



DATE ISSUED: July 22, 2009 REPORT NO.: CCDC-09-23
CCDC-09-15

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Council President and City Council
Docket of July 28, 2009

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

COUNCIL DISTRICT: Two

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 to the Joint Exercise of Powers Agreement for the North Embarcadero Visionary Plan project located in the Columbia Sub Area of the Centre City Redevelopment Project.

STAFF RECOMMENDATION:

That the Agency and City Council approve and authorize execution of a proposed First Amendment to the Joint Exercise of Powers Agreement between 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 A.

SUMMARY:

On April 9, 2007, the Joint Exercise of Powers Agreement (“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 North Embarcadero Visionary Plan (NEVP) 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 NEVP 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, 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 W. 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 ("Amendment"), 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 proposed Amendment would require that the Agency advance the Port, potentially, all of their estimated 50 percent share of the capital 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. Key elements of the funding arrangement are discussed in further detail below.

CENTRE CITY DEVELOPMENT CORPORATION RECOMMENDATION:

On July 22, 2009, the Corporation Board of Directors will consider the proposed Amendment, prior to hearing the Request to Bid for the NEVP Phase 1A public improvements. Corporation staff will provide an oral update to the Agency and City Council at its meeting of July 28, 2009.

OTHER RECOMMENDATIONS:

On July 7, 2009, the proposed Amendment will be heard by the Board of Port Commissioners. Corporation staff will provide an oral update to the Agency and City Council at the meeting of July 28, 2009.

KEY STAKEHOLDERS AND PROJECTED 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:

- Creating an amenity worthy of a distinctive world-class downtown, reflecting San Diego's unique setting;
- Celebrating San Diego's climate and waterfront location;
- Enhancing downtown's connection to its context and to San Diego Bay;
- 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;
- Expanding a comprehensive open-space system that provides for a diverse range of outdoor opportunities for residents, workers, and visitors;

- Coordinating planning efforts with relevant agencies including the Port, the City, California Coastal Commission, U.S. Navy, and San Diego County; and
- Improving accessibility to recreational, leisure, and cultural opportunities on the waterfront.

The Party Agencies of the Joint Powers Authority, the City, the Port, and Agency, acting through the Corporation, have co-managed the design of Phase 1 of the NEVP. 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 2009 seems to be a very real possibility. Two primary obstacles to the implementation of the First Phase 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 First Phase and identifying a maintenance funding arrangement. 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 the First Phase of the NEVP were dependent on the anticipated execution of the Lane Field lease this year, 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 proposed 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 NEVP 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 proposed Amendment addresses the financing for the development of the First Phase of the NEVP.

Previous Agency actions on the North Embarcadero Visionary Plan Phase 1 project included approval of the agreement with Project Design Consultants for architectural and engineering design services on February 19, 2008, and an amendment to that same contract on March 10, 2009.

DISCUSSION

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

- Scope of First Phase – The Amendment redefines the scope of the First Phase Improvements to include the W. Broadway improvements and the public

improvements along Harbor Drive. The estimated cost of the First Phase construction is \$28.6 million.

- Phasing of Construction – The Amendment separates the First Phase Construction into two parts – Phase 1A and Phase 1B. Phase 1A involves the lowering of the crest of W. Broadway and the right-of-way improvements within W. Broadway, from Harbor Drive to the railroad tracks. Phase 1A has an estimated cost of \$6.1 million. Phase 1B involves the construction of improvements along Harbor Drive and has an estimated cost of \$22.5 million.
- Funding of First Phase Construction – The Amendment provides that the Port and the Agency shall equally share the total cost of the First Phase 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 First Phase improvements.
- Funding of Phase 1A Construction – The Amendment provides that the Agency and the Port will share the Phase 1A construction costs equally. However, the Port will receive a credit of \$1.340 million for the structural improvements it has made to the Broadway Pier. In addition, the Agency will advance the Port's remaining share (\$1.710 million), subject to repayment from revenue generated by Lane Field or general revenues, with interest at a 4.77% interest rate. When the Port assumes the maintenance obligations for the Phase 1A improvements, the Phase 1A advance will also be reduced by a portion of the estimated present value of 50 percent of the incremental maintenance costs over 30 years.
- 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.
- Funding of Phase 1B Construction – The Amendment provides that the Agency and the Port will share the Phase 1B construction costs equally. However, the Agency will advance the Port's share (\$11.25 million), subject to repayment from revenue generated by Lane Field or general revenues, with interest at a 4.77 percent interest rate. When the Port assumes the maintenance obligations for the Phase 1B improvements, the Phase 1B advance will be reduced by the estimated present value of 50 percent of the incremental maintenance costs.
- Repayment of Agency Advances – The Port shall repay the Agency's advances from 50 percent of any and all revenue generated by Lane Field. The Port's repayment obligations shall be set forth in reimbursement agreements for each

phase. The Port will utilize at 50 percent of any revenues from Lane Field to repay the Agency's advances. 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 January 2012, the Port will pay the Agency from general funds the amount of \$1.2 million annually until Agency advances are paid in full.

- Maintenance – The Port shall be responsible for maintenance of the First Phase 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 the First Phase is \$550,000 annually and this amount will be adjusted for inflation at the rate of three percent annually.

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.

Environmental Impact – This activity is not a “project” under the definition set forth in CEQA Guidelines Section 15378. Therefore, pursuant to CEQA Guidelines Section 15060(c)(3), the activity is not subject to CEQA.

CONCLUSION

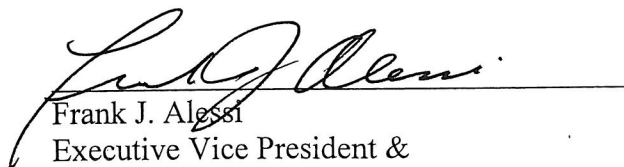
Approval of the proposed Amendment provides for the financing and implementation of the First Phase of the NEVP project.

Respectfully submitted,



Gary J. Bosse
Assistant Vice President–Public Works

Concurred by:



Frank J. Alessi
Executive Vice President &
Chief Financial Officer

Attachment: A – Amendment