatt San Diego), and

Sanford Spas, LLC (dba Marilyn Monroe Spas), for a five (5) year term with two five (5) year options to extend.

FISCAL IMPACT:

Manchester Grand Hyatt pays the District the greater of a percentage of gross revenues or a minimum annual rent. The current minimum annual rent is \$6,600,000, subject to scheduled increases, as further detailed under Section 2.a(6) of the Lease. The SOSA with Marilyn Monroe Spas will contribute to the percentage rent paid by Manchester Grand Hyatt to the District. This SOSA would replace a previous agreement for a similar use and therefore will not result in a substantial change in percentage rent.

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

COMPASS STRATEGIC GOALS:

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

- A vibrant waterfront destination where residents and visitors converge.
- 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

The Lease with the District covers approximately 402,322 square feet of tidelands area located at the southeast corner of Harbor Drive and Kettner Boulevard in the City of San Diego (Attachment A - Location Map).

The permitted uses under the Lease include the operation of two hotel towers providing 1,628 rooms, meeting and banquet space, 909 restaurant seats, and 1,150 parking spaces. The original term of the Lease is sixty-six (66) years, commencing June 1, 2001 and ending May 31, 2067.

Hyatt terminated its operations agreement with the previous spa operator and has entered into a new operations and sub-management agreement with Marilyn Monroe Spas.

Spa Operations and Sub-Management Agreement

Marilyn Monroe Spas will operate a full-service spa providing a wide variety of treatments, procedures, and services to hotel guests and the general public. The term of the sublease is five (5) years, having commenced September 30, 2018 and ending September 29, 2023. The term includes two five (5) year options to extend the term.

For long term subleases (more than five years), BPC 355 states that they must meet the following conditions as a requirement to consent of the sublease:

- Sublease must meet current District lease requirements; and
- Provide that the subtenant shall be obligated to pay any master lease rent increases that are

applicable to the subleased premises; and

- Provide that in the event of a conflict between the master lease and the sublease, the master lease shall prevail.

Staff has determined that the SOSA is consistent with BPC 355. Staff recommends that the Board adopt a Resolution consenting to the SOSA between Hyatt and Marilyn Monroe Spas.

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:

The proposed Board action, including without limitation, a resolution consenting to a sublease between Hyatt and Marilyn Monroe Spas, was adequately covered in the Environmental Impact Report (EIR) for the Inter-Continental Hotel and Marina, San Diego Embarcadero (UPD No. 80220-EIR-9), which was certified by the District on September 8, 1981 (Resolution No. 81-294), and the EIR for San Diego Marriott Marquis & Marina Facilities Improvement and Port Master Plan Amendment Project (UPD #83356-EIR-846; SCH #2010091012), which was certified by the District on December 13, 2011 (Resolution No. 2011-178). 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 EIRs, the District finds and recommends that the ordinances authorizing amendments to the Marriott Lease to extend the lease term and alter the rent do 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 EIRs 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 EIRs, (b) identifies significant impacts would not be more severe than those analyzed in the EIRs, (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 comply with Sections 21, 36, and 87 of the Port Act, which allow for the Board to pass resolutions, to do all acts necessary and convenient for the exercise of its power, and for tidelands to be used for all visitor serving commercial and industrial uses and purposes. The Port Act was enacted by the California Legislature and is consistent with the Public

Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

The proposed Board action was covered in the Coastal Development Permit (CDP) (A81-3-33) for the Inter-Continental Hotel Beach and Bay Resort, issued on March 22, 1982; an amendment to the CDP to accurately reflect the existing tower and to incorporate the second tower and conference center, issued on May 25, 1984; and the CDP (2013-04) for the San Diego Marriott Marquis and Marina Facilities Improvement Project, issued on May 7, 2013 (Resolution No. 2103-61). The proposed Board action is consistent with the projects in those CDPs. 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:	Copy of Sublease