

DATE ISSUED: February 23, 2011

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Council President and City Council
Docket of February 28, 2011

ORIGINATING DEPT.: Centre City Development Corporation

SUBJECT: North Embarcadero Visionary Plan – First Amendment to the Joint
Exercise of Powers Agreement – Columbia Sub Area of the Centre
City Redevelopment Project – **JOINT PUBLIC HEARING**

COUNCIL DISTRICT: 2

REFERENCE: None

STAFF CONTACT: Gary J. Bosse, Assistant Vice President, Public Works
(619) 533-7163

REQUESTED ACTION: That the Redevelopment Agency of the City of San Diego (“Agency”) and City Council of the City of San Diego (“City Council”) approve all actions as necessary for the approval and execution of the proposed First Amendment (“Amendment”) to the Joint Exercise of Powers Agreement (“JPA Agreement”) for the North Embarcadero Visionary Plan (“Project”) located in the Columbia Sub Area of the Centre City Redevelopment Project (“Project Area”).

STAFF RECOMMENDATION:

That the Agency:

- Adopts a Resolution stating for the record that it has reviewed and considered the information contained in certain environmental documents for the Project, adopting certain findings of fact, and adopting the Mitigation Monitoring and Reporting Program for the Project.
- Approves and authorizes execution of a proposed Amendment to the JPA Agreement by and among the Agency, acting through the Centre City Development Corporation (“Corporation”), the City of San Diego (“City”), and the San Diego Unified Port District (“Port”), as described in Attachment B.

- Adopts the findings and recommendations set forth in the attached “Summary Pertaining to the Use of Tax Increment for the North Embarcadero Visionary Plan” (Attachment C), and more specifically finds and determines that:
 - a. The Project for which the Agency proposes to pay will benefit the Project Area in which the Project is located by helping to eliminate blight within the Project Area.
 - b. There are no other reasonable means available to the City and the Port for financing the Project; and
 - c. The payment of Agency funds towards the cost of the Project is consistent with the Fourth Five-Year Implementation Plan for the Project Area adopted June 19, 2009 (“Implementation Plan”) pursuant to Section 33490 of the California Health and Safety Code (CRL); and
- Authorizes the City’s Chief Financial Officer, as delegated, to appropriate, encumber and expend tax increment funds from the Project Area in the amount of \$29,600,000, enabling the Agency, as required by the Amendment, to (i) pay \$14,300,000 to the Port, representing the Agency’s 50 percent share of the Project Costs to complete Phase 1 of the Project, (ii) advance \$14,300,000 to the Port, representing the Agency’s advance of all of the Port’s 50 percent share of the Project Costs to complete Phase 1 of the Project, subject to the Port’s later reimbursement to the Agency except for any credit or offset to which the Port may be entitled, and (iii) pay up to \$1,000,000 to the Port, representing the Agency’s contribution toward the cost of design and construction of the Broadway Pier Surface Improvements, provided that the Agency’s contribution toward the cost of the design aspect only shall not exceed \$150,000.

And, that the City Council:

- Adopts a Resolution stating for the record that it has reviewed and considered the information contained in certain environmental documents for the Project, adopting certain findings of fact, and adopting the Mitigation Monitoring and Reporting Program for the Project.
- Approves and authorizes execution of the proposed Amendment to the JPA Agreement by and among the Agency, acting through the Corporation, the City, and the Port.
- Adopts the findings and recommendations set forth in the attached “Summary Pertaining to the Use of Tax Increment for the North Embarcadero Visionary Plan,” and more specifically finds and determines that:
 - a. The Project for which the Agency proposes to pay will benefit the Project Area in which the Project is located by helping to eliminate blight within the Project Area.
 - b. There are no other reasonable means available to the City and the Port for financing the Project; and

- c. The payment of Agency funds towards the cost of the Project is consistent with the Fourth Five-Year Implementation Plan for the Project Area adopted June 19, 2009 (“Implementation Plan”) pursuant to Section 33490 of the California Health and Safety Code (CRL); and
- Consents to the Agency’s payment for the cost of the Project using tax increment proceeds generated from the Project Area; and
 - Authorizes the City to accept the improvements, upon completion of construction of the improvements by the Port, that are within City right-of-way or easements.

