



## Legislation Text

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**File #:** 2020-0373, **Version:** 1

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**DATE:** November 10, 2020

**SUBJECT:**

**RESOLUTION AUTHORIZING AMENDMENT NO. 1 TO THE BLUE ECONOMY INCUBATOR AGREEMENT WITH SWELL ADVANTAGE LTD., CONSENTING TO AN ACQUISITION OF SWELL, ACCEPTING PAYMENT OF \$150,000 (150% OF DISTRICT'S FINANCIAL CONTRIBUTION TO SWELL'S PILOT PROJECT) IN EXCHANGE FOR ENDING SWELL'S FUTURE OBLIGATIONS TO THE DISTRICT, AND TERMINATING THE AGREEMENT**

### **EXECUTIVE SUMMARY:**

On June 20, 2017, by Resolution 2017-085, the Board of Port Commissioners (Board) authorized an agreement with Swell Advantage Ltd. (Swell) to advance the development of a smart marina management application. The agreement included a District contribution of \$100,000 in support of a one-year pilot project to build a minimum viable product of Swell's software technology (Attachment A). The pilot was completed in collaboration with a local marina in San Diego Bay. The design development of the smart marina management application assists marina managers to understand how individual boaters use their facility, how efficiently operations are running, and if the marina is maximizing slip revenues. Through this successful pilot project, the District enabled and accelerated smart marina management technology that benefits the marina industry, which in return benefited the District tenants to increase their revenues and customer experiences.

Since the completion of the pilot project, Swell has continued the development of its software technology in partnership with marina experts, has generated sales across North America, and has established strategic technology partnerships. Despite this success, Swell believes their technology needs to be incorporated into a broader suite of features to become a more marketable product for a wider variety of potential customers. Swell's success was noticed with an offer to acquire Swell. Swell believes this acquisition will allow it to accelerate its technology development under new management to better service the marina industry. However, in order to close the proposed acquisition, Swell has requested that the District accept payment of \$150,000 in exchange for ending Swell's future obligations to the District and terminating the agreement (Attachment B). This would require the Board to authorize an amendment to the terms of the agreement.

Staff believes it is in the best interest of the District to consent to the acquisition, amend the agreement, and accept this payment. Therefore, staff recommends the Board authorize an amendment to the Blue Economy Incubator agreement with Swell Advantage consenting to an acquisition of Swell, accepting payment of \$150,000 in exchange for ending Swell's future obligations to the District and terminating the agreement.

### **RECOMMENDATION:**

Adopt a resolution authorizing Amendment No. 1 to the Blue Economy Incubator Agreement with Swell Advantage Ltd, consenting to an acquisition of Swell, accepting payment of \$150,000 in exchange for ending Swell's future obligations to the District, and terminating the agreement.

### **FISCAL IMPACT:**

The proposed payment to the District of \$150,000 represents a 50% return on the District's \$100,000 contribution to Swell Advantage's pilot project.

### **COMPASS STRATEGIC GOALS:**

Advancing the Blue Economy directly aligns with the District's core mission, the Public Trust Doctrine and the Port Act which promotes commerce, navigation, fisheries, recreation and environmental stewardship. This agenda item supports the following Strategic Goal.

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

### **DISCUSSION:**

#### **Blue Economy Incubator**

In 2015, the District established the Aquaculture and Blue Technology Program to conduct studies, planning, and pre-development work to support and inform aquaculture and blue tech opportunities in and around San Diego Bay. Under this Program, in 2016, the District established a Blue Economy Incubator to assist in the creation, early development, and initial scaling of new Blue Economy business ventures in and around San Diego Bay. As the state-legislated trustee of tidelands, fostering sustainable domestic aquaculture and Port-related blue tech innovation helps fulfill the District's public trust responsibility to promote fisheries and commerce, as well as aligning with our mission to enhance and protect the environment.

The District Blue Economy Incubator program acts as a launching pad for sustainable aquaculture and blue tech ventures by removing barriers to early-stage entrepreneurs and providing key assets and support services focused on pilot project facilitation. Through its incubator, the District is seeking innovative aquaculture and blue tech proposals to inform present and future Port challenges and opportunities. By funding pilot projects, the Port is supporting entrepreneurship, fostering sustainable aquaculture, and helping drive port-related blue tech innovation. Ultimately, the goal of the program is to develop 'innovation partnerships' to build a Blue Economy portfolio of new businesses who can deliver multiple social, environmental, and economic benefits to the District and the region.

