



CITY COUNCIL AGENDA STATEMENT



April 16, 2019

File ID: 19-0217

TITLE

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING AN AGREEMENT BETWEEN THE SAN DIEGO UNIFIED PORT DISTRICT, THE CITY OF CHULA VISTA AND COLANTUONO, HIGHSMITH & WHATLEY, P.C. FOR LEGAL SERVICES IN CONNECTION WITH THE BAYFRONT HOTEL/CONVENTION CENTER PROJECT

RECOMMENDED ACTION

Council adopt the resolution.

SUMMARY

This action would approve an agreement with the law firm of Colantuono, Highsmith & Whatley, for “validation action” legal services in connection with the pending Chula Vista Bayfront Hotel and Convention Center Project. The firm is highly qualified in this area, and has proposed reasonable hourly rates. The contract is for a “not to exceed” amount of \$150,000, subject to further authorization if necessary.

ENVIRONMENTAL REVIEW

The Development Services Director has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a “Project” as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA. Thus, no environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

DISCUSSION

In order to facilitate and make feasible the pending RIDA Bayfront Hotel/Convention Center Project (“Project”), the San Diego Unified Port District (“Port”) and the City of Chula Vista (“City”) have agreed to provide public financing in the combined approximate amount of \$336 million. A substantial portion of this public financing (approximately \$300 million) will be funded by the issuance of both taxable and non-taxable bonds by a Joint Exercise of Powers Authority (“JEPA”) formed by the Port and the City. Due to the complexity of this financing, and the assurances expected to be required by the bond market in connection therewith, the parties have long contemplated filing what’s known as a “validation action” with respect to the public financing.

The effect of a validation action is to confirm, in advance, before the issuance of debt and the commencement of construction, that all aspects of the public financing are legally valid. This is a typical action for public agencies to take under such circumstances to eliminate the risk of legal challenges late in the development process, after substantial public and private monies would have already been invested. Such legal actions are expressly provided for under California Code of Civil Procedure Sections 860, 1085 and/or 1094.5. Section 4.19 of the Disposition and Development Agreement for the Project also contemplates such an action as a “condition precedent” for the closing of the public financing, and sets forth the terms for all parties to participate and cooperate in the validation process.

The validation process is a specialty area of the law that neither the Port or the City has in-house. The firm of Colantuono, Highsmith & Whatley was chosen because of their substantial expertise in this area, because both the Port and the City have engaged the firm in the past with excellent results, and because of the firm’s competitive rates. Given these qualifications, and the Port’s initial engagement of the firm, the City’s standard procurement process was not utilized. Staff is comfortable recommending the waiver of the City’s standard procurement processes under these circumstances.

The firm would be initially engaged by the Port and the City, and receive joint direction. Upon formal establishment of the JEPA for the Project, the legal services contract would be assigned to and coordinated through the JEPA entity.

A copy of the legal services agreement prepared on the Port’s standard form is attached hereto. The contract provides for a “not to exceed” amount of \$150,000, subject to further authorization if necessary. The costs for the agreement are to borne equally by the Port and the City, with contributions from the developer for any aspects of the validation action relating to developer’s private contracts. Per standard Port practice in litigation matters, the details of the “scope of work” for the legal services engagement (Exhibit A to the agreement) are deemed “attorney/client privileged” and redacted.

DECISION-MAKER CONFLICT

Staff has reviewed the property holdings of the City Councilmembers and has found no property holdings within 1000 feet of the boundaries of the property which is subject to this action. Staff is not independently aware, nor has staff been informed by any City Councilmember, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City’s Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The proposed legal services contract to facilitate the Bayfront Hotel and Convention Center Project addresses the Economic Vitality goal in that implementation of the Project will assist in creating a substantial number of temporary and permanent local jobs and be an economic engine for further local development and tax revenues within the City.

CURRENT-YEAR FISCAL IMPACT

There is a minimal current year fiscal impact to the General Fund related to this agreement as most of the work is likely to be performed in the upcoming fiscal year. The costs for the services that are City’s share will be funded out of the City’s non-departmental account.

ONGOING FISCAL IMPACT

The cost for legal services in the upcoming fiscal year (City's 50% share) are expected to be funded out of existing Bayfront tax revenues currently being set aside for this Project.

ATTACHMENTS

Attachment A - Legal Services Agreement

Staff Contact: Glen R. Googins, City Attorney