SUMMARY: On April 9, 2007, the JPA Agreement between the Agency, acting through the Corporation, the City, and the Port, herein after referred to as Parties, was executed. This JPA Agreement set forth the framework for financing the Project and provides that each member will use its best efforts to procure available funding. For purposes of funding, designing, and constructing the improvements, the Project has been proposed to be delivered in phases. In October 2005, in a joint meeting of the Corporation Board and the Board of Port Commissioners (“Port Commissioners”), Phase 1 of the Project was approved to be the construction of the Esplanade improvements (those improvements between the west side of Harbor Drive and the water’s edge), including the relocation of Harbor Drive, between West Broadway and B Street.

Since the date of execution of the JPA Agreement, certain circumstances have changed that now require a First Amendment to the JPA Agreement, including, but not limited to, the limits of the first phase of construction, the Parties’ ability to fund construction of Phase 1, and the clarification of the maintenance funding arrangement. Key elements of the proposed Amendment are identified in the Discussion section of this staff report.

FISCAL CONSIDERATIONS: The First Amendment would require that the Agency advance the Port, potentially, all of their estimated 50 percent share of the Project costs to construct Phase 1, or \$14.3 million, less certain offsets or credits (\$5.724 million) for previous work completed and in exchange for the assumption of the maintenance responsibilities. The funding arrangement proposed requires the Port to agree to terms to secure the Agency’s advances, with interest, and to their repayment. The Agency’s receipt of repayment of the approximately \$12,960,000 advance to the Port for the First Phase Project Costs may be additionally offset by up to \$3,000,000 in the event that the Port must design and construct Setback Park/Plaza and fails to recoup those costs from a future developer of Lane Field. This and other key elements of the funding arrangement are discussed in further detail below. Funds in the amount of \$29,600,000 are available in the Fiscal Year 2011 Agency budget. As part of their actions on this item, the Agency and City Council are being requested to make the required findings and determinations to utilize tax increment revenues from the Centre City Redevelopment Project area to fund the construction of the Project, which includes certain construction phase soft costs such as permitting fees and construction administration contracts with professional consultants. The findings and determinations are included within the attached “Summary Pertaining to the Use of Tax Increment for the North Embarcadero Visionary Plan.”

ECONOMIC IMPACT: Analysis indicated that the Project will create 283 construction employment opportunities and 115 permanent employment opportunities.

CENTRE CITY DEVELOPMENT CORPORATION RECOMMENDATION: On February 9, 2011, the Corporation Board of Directors unanimously approved the proposed Amendment.

OTHER RECOMMENDATIONS: On February 8, 2011, the Port Commissioners approved a resolution making a financing declaration that the Port has no other reasonable means of funding Phase 1 of the Project (Attachment D). On February 16, 2011, the Amendment will be heard by the Centre City Advisory Committee. On March 8, 2011 the Port Commissioners will consider approval of the Amendment. Corporation staff will provide an oral update to the Agency and City Council at the meeting of February 28, 2011.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: City, Port, and CCDC staff estimate that well over 100 public engagement opportunities have been conducted over the last 10 years of refinement of the Project. Just in the last six months, there have been over 10 opportunities for the public to provide input:

Date	Outreach Effort
August 2010	Four (well-attended) Public Workshops at the B Street Pier Cruise Ship Terminal
September 2010	Joint Powers Authority Board meeting
October 2010	Participation in <i>Revisioning our Waterfront</i> Public Workshop (sponsored by a consortium of organizations including C3, the Navy Broadway Complex Coalition, League of Women Voters, Public Trust Alliance and other members of the design community).
September, October, November, and December 2010, and January 2011	Port Commission Meetings

KEY STAKEHOLDERS AND PROJECT IMPACTS: Key stakeholders in the project are the Corporation, the Agency, the City and Port.

