



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: August 27, 2013 REPORT NO: 13-064
ATTENTION: Council President and City Council
SUBJECT: Leasehold Development Agreement for Brown Field Airport

REQUESTED ACTION:

Authorize the Mayor or his Designee to Approve a Leasehold Development Agreement (LDA) between Brown Field International Business Park, LLC and the City of San Diego for an approximate 331 acre development at Brown Field Airport.

STAFF RECOMMENDATION:

Approve the requested action.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

This action is to approve the Leasehold Development Agreement (LDA) which establishes the terms and conditions between Brown Field International Business Park, LLC (Developer) and the City of San Diego for the Developer to enter upon, lease and develop defined portions of the Brown Field Airport. The master planned, four-phase development for aviation and non-aviation uses covers approximately 331 acres of the 880 acres of Brown Field Airport. The proposed Project is projected to create an estimated 8,000 temporary jobs and 4,000 permanent jobs over the estimated 20 year build-out. The Project will create new aviation facilities, a solar field, aviation industrial, industrial and commercial uses while satisfying immediate and long term aviation needs at the Brown Field Airport.

On July 28, 2009 the City Council authorized the Mayor to enter into an Exclusive Negotiation Agreement (ENA) with Brown Field International Business Park, LLC, dba DPC Brown Field, to further negotiations regarding a proposed development at Brown Field. The proposed Leasehold Development Agreement is a result of those negotiations.

On June 20, 2013 the proposed Project was presented to the Planning Commission at a noticed public hearing. The Commission, after hearing all public testimony and deliberation, voted 6:1:0 to recommend the City Council's approval of the City staff's recommendation to approve the Environmental Impact Report, adopt the Findings and Statement of Overriding Considerations, adopt the Mitigation Monitoring and Reporting Program, Site Development Permit No.768683, and adopt the No museum Alternative and Approve Easement Vacation No. 1099992. This item is submitted as a companion item to the project's Site Development Permit, Environmental Impact Report, Statement of Overriding Considerations and Easement Vacation.

The Project will consist of four phases which would be allowed to be built out over a twenty (20) year period. If built individually, each phase is anticipated to take five years to develop. However, the Developer would have the right, subject to Federal Aviation Administration (FAA) approval, to simultaneously construct phases or portions of phases.

The following is a summary of the key business points in the LDA:

Phase 1: Comprised of Aviation and Solar uses on 136 acres.

Submittal of construction plans: Eighteen months from LDA approval.

Commencement of Construction: shall commence no later than forty-two months from the effective date of the LDA or upon receipt of entitlements for the Project, whichever occurs later.

Commencement of Rent: shall be the earlier of issuance of the first Certificate of Occupancy or thirty (30) months after issuance of building permits.

Phase 2: Comprised of Aviation, industrial, hotel and alternative fuels station uses on 101 acres.

Commencement of Construction: shall commence no later than five (5) years from construction of any structures in Phase 1 of the Project.

Commencement of Rent: shall be the earlier of issuance of the first Certificate of Occupancy or thirty (30) months after issuance of building permits.

Phase 3: Comprised of aviation, commercial, industrial, and hotel uses on 48 acres.

Commencement of Construction: shall commence no later than ten (10) years from construction of any structures in Phase 1 of the Project.

Commencement of Rent: shall be the earlier of issuance of the first Certificate of Occupancy or thirty (30) months after issuance of building permits.

Phase 4: Comprised of aviation, commercial, industrial, and office uses on 46 acres.

Commencement of Construction: shall commence no later than fifteen (15) years from construction of any structures in Phase 1 of the Project.

Commencement of Rent: shall be the earlier of issuance of the first Certificate of Occupancy or thirty (30) months after issuance of building permits.

The City shall extend the above time periods for commencement of construction in phases 1-4 once, for six (6) months, upon payment of a non-refundable sum of \$50,000.

Construction on Non-Aviation Parcels: Construction on Parcels within Phases 2, 3, and 4 not designated for Aviation Use, as shown on the Site Development Permit, may commence concurrently with construction of Phase 1. However, Certificates of Occupancy will not be

issued for any non-aviation facilities until all of the Certificates of Occupancy for Phase I aviation facilities required by the FAA have been issued. If required, the Developer shall be responsible for any revisions or amendments to the Site Development Permit, CEQA documents, traffic studies and other required permits, as well as all infrastructure improvements and mitigation, necessary for any non-aviation use.

The Leases for the individual parcels will be negotiated and brought before City Council for approval. Leases will include the following terms and conditions:

Lease Term: For all approved uses other than solar: fifty (50) years.

Solar Use Lease Term: Twenty-Five (25) years with First Right of Refusal for the tenant to extend the term for an additional twenty-five (25) years.

Outdoor Storage Lease Term: Granted for terms of less than fifty (50) years to run commensurate with, or less than, the initial twenty-five (25) year solar use lease term. At least 12 months, and no more than 18 months, prior to the expiration of said initial 25-year Term, the Developer shall have the right of first refusal to lease the subject property for an additional twenty five (25) years, for any use which is compatible with the then-applicable Airport Layout Plan, SDM Airport Land Use Compatibility Plan (ALUCP) and as allowed by the Site Development Permit.