To date, the Board has approved eight (8) Blue Economy Agreements with early stage companies to launch pilot projects including shellfish nursery operations; copper remediation technology; a drive-in Boatwash; a smart marina application; a marine debris removal vessel; seaweed aquaculture; bio-enhancing shoreline armoring technology; and a new approach to soil remediation in marine environments. These pilot projects complement several environmental initiatives already underway at the Port, from sea-level rise adaptation, to copper remediation, marine debris removal management, and evaluating seaweed and shellfish aquaculture as a tool for bioremediation and restoration.

## **Swell Advantage (Smart Marina pilot project)**

On June 20, 2017, by resolution 2017-085, the Board authorized an agreement with Swell for a one-year pilot project to advance the development of a smart marina management software application. Swell is a technology start-up, developing smart marina management solutions for marinas, boat clubs, and waterfronts. The pilot was completed in collaboration with a local marina in San Diego Bay. The design development smart marina management application assist marina managers understand how individual boaters use their facility, how efficiently operations are running, and if the marina is maximizing slip revenues. Since the completion of the pilot project, Swell has continued to advance the development of its software technology in partnership with marina experts, has generated sales across North America, and has established strategic technology partnerships.

Despite this success, Swell believes their technology needs to be incorporated with a broader suite of features in order to become a more marketable product to a wider variety of potential customers. Swell's success was noticed, and an entity has offered to acquire Swell. Swell believes this acquisition will allow it to accelerate its technology development under new management to better service the marina industry. However, in order to close the proposed acquisition, Swell has requested that the District accept payment of \$150,000 in exchange for ending Swell's future obligations to the District and terminating the agreement (Attachment A). This would require an amendment to the terms of our agreement.

Per the current agreement with Swell, the District in exchange for its support of Swell's pilot project through the Blue Economy incubator, is entitled to payments from Swell in various situations, subject to certain rights of Swell as follows:

- a 5% royalty of any gross revenue on Swell's sales worldwide for 15 years, paid on an annual basis with first payment beginning January 30, 2020 (\$3,666.08 CDN paid to District).
- Swell may end the District's right to receive this 5% royalty revenue share through a cumulative Revenue Share buy-out option. Currently, Swell would need to pay the District \$500,000 to end its ongoing revenue share obligations.
- Additionally, Swell must receive District's consent to a change in ownership of Swell and must pay the District an amount equal to 0.75% of the purchase price.

On August 28, 2020, Swell requested the District consent to the acquisition and accept \$150,000 in exchange for ending Swell's future obligations to the District and terminating the agreement. Swell has indicated that there is not enough money in the acquisition purchase price to pay the District the full \$500,000 buy-out and meet other obligations of the acquisition.

Staff has reviewed the proposed terms of the acquisition, Swell's assessment of its technology and future expectations with and without the acquisition. Based on this review, staff is now recommending the Board authorize an amendment to the Blue Economy incubator agreement with Swell Advantage consenting to an acquisition of Swell, accepting payment of \$150,000 in exchange for ending Swell's future obligations to the District and terminating the agreement, for the following reasons.

- Staff's review concluded that the acceptance of \$150,000 (a 50% return on the District's

contribution of \$100,000) is more than District would receive if it did not amend the agreement and consent to the acquisition. Staff understands that without the acquisition, Swell will not generate enough sales on its own such that the District's ongoing revenue share would reach the \$150,000 currently offered.

- Through this successful pilot project, the District enabled and accelerated smart marina management technology that benefits the marina industry, which in return has potential benefits for District tenants to increase their revenues and customer experiences. The District delivered on its Blue Economy Incubator mission to support entrepreneurship and accelerate Port-related Blue Tech innovation.

## **Conclusion**

The District consenting to the acquisition is more likely to allow further development of these important technologies therefore, staff recommends the Board authorize an amendment to the Blue Economy Incubator Agreement with Swell Advantage consenting to an acquisition of Swell, accepting payment of \$150,000 in exchange for ending Swell's future obligations to the District, and terminating the agreement.

## **General Counsel's Comments:**

The Office of the General Counsel has reviewed and approved this agenda, proposed amendment, and resolution, as presented, as to form and legality.

## **Environmental Review:**

The proposed Board action, including without limitation, adopting a resolution consenting to an acquisition of Swell Advantage LTD and accepting payment of \$150,000 in exchange to terminate the Blue Economy Agreement with the company and ending Swell Advantage LTD's future obligations to the District, does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

In addition, this Board item complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operations of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed project 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 Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

## **Equal Opportunity Program:**

Not applicable.

**PREPARED BY:**

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Attachment A: BEI Agreement with Swell Advantage Ltd.

Attachment B: Amendment No. 1 to BEI Agreement with Swell Advantage Ltd.