BACKGROUND

The proposed Project advances the Visions and Goals of the Centre City Community Plan and the Objectives of the Centre City Redevelopment Project by:

- Celebrating San Diego's climate and waterfront location;
- Creating an amenity worthy of a distinctive world-class downtown, reflecting San Diego's unique setting (Goal 5.5-G-4);
- Enhancing downtown's connection to its context and to San Diego Bay (Goal 5.5-G-3);

- Providing a land use and development framework to guide downtown's evolution as a premier regional and global center of commerce, residence, arts, education, and recreation (Goal 3.1-G-1);
- Expanding a comprehensive open-space system that provides for a diverse range of outdoor opportunities for residents, workers, and visitors (Goal 4.1-G-1);
- Coordinating planning efforts with relevant agencies including the Port, the City, California Coastal Commission, U.S. Navy, and San Diego County (Goal 5.5-G-5); and
- Improving accessibility to recreational, leisure, and cultural opportunities on the waterfront.

The Party Agencies have co-managed the design of Phase 1 of the Project. After the execution of a JPA Agreement in April 2007, design efforts for the preparation of construction documents for Phase 1 commenced in the last quarter of 2007. Progress on the plans and permitting has been steady and attainment of the goal to start construction in calendar year 2011 seems to be a very real possibility, pending the ratification of the Coastal Development Permit (CDP) issued by the Port Commissioners at their January 11, 2011 meeting. Two primary obstacles to the implementation of Phase 1 have been at the forefront; the Port's inability to identify a source for funding their 50 percent share of the estimated \$28.6 million project cost and identifying a maintenance funding arrangement; and the economic downturn combined with reduced revenue projections, have placed the City in a situation where expenditures exceed revenues, thus making the case that the Agency needs to fund these public improvements.

The Port's funding source for the capital public improvements related to Phase 1 of the Project were dependent on the anticipated execution of the Lane Field lease in 2009, and subsequent lease revenue payments. The Lane Field development project experienced delays due to litigation surrounding the adequacy of environmental documents. That delay, combined with the current dismal economic environment, has stalled the Project. The Amendment provides a solution whereby the Agency would advance the Port funds necessary for Phase 1 construction to proceed, offset in part by credits associated with certain work paid for by the Port and future maintenance responsibilities.

Identifying a maintenance strategy for the day-to-day maintenance and long-term repair and replacement of improvements planned for Phase 1 was equally challenging. Port and Corporation staff worked together to propose a solution specific to the Project that would allow the construction of Phase 1 to move forward with the assurance that funds, exclusive of the Agency's funding, are available to adequately maintain the improvements for a period of 30 years. The Amendment addresses the financing for the development of Phase 1 of the Project.

Broadway Pier Surface Improvements will integrate the publicly accessible areas of the Pier into Phase 1 of the Project to create a seamless waterfront plan connecting the Esplanade to the Pier. The design would be multi-functional, flexible, and balanced in design that is conducive to daily public use and special events, while still respecting the need to maintain maritime operations of the existing water-dependent cruise ship berth adjacent to Broadway Pier. These design features may include surface color, treatment and texture, lighting and furniture.

DISCUSSION

As stated above, the Port's funding source for the capital public improvements related to Phase 1 of the Project were dependent on the anticipated execution of the Lane Field lease in 2009, and subsequent lease revenue payments. The delay in the Lane Field project has created a situation in which the Port has stated that they have no other reasonable means of financing their participation in the Project. The Port Commissioners, at their February 8, 2011 meeting, adopted a resolution making that financing declaration (Attachment D). The Amendment provides a solution that demonstrates the Parties resolve to implement creative and best efforts to fund the implementation of Phase 1 as required by the existing JPA Agreement.