Base Monthly Rent: (including outdoor storage, but not solar uses): Base Monthly Rent shall be equal to one twelfth (1/12) of ten percent (10%) of the appraised real property value for each parcel(s), or portion thereof. Because the developer is paying for the cost of all of the required infrastructure, mitigation and entitlements, the property to be leased will be valued on a raw land, "as is" basis.

Base Monthly Rent for Solar Use: No monthly ground rent will be paid by Developer, or any assigned solar operator, for years 1-25 of the Solar Ground Lease, for the parcel(s), or portion thereof, during the time period said parcel(s), or portion thereof, are used as a solar field. The conveyance of fee owner interest in all the land purchased by the Developer or any assigned solar operator as mitigation for the solar field to the City has been determined to be adequate consideration for Developers' initial 25 year Solar Ground Lease term for said property.

Ground Rent Solar Use Years 26-50: If the Developer exercises the right of first refusal and continues to use the subject real property for a solar field, then Developer shall lease said property and shall pay the City as rent 50% of any revenues received, or the value of any compensation (monitory or non-monitory) received, by Developer from the operation of the solar field. If Developer exercises the right of first refusal and puts the subject real property to a non-solar field use, then Developer shall lease said property on the same terms and conditions as the non-solar leases described in this Agreement (except the length of the Term therefor), and shall pay the City rent in the same manner and utilizing the same methodology as is described in this Agreement for non-solar leases. The rent shall commence in year 26 (immediately after the expiration of the initial 25 year Solar Ground Lease).

Ground Rent CPI Adjustments: The ground rent shall be adjusted upward by the CPI every five (5) years with a fifteen percent (15%) cumulative maximum increase during each individual five (5) year period during the term of the lease.

Ground Rent Market Rate Adjustments: Adjusted to market value at the beginning of the twenty first (21st) year of the lease term and every ten (10) years thereafter. The rent as adjusted to market may increase but never decrease.

Infrastructure Costs: All costs for both on-site and off-site infrastructure required by and for the Development of the Site, as more fully described in the Site Development Permit and FEIR, or any other required infrastructure costs through build-out of the Site, as determined by the City DSD, shall be at the sole cost and expense of the Developer.

On Airport Mitigation Land: 46 acres of land located on the Brown Field Airport may only be used as required mitigation for the development of Aviation Uses at the Airport.

Mitigation Land for Solar Use. Developer or any approved assigned solar operator, will acquire all necessary acreage (estimated to be approximately 30 acres) to mitigate for the solar use (“solar use mitigation land”).

Fuel Flowage Fees: fuel flowage fees will be assessed based on City Council approved usage fees for all aviation fuels sold on the leaseholds, which will be deposited into the Airport Enterprise Fund.

Resale of Leasehold Interest: City shall be entitled to two percent (2%) of the value of the full sale price/consideration for any resale of any leasehold interest in buildings, hangars or other structures, or portions thereof, after the Developer’s initial sale or lease of such building, hangar or other structure.

FISCAL CONSIDERATIONS:

The Airports Division is an enterprise fund supported by rent collected from leases. This proposed development will increase revenue from aviation and commercial activities at the airport. There is no cost to the City associated with the Leasehold Development Agreement.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (if applicable)

This agreement is subject to the City’s Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and the City’s Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS:

On July 28, 2009, the City Council approved the Exclusive Negotiation Agreement (ENA) via Resolution R-305157.

On July 15, 2009, the Land Use and Housing Committee recommended forwarding the ENA to City Council.

On January 23, 2008, the Land Use and Housing Committee voted to enter into an Exclusive Negotiation Agreement (ENA) with Distinctive Property Company (DPC).

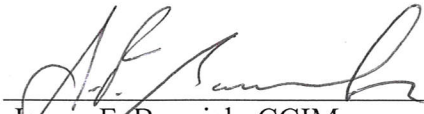
On July 11, 2007 the land Use and Housing Committee voted to unanimously support the issuance of an RFP for the development of Brown Field.

COMMUNITY PARTICIPATION AND OUTREACH EFFORTS:

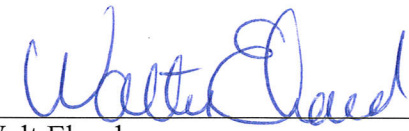
On June 20, 2013 the Planning Commission heard the proposed actions and staff recommendations to recommend the City Council's approval of the Environmental Impact Report, Site Development Permit, Statement of Overriding Considerations, Easement Vacation and the No Museum Alternative at a noticed public hearing. The Commission, after hearing all public testimony and deliberation, voted 6:1 to recommend City Council adopt staff's recommendation. On February 20, 2013, the Otay Mesa Planning Group voted to support the proposed project. Since May 2007 City staff attended meetings regarding the Brown field Development project with many Community groups.

KEY STAKEHOLDERS AND PROJECTED IMPACTS

Existing tenants at the airport and the surrounding Otay Mesa Community. There are currently four aviation tenants at Brown Field.



James F. Barwick, CCIM
Director, Real Estate Assets



Walt Ekard
Interim Chief Operating Officer

Attachments(s): 1. Leasehold Development Agreement