



Legislation Text

File #: 2021-0043, **Version:** 1

DATE: February 11, 2021

SUBJECT:

RESOLUTION AUTHORIZING AN INDEMNITY PURSUANT TO A RIGHT OF ENTRY LICENSE AGREEMENT WITH MARINE GROUP BOAT WORKS, LLC FOR THE SAN DIEGO UNIFIED PORT DISTRICT'S IMPLEMENTATION OF UTILITY UPGRADES RELATED TO THE RESORT HOTEL & CONVENTION CENTER IN CHULA VISTA.

EXECUTIVE SUMMARY:

In April 2018, RIDA Chula Vista, LLC (RIDA) entered into a Disposition and Development Agreement (DDA) with the San Diego Unified Port District (District) and City of Chula Vista (City) for the development of a resort hotel and convention center (RHCC) on approximately 37 acres of land within the Chula Vista Bayfront (CVB). The DDA sets forth the mechanism to design, finance, and construct the RHCC, associated parking, and surrounding public infrastructure, which includes portions of E, G, and H Streets, pedestrian and bicycle paths, utilities, and stormwater improvements (collectively, Phase 1A Infrastructure).

RIDA has actively been designing and coordinating its utility plan as part of the Phase 1A Infrastructure, including its impacts on adjacent District tenants. These utilities will serve the future RHCC by providing water, electricity, gas, and other facilities while maintaining existing utilities to adjacent tenants. The City's Fire Department has identified that as a result of the required infrastructure work, anticipated utility impacts during construction will reduce fire water flow at the adjacent Marine Group Boat Works, LLC (MGBW) leasehold and will require an upgrade to MGBW's current fire water flow system.

MGBW currently has a Lease with the District (Clerk's Doc. No. 54509, Filed February 13, 2009, as amended) that expires on January 31, 2030 and contains an option to extend for an additional 11 years. The proposed Right of Entry License Agreement (included as Attachment A) (the ROE) would allow the District to access and upgrade the existing underground fire water system at MGBW's leased premises. The ROE's corresponding exhibits (Description of Premises; Scope of Work) will be inserted once the work's full scope is determined and finalized by the District, at which point the ROE will be submitted to MGBW for execution. The final scope of work is not expected to materially change from what is described below in this agenda sheet. MGBW is in agreement with the terms of the proposed ROE subject to final approval of the accompanying exhibits.

The work under the proposed ROE, which will be completed by the District, is anticipated to occur in either Spring or Summer 2021 and is expected to take approximately two months to complete. The term of the ROE shall expire on December 31, 2021. MGBW has requested that the ROE contain an indemnity from the District to MGBW for damages caused by the District's work in order to proceed

with the ROE, which indemnity requires Board approval through a Resolution. In order to move the utility planning and construction of the RHCC and Phase 1A Infrastructure forward, staff recommends that the Board adopt a Resolution authorizing a reasonable indemnity to MGBW pursuant to an ROE substantially in the form attached to this agenda, and conditioned upon the incorporation of the final exhibits to the ROE and MGBW's signature to the ROE.

RECOMMENDATION:

Adopt a Resolution authorizing an indemnity to Marine Group Boat Works, LLC pursuant to a Right of Entry License Agreement substantially in the form included as Attachment A following the incorporation of the exhibits thereto (Description of Premises and Scope of Work) and execution of the agreement by Marine Group Boat Works, LLC for the San Diego Unified Port District's implementation of utility upgrades related to the Resort Hotel & Convention Center in Chula Vista.

FISCAL IMPACT:

This agenda item has no fiscal impact. The related work, which is expected to cost approximately \$150,000, will be funded by existing funds committed to the Chula Vista Bayfront, including the Chula Vista Capital Improvement Program.

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.

DISCUSSION:

The Chula Vista Bayfront Master Plan (CVBMP) is the result of a decade-long joint planning effort by the District, the City, and a broad coalition of stakeholders. In April 2018, RIDA entered into the DDA with the District and City for the development of the RHCC on approximately 37 acres of land within the CVB. The DDA sets forth the mechanism to design, finance, and construct the RHCC, associated parking, and Phase 1A Infrastructure. At the June 19, 2019 Board Meeting, the Board approved the Coastal Development Permit (CDP) for the RHCC and Phase 1A Infrastructure (CDP-2019-03; Clerk Document No. 70152) (Resolution No. 2019-080).