Below is a summary of the key deal points of the proposed Amendment:

- The Definition of the Limits of Work of the First Phase – The Amendment redefines the scope of the Phase I Improvements to include the West Broadway improvements, extension of the Esplanade improvements south to the former Navy Pier 11A, and the inclusion of the Setback Park/Plaza, an approximately two-acre public park/plaza to be designed and constructed within a 150-foot setback from North Harbor Drive along the Lane Field development between West Broadway and B Street.
- Phasing of Construction – The Amendment will allow for the Port shall bid and be solely responsible for the administration of the construction activities included within Phase I, excluding Setback Park/Plaza. Design and construction of Setback Park/Plaza is the responsibility of the Lane Field development. In the event the Lane Field development does not timely design and construct Setback Park/Plaza, the Port shall be responsible for causing its construction as provided in the CDP.
- Funding of Phase I Construction – The Amendment provides that the Port and the Agency shall equally share the total cost of the Phase I construction. However, the Agency will advance the construction costs and the Port will also receive certain credits for previous capital contributions and offsets for the Port's assumption of maintenance responsibility for the Phase I improvements.
 - (i) The Port will receive a credit of \$1.340 million for the structural improvements it has made to the Broadway Pier.
 - (ii) The Agency will advance the Port's remaining share relating to Phase I (\$12.96 million), after deducting the \$1.340 million credit referenced above, and subject to repayment, with interest at a 4.77 percent interest rate, from revenue generated by Lane Field or general revenues.
 - (iii) When the Port assumes the maintenance obligations for the Phase I improvements, the Phase I advance will be reduced by the estimated present value of 50 percent of the incremental maintenance costs for a period of 30 years based on a 5 percent present value factor. The amount of credit is calculated to be

\$4,383,862 based on annual incremental maintenance cost of \$400,000 with a 3 percent inflation factor.

- (iv) In the event the Lane Field development does not timely design and construct Setback Park/Plaza, Port shall advance the funds for the design and construction such that the construction shall commence at or before the time of substantial completion of Phase I. The Agency agrees to repay to the Port 50 percent of the design and construction costs. The Port shall deduct such cost from the Agency Advance repayment until paid.
- Funding of Broadway Surface Improvements – The Amendment also provides that the Agency, acting through the Corporation, will contribute an amount up to \$1 million for the design and construction of the Broadway Pier Surface Improvements located east of the building open to the public. Of this amount, up to \$150,000 may be used for design work. The Port will serve as the lead agency for this work.
 - Repayment of Agency Advance for Phase I – The Port shall repay the Agency’s advance from 50 percent of any and all revenue generated by Lane Field. The Port’s repayment obligation shall be set forth in a reimbursement agreement. The Port will utilize at 50 percent of any revenues from Lane Field to repay the Agency’s advance. The Agency will subordinate any payments from the Port, certain obligations of the Port. In the event that the Lane Field lease is not executed by June 30, 2013, the Port will pay the Agency from general funds the amount of \$850,000 annually until Agency advances are paid in full.
 - Repayment of Agency Advance for Setback Park/Plaza – If the Port subsequently recoups the Setback Park/Plaza design and construction costs from the Lane field developer, the Port shall repay the Agency for its share of the costs. When the Port assumes the maintenance obligations for the Setback Park/Plaza, the Phase 1 advance will be further reduced by the estimated present value of 50 percent of the mutually-agreed upon incremental maintenance costs, calculated on the same basis as provided for above.
 - Maintenance – The Port shall be responsible for maintenance of the Phase 1 improvements for 30 years. The Port shall create a maintenance reserve and shall deposit an annual amount to cover both the current and incremental maintenance costs. The total amount of the annual deposit into the maintenance reserve at the completion of Phase 1 is \$550,000 annually and this amount will be adjusted for inflation at the rate of three percent annually. Additionally, upon completion of the construction of Setback Park/Plaza, the Port’s obligation to annually fund the maintenance reserve shall be increased to cover the agreed upon incremental maintenance costs of Setback Park/Plaza.

