



Legislation Text

File #: 2019-0301, **Version:** 1

DATE: November 5, 2019

SUBJECT:

RESOLUTION CONSENTING TO A SUBLEASE BETWEEN HYATT CORPORATION, AS AGENT OF HST SAN DIEGO HH LP, A DELAWARE LIMITED PARTNERSHIP (DBA MANCHESTER GRAND HYATT SAN DIEGO), AND MOBILITIE MANAGEMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO INSTALL, OPERATE, AND MAINTAIN A MULTI-CARRIER, NEUTRAL HOST DISTRIBUTED ANTENNA SYSTEM AND/OR SIMILAR SYSTEM, FOR A TEN-YEAR TERM WITH ONE TEN-YEAR OPTION TO EXTEND (SUBLEASE) AND POTENTIAL FUTURE SUBLEASE OR SUBLICENSE OF THE NETWORK TO SPECIFIC CARRIERS (AT&T, VERIZON, T-MOBILE, OR SPRINT)

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 Sublease Agreement (Sublease) for (1) approximately four hundred twenty-four (424) square feet of the hotel as equipment space and (2) additional areas located within and around the hotel for the placement of antennas, conduit, and other associated facilities to Mobilitie Management, LLC (Mobilitie), for the installation, construction, use, and maintenance of a multi-carrier, neutral host distributed antenna system and/or similar system (such as a small cell antenna system) (System), as further detailed in Attachment A: Copy of Sublease. The System will be installed at various locations within, around, and on top of the building(s) within the leased premises. The specific System details, aside from the location of the equipment space, are not currently known. The System and associated equipment (e.g., antennas) will be dictated by the needs of the individual carriers that will potentially use the System. The Sublease mandates that any System installations not materially interfere with the operation of the hotel as a first-class accommodation. The Sublease also specifies that, once details of the System are known, additional approvals from the District and any and all other applicable governmental approvals, may be required for physical improvements. Once the System is installed, guests of the hotel will have improved cellular coverage within and around the hotel.

The Sublease would specifically consent to Mobilitie's sublease or sublicense of the System to specific cellular carriers (AT&T, Verizon, T-Mobile or Sprint) through a Carrier Agreement. Any Carrier Agreement executed by Mobilitie and an approved carrier must be (1) in substantial conformance with the Form Carrier Agreement, attached to the Sublease as Exhibit 3: Form Carrier Agreement and (2) submitted to the District within ninety (90) days of execution. If the District determines that any executed Carrier Agreement is not in substantial conformance with the Form Carrier Agreement, the Carrier Agreement shall be void and District's prior written consent is required.

If approved by the Board of Port Commissioners (Board), the proposed Sublease with Mobilitie would be for a term of ten (10) years. In addition, the term includes one ten (10) year option to extend the term.

The proposed Sublease 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 Sublease between Hyatt Corporation, as agent of HST San Diego HH LP (dba Manchester Grand Hyatt San Diego), and Mobilitie Management, LLC, for a ten (10) year term with one ten (10) year option to extend and potential future sublease or sublicense of the network to specific carriers (AT&T, Verizon, T-Mobile, OR Sprint).

FISCAL IMPACT:

Manchester Grand Hyatt San Diego pays the District the greater of a percentage of gross revenues and minimum annual rent. The current minimum annual rent is \$6,600,000, subject to scheduled increases, as further detailed under Section 2(a) of the Lease. The rental revenue generated by Mobilitie will initially contribute approximately \$5,000 per year in additional rent to the District, but may increase if and when carriers commence commercial operation on the System.

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 Port that the public understands and trusts.
- 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:

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, as further depicted in Attachment B: Location Map. The permitted uses under the Lease include the operation of two

hotel towers providing 1,628 hotel 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.

For twelve years, Mobilitie has partnered with venue operators and telecommunication carriers to design and build high capacity wireless networks in congested environments to provide comprehensive, robust, and secure mobile coverage. Mobilitie specializes in funding, deploying, and operating wireless solutions including indoor and outdoor neutral host distributed antenna systems, small cells, wi-fi networks, and other infrastructure used by telecommunication carriers to enable high speed mobile communications. Mobilitie owns and operates a diverse portfolio of over 1,000 wireless assets that address key financial and technical metrics for a wide variety of carriers.

The Sublease authorizes Mobilitie to sublease or sublicense the System to specified carriers, provided that any Carrier Agreement must be in substantial conformance with the Form Carrier Agreement attached to the Sublease as Exhibit 3. Mobilitie must submit any executed Carrier Agreement to the District within ninety (90) days of execution for the District's review. If the District determines that a Carrier Agreement is not in substantial conformance with the Form Carrier Agreement, the Carrier Agreement shall be void and the District's consent is required.

Mobilitie's assignment of its interest in the Sublease requires the District's consent, unless the assignment is to one of two specified affiliate entities: (1) Mobilitie Investments III, LLC or (2) Mobilitie Investments IV, LLC. Mobilitie provided District staff with information about Mobilitie Investments III, LLC and Mobilitie Investments IV, LLC, and staff has determined that those affiliated entities satisfy the District's tenant qualification requirements, as outlined in BPC 355.

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
- Provide that the subtenant shall be obligated to pay any master lease rent increases that are applicable to the subleased premises
- 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 proposed Sublease is consistent with BPC 355. Staff recommends that the Board adopt a Resolution consenting to the Sublease between Hyatt and Mobilitie.

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 Mobilitie of approximately four hundred twenty-four (424) square feet of the leased premises and installation, operation, and maintenance of a multi-carrier distributed antenna

system and/or similar system in areas located within and around the hotel, is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15301 (Existing Facilities), and 15303 (New Construction or Conversion of Small Structures); CEQA Guidelines Section 15061 because there is no possibility that the activity may have a significant environmental effect; and Section 3.a. (Existing Facilities) (3) and (4) of the District's Guidelines for Compliance with CEQA because the project would consist of a short term tenancy agreement. The specific details of the System, and any associated improvements and/or installations, are not currently known. The Sublease requires Mobilitie to obtain any required permits and approvals for physical improvements or installations associated with the System. CEQA compliance and environmental review will be conducted in conjunction with those approvals or permits, if required. The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2). No further action under CEQA is required for the Sublease.

In addition, the proposed Board actions allow for the District to implement its obligations under Sections 21, 35, 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 powers, and for the use of tidelands for (1) all commercial and industrial uses and purposes and (2) the construction, reconstruction, repair, and maintenance of telephone, telegraph or cable lines or landings, water and gas pipelines, and all other transportation and utility facilities or betterments incidental, necessary, or convenient for the promotion and accommodation of any of trust uses. 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.

Finally, the proposed Board action is considered "excluded development" pursuant to Section 8.a of the District's Coastal Development Permit Regulations because the project would consist of a short term tenancy agreement. No further action under the Coastal Act is required for the Sublease.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

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Attachment(s):
Attachment A: Copy of Sublease
Attachment B: Location Map