



Legislation Text

File #: 2019-0368, **Version:** 1

DATE: November 5, 2019

SUBJECT:

RESOLUTION CONSENTING TO AMENDMENT NO. 1 TO SUBLEASE BETWEEN LFS DEVELOPMENT, LLC, DBA INTERCONTINENTAL SAN DIEGO, AND STOIC HOLDINGS, INC., TO INCREASE THE TERM FROM A TEN-YEAR TERM WITH TWO FIVE-YEAR OPTIONS TO A TEN-YEAR AND FIVE-MONTH TERM WITH TWO FIVE-YEAR OPTIONS

EXECUTIVE SUMMARY:

The District entered into a 66-year lease (Lease) with LFS Development, LLC (Lane Field South), on June 1, 2016 to operate a 400-room single-branded Intercontinental Hotel located between Pacific Highway and North Harbor Drive, north of Broadway, in the City of San Diego. Lane Field South received District approval to enter into a sublease with a ten-year term with two five-year options to extend with STOIC Holdings, Inc. (STOIC Holdings) to operate a rooftop bar and restaurant on the 19th floor of the hotel building on September 12, 2017 (Sublease).

Lane Field South is requesting Board consent for Amendment No. 1 (Amendment) to the Sublease with STOIC Holdings. The Amendment increases the original term of the Sublease by five months from a ten-year term with two five-year options to a ten-year and five-month term with two five-year options (with a commencement date of January 15, 2019). The Amendment also adds a ten and a half month rent abatement period commencing on January 15, 2019 and terminating November 30, 2019. As discussed below, the limited-term rent abatement will not have a fiscal impact on the District. The Amendment is consistent with the terms of the Lease and Board of Port Commissioners Policy No. 355 (BPC 355) and staff recommends that the Board consent to the Amendment.

RECOMMENDATION:

Adopt a Resolution consenting to Amendment No. 1 to Sublease between LFS Development, LLC dba Intercontinental San Diego and STOIC Holdings, Inc. to increase the term from a ten-year term with two five-year options to a ten-year and five-month term with two five-year options.

FISCAL IMPACT:

Lane Field South currently pays a minimum annual rent of \$382,975 to the District, which is subject to annual increases on June 1st of each year through 2030. Lane Field South will begin to pay percentage rent once a rent threshold is achieved, which is not anticipated to occur within the next 10 years. The Amendment's specified rent abatement period is within the next 10 years and, therefore, would not have any fiscal impact on the District.

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 financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Lane Field South's Lease with the District covers approximately 69,278 square feet of land area located between Pacific Highway and North Harbor Drive, north of Broadway, in the City of San Diego (Attachment A - Location Map). The Lease commenced on June 1, 2016 and has a term of 66 years, which expires on May 31, 2082. Lane Field South's leasehold is comprised of a 400-room single-branded Intercontinental Hotel within a single tower, meeting space and banquet rooms, 686 parking spaces, and 32,850 square feet of retail space. The Master Lease is summarized on the attached Lease Information Summary (Attachment B - Lease Information Summary).

Lane Field South received District approval to enter into a sublease with STOIC Holdings, Inc. to operate a rooftop bar and restaurant on September 12, 2017 (Attachment C - Sublease). Lane Field South is requesting Board consent for Amendment No. 1 to the Sublease with STOIC Holdings (Attachment D - Amendment No. 1).

The purpose of the Amendment is to provide a rent concession and term extension to STOIC Holdings due to construction delays and the inability to gain authorization for a valet drop-off on Broadway. When the Sublease was originally negotiated, the parties intended for rent payments from STOIC Holdings to commence when the bar and restaurant opened for business. Since the construction was unexpectedly delayed, Lane Field South and STOIC Holdings have mutually agreed to amend the terms of their sublease so that the rent commencement period would more closely align with the restaurant's anticipated opening of early 2020.