Since this time, RIDA has actively been designing and coordinating its utility plan for future on-site construction and operations of the RHCC consistent with the DDA and included as part of the Phase 1A Infrastructure, including its impacts on adjacent District tenants. These utilities will serve the future RHCC by providing water, electricity, gas, and other facilities while maintaining existing utilities to adjacent tenants. The City's Fire Department has identified that anticipated utility impacts during construction will reduce fire water flow at the adjacent MGBW site and has required an upgrade to MGBW's current fire water flow system. In order to begin future construction of either the RHCC or Phase 1A Infrastructure, this fire water flow system must first be upgraded so MGBW's on-site fire water system is not jeopardized during construction of the RHCC. This makes the fire water flow upgrade a critical path item to commencement of construction of the Phase 1A Infrastructure and

ultimately the RHCC.

The proposed ROE would allow the District access to MGBW's leased premises for utility upgrades to the existing underground fire water system. The proposed form of the ROE is included as Attachment A. The ROE's corresponding exhibits (Description of Premises; Scope of Work) will be inserted once the work's full scope is determined and finalized by the District. The final scope of work is not expected to materially change from what is described in the following paragraph, and MGBW has agreed to the form of the ROE subject to MGBW's final approval of these exhibits. As part of the ROE, MGBW has requested the District indemnify MGBW for damages caused by the District's Work in order to proceed with the ROE and complete this work at MGBW's leased premises, which requires Board approval through a Resolution. The term of the Right of Entry License Agreement will expire December 31, 2021.

The work, which is expected to cost approximately \$150,000, would be completed by the District and funded by existing funds committed to the project, including the Chula Vista Capital Improvement Program. The work specifically involves extending an existing fire water line approximately 200 feet west of an existing non-operational fire water system and installing an eight (8)-inch reduced pressure backflow preventer to create a continuous loop to improve water flow and pressure. The work would also require cutting existing pavement, trenching approximately 400-feet long, 24-inches wide, and 48-inches deep, excavation of approximately 120 cubic-yards, and export of approximately 10 cubic-yards of subsurface material, backfilling, and patching pavement to pre-disturbed conditions upon completion. Work is anticipated to occur in either Spring or Summer 2021 and would take approximately two months to complete.

Once completed, the fire water flow upgrade at MGBW will provide RIDA a pathway to commence construction of the Phase 1A Infrastructure and RHCC later this year. Therefore, to allow for the District's implementation of this utility upgrade, staff recommends authorizing an indemnity pursuant to the ROE substantially in the form included as Attachment A following the incorporation of the exhibits thereto (Description of Premises and Scope of Work) and execution of the agreement by MGBW.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda sheet as well as the Right of Entry License Agreement with MGBW and the applicable indemnity provision and approves as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, a resolution authorizing an indemnity pursuant to a Right of Entry License Agreement for implementation of utility upgrades, was adequately covered in the Final Environmental Impact Report (FEIR) for the Chula Vista Bayfront Master Plan (UPD #83356-EIR-658; SCH #2005081077; Clerk Document No. 56562), certified by the District on May 18, 2010 (Resolution No. 2010-78), the Addendum to the FEIR, which was adopted by the Board on August 13, 2013 (Resolution No. 2013-138), the Second Addendum to the FEIR, which was adopted by the Board on April 10, 2018 (Resolution No. 2018-0069), and the Third Addendum to the FEIR, which was adopted by the Board on December 8, 2020 (Resolution No. 2020-116). 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.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the FEIR and Addendums, the District finds and recommends that the proposed Board action does 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 FEIR and Addendums due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; 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 FEIR and Addendums, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR and Addendums, or (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 3) no changes to mitigation measures or alternatives have been identified or are required. 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.

The proposed Board action complies with 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 the construction, reconstruction, repair, and maintenance of highways, streets, roadways, bridges, belt line railroads, parking facilities, power, 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 the uses set forth in this section. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed actions are consistent with the Public Trust Doctrine.

The proposed Board action was covered in the Coastal Development Permit (CDP) for the Resort Hotel and Convention Center, Parking, Infrastructure and Phase 1A Improvements (CDP-2019-03; Clerk Document No. 70152) approved by the Board on June 18, 2019 (Resolution No. 2019-080). The proposed Board action is consistent with the project in the CDP. No additional action under the California Coastal Act is required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

Matthew Ostlund
Asset Manager, Real Estate

Attachment(s):

Attachment A: Right of Entry License Agreement