



CITY COUNCIL AGENDA STATEMENT



September 10, 2019

File ID: 19-0414

TITLE

- A. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA (1) APPROVING A REIMBURSEMENT AGREEMENT BETWEEN THE CITY AND RIDA CHULA VISTA, LLC ("DEVELOPER") TO CONSTRUCT SPECIFIED SEWER IMPROVEMENTS; (2) FINDING THE DEVELOPER'S PROPOSED SOLE SOURCE AWARD TO ITS GENERAL CONTRACTOR TO CONSTRUCT SUCH IMPROVEMENTS TO BE IN THE BEST INTEREST OF THE PUBLIC, PURSUANT TO CHULA VISTA MUNICIPAL CODE SUBSECTION 2.56.160(H), "DEVELOPER-PERFORMED PUBLIC WORKS"; (3) DELEGATING TO THE CITY MANAGER AUTHORITY TO ASSURE COMPLIANCE WITH APPLICABLE PROCUREMENT REQUIREMENTS FOR SUBCONTRACTORS; AND (4) APPROPRIATING FUNDS THEREFOR (4/5 VOTE REQUIRED)

- B. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING A REIMBURSEMENT AGREEMENT BETWEEN THE CITY AND RIDA CHULA VISTA, LLC TO DESIGN SPECIFIED BAYFRONT INFRASTRUCTURE IMPROVEMENTS AND APPROPRIATING FUNDS THEREFOR (4/5 VOTE REQUIRED)

- C. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA FINDING RIDA CHULA VISTA, LLC'S PROPOSED SOLE SOURCE AWARD TO ITS GENERAL CONTRACTOR TO CONSTRUCT BAYFRONT DEVELOPMENT IMPACT FEE TRANSPORTATION FACILITIES TO BE IN THE BEST INTEREST OF THE PUBLIC, PURSUANT TO CHULA VISTA MUNICIPAL CODE SUBSECTION 2.56.160(H), "DEVELOPER-PERFORMED PUBLIC WORKS," AND DELEGATING TO THE CITY MANAGER AUTHORITY TO ASSURE COMPLIANCE WITH APPLICABLE PROCUREMENT REQUIREMENTS FOR SUBCONTRACTORS

RECOMMENDED ACTION

Council adopt the resolutions.

SUMMARY

On April 24, 2018, the City of Chula Vista and the San Diego Unified Port District (the "District") approved a Disposition and Development Agreement (DDA) with RIDA Chula Vista, LLC ("RIDA") for the development of a large-scale destination resort and convention center project on parcel H-3 of the Chula Vista Bayfront Master Plan (also known as the "CVBMP", "Chula Vista Bayfront", or "CVB"). The DDA obligates RIDA to design and construct certain public improvements (the "Developer's Phase 1A Infrastructure Improvements"), subject to a combination of reimbursements and Bayfront Development Impact Fee (BFDIF) credits. The proposed reimbursement agreements and resolutions are recommended in order to implement commitments made in the DDA and to facilitate related procurement and credit award processes.

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 was covered in previously adopted Environmental Impact Report UPD#83356-EIR-65B/SCH#2005081077. The Development Services Director has also reviewed the proposed activity for additional compliance with CEQA and has determined that there is no possibility that the activity may have a significant effect on the environment; therefore, pursuant to Section 15061(b)(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 2002, the City of Chula Vista and the District began a collaborative planning process to create a master plan (CVBMP) for the approximately 535-acre Chula Vista Bayfront area. The master plan was designed to transform Chula Vista's underutilized industrial Bayfront landscape into a thriving residential and world-class waterfront resort destination. The CVBMP represents the last significant waterfront development opportunity in Southern California and is the result of a decade-long joint planning effort by a broad coalition of stakeholders, the District, the City, and Pacifica Companies.

The CVBMP will create thousands of new jobs, create new public parks, protect natural coastal resources, provide conference and visitor-serving amenities and build an important asset for the San Diego region, the South Bay, Chula Vista residents, and coastal visitors. At buildout, more than 40% of the CVBMP project area will be dedicated to parks, open space, and habitat restoration/preservation. Anticipated economic benefits include the creation of more than 4,400 permanent jobs, nearly 7,000 temporary construction jobs, and numerous indirect jobs in the regional economy.

The CVBMP will be implemented jointly by the City and the District in four major phases over a 24-year period. Phase one of implementation includes the development of the previously described resort hotel and convention center project, the creation of public parks and open space, the restoration of habitat areas, a mixed-use residential development, and ancillary public infrastructure.

CVBMP Financing Agreement

In furtherance of developing the CVBMP, the City and the District entered into a Bayfront Master Plan Financing Agreement (the "Financing Agreement") on May 8, 2012. The Financing Agreement identified the rights and obligations of each agency, with respect to the financing, development, and construction of public improvements, infrastructure, and the planned convention center in the CVBMP. The Financing Agreement was subsequently amended and restated to recognize additional rights and obligations of the respective agencies, effective June 20, 2017 (the "Amended and Restated Financing Agreement").

The Financing Agreement established that the City and the District would form a Joint Exercise of Powers Authority (JEPA) to provide for or facilitate the financing of the convention center and other CVBMP public

improvements. Pursuant to authority granted by Article 1 (commencing with §6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the “JPA Act”), the City entered into a JEP A Agreement with the District, effective May 1, 2014 (the “Original JEP A Agreement”). The Original JEP A Agreement established the Chula Vista Bayfront Facilities Financing Authority (the “Authority”).

The Authority was formed for the sole purpose of assisting in the financing and refinancing of, and procurement and contracting for capital improvement projects of the CVBMP, as contemplated by the Financing Agreement. The anticipated sources of funds to secure debt issued by the Authority are addressed in the Amended and Restated Financing Agreement, and include, but are not limited to: RIDA ground lease payments to the District, lease payments payable from public funds, City sales taxes, City transient occupancy taxes (TOT), and additional occupancy-based revenues. Pursuant to California law and the JEP A Agreement, the Authority will be a public entity separate and apart from the City and District. The debts, liabilities, or obligations of the Authority will not be the debts, liabilities, or obligations of the City, the District, or any representative of the City or District serving on the Governing Board of the Authority.

An Amended and Restated Joint Exercise of Powers Agreement was drafted to further refine the proposed jurisdiction, purpose, and structure of the Authority (the