The Amendment increases the original term of the Sublease by five months from a ten-year term with two five-year options to a ten-year and five-month term with two five-year options. The Amendment also adds a new ten and a half month rent abatement period during construction to offset construction delays. Base rent is due from STOIC Holdings at the termination of the rent abatement period, which ends November 30, 2019.

For long term subleases (more than five years), BPC 355 states 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 Amendment is consistent with BPC 355. Staff recommends that the Board adopt a Resolution consenting to the Amendment of the Sublease between Lane Field South and STOIC Holdings.

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 District originally approved development of the Lane Field site for hotel, retail and office use as part of the North Embarcadero Alliance Visionary Plan (NEAVP). The potential environmental impacts of the proposed uses were analyzed in the Master Environmental Impact Report (MEIR) for the NEAVP, which was certified by the District on April 25, 2000 (Resolution 2000-82). Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15179, the Board adopted Resolution 2006-131 on August 8, 2006, which found that: (1) no substantial changes have occurred with respect to the circumstances under which the NEAVP MEIR was certified; (2) the MEIR is adequate for use in the review of subsequent projects; and, (3) the mitigation measures contained in the NEAVP MEIR and Mitigation Monitoring and Reporting Program adopted by the Board under Resolution 2000-82 remain in effect and are applicable for subsequent projects described in the MEIR. The District subsequently prepared an Addendum to the MEIR for the Lane Field Development project as the environmental review for a Coastal Development Permit (CDP) for development of the Lane Field North and South parcels with a total of 800 hotel rooms and 80,000 square feet of retail space. The District adopted the Addendum on January 8, 2008. The proposed project is consistent with the project analyzed in the Addendum. The proposed Board action 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.) Accordingly, the proposed Board action consenting to an amendment to a sublease for the operation of a restaurant and bar is merely a step in furtherance of the original project for which environmental review was performed, and no further environmental review is required.

In addition, the proposed Board action complies with Sections 21, 35, and 87 of the Port Act, which allow the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers, and for the use of tidelands for 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, the District authorized issuance of a CDP for the Lane Field Hotel project. The CDP was subsequently appealed by the California Coastal Commission (CCC). On January 8, 2009, the CCC determined the project complied with CEQA and approved the CDP for the Lane Field Hotel project (A-6-PSD-08-04/A-6-PSD-08-101). Furthermore, on April 13, 2011, the CCC approved the CDP for the NEVP Phase 1 project, with the understanding that an amendment to the Lane Field CDP would be required to include the Setback Park in the redesign of the hotel development. On February 6,

2013, the CCC authorized an amendment to the Lane Field CDP to incorporate the Setback Park as part of the project (A-6-PSD-08-04-A1). In November 2013, the CCC authorized an amendment to the Lane Field CDP to extend the expiration date to January 8, 2015 (A-6-PSD-08-004-E2). On September 22, 2015, the CCC authorized a second amendment to the Lane Field CDP to modify the project description and Public Access Plan concerning the publicly-accessible terrace and restaurant components of the project (A-6-PSD-08-004-A2). On January 11, 2016, the CCC authorized a third amendment to the Lane Field CDP to modify project description to extend the required construction start date by six months from February 6, 2016 to August 6, 2016 (A-6-PSD-08-004-A3). On February 8, 2018, the CCC authorized a fourth amendment to the Lane Field CDP to incorporate a temporary electronic public art installation (CDP No. A-6-PSD-08-004-A4). Finally, on July 10, 2019 the CCC authorized a fifth amendment to the Lane Field CDP to allow an area designated as visitor-serving retail and restaurant on Level 2 of Lane Field North to be used as an event space (A-6-PSD-08-004-A5). The proposed Board action is consistent with the project description in the CCC-issued CDP. No additional action under the California Coastal Act is required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

Taylor Stack
Asset Manager, Real Estate

Attachment(s):

Attachment A:	Location Map
Attachment B:	Lease Information Summary
Attachment C:	Sublease
Attachment D:	Amendment No. 1