Pursuant to California Government Code Section 6503.5, within thirty days after the effective date of the Amendment, a notice of the Amendment shall be prepared and filed with the Office of the Secretary of State.

Participation by Agency – Agency tax increment funding of the Project will require that the Agency and City Council make certain findings and determinations pursuant to CRL section 33445, regarding “payment for publicly-owned buildings, facilities, structures or other improvements.” The findings and determinations include:

- The estimated costs to the Agency for construction of Phase 1 of the Project;
- That the Project is of benefit to the Project Area by helping to eliminate blight within the Project Area;
- That there are no other reasonable means of financing the Project that are available to the City; and
- That the payment to be provided by the Agency toward the Project is consistent with the “Fourth Implementation Plan for the Horton Plaza and Centre City Redevelopment Projects for the Period July 2009 – June 2014;” and
- The redevelopment purpose for which Agency funds are being used.

In accordance with CRL section 33679, the Agency and City Council are required to hold a Joint Public Hearing during which the CRL section 33445 findings and determinations are considered along with the estimated costs to the Agency for design and construction of the Project and the redevelopment purposes for which Agency tax increment proceeds are being used. The findings and determinations for the Project and other CRL section 33679 information are embodied within the attached “Summary Pertaining to the Use of Tax Increment for the North Embarcadero Visionary Plan.”

Environmental Impact – The Port, acting as the Lead Agency for the purposes of the California Environmental Quality Act (CEQA) set forth at California Public Resources Code Section 21000 et seq., and the State CEQA Guidelines (CEQA Guidelines), set forth at California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq., prepared and certified a Master Environmental Impact Report (Final EIR) for the Project in April, 2000, including the adoption of Findings of Fact and a Mitigation Monitoring and Reporting Program (MMRP). In April, 2007, the Port certified an Addendum to the Final EIR for the Project’s Broadway Pier Cruise Ship Terminal and Infrastructure Improvement Project. In October, 2007, the Port certified an Addendum to the Final EIR for the Project’s Lane Field Development Project.

In 2010 the Port prepared an Addendum to the Final EIR for the Phase I, Coastal Access Features Project which found that the Project is within the scope of the NEVP Final EIR and that there were no new significant impacts or required mitigation measures not previously identified in the NEVP Final EIR and MMRP.

The Agency and Council, acting as Responsible Agencies under CEQA, shall review and consider these environmental documents and the Findings of Fact adopted by the Port as the Lead Agency. Staff recommends that the Agency and Council certify that the information contained in the Final EIR and Addenda has been reviewed and considered, adopt the Findings of Fact pursuant to CEQA Guidelines Sections 15091 and 15096, and adopt the MMRP prepared in connection with the Final EIR for the Project pursuant to CEQA Guidelines Section 15096, to monitor and ensure that the mitigation measures identified will be instituted. Based on these

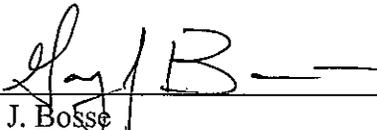
environmental documents, there is no further environmental review required under CEQA for the Project.

CONCLUSION

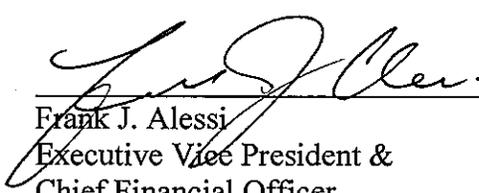
Approval of the proposed Amendment provides for the financing and implementation of Phase 1 of the Project.

Respectfully submitted,

Concurred by:



Gary J. Bosse
Assistant Vice President, Public Works



Frank J. Alessi
Executive Vice President &
Chief Financial Officer

- Attachments: A – Phase 1 Project Limits
B – First Amendment to the JPA Agreement
C – Summary Pertaining to the Use of Tax Increment for the North Embarcadero Visionary Plan
D – Port of San Diego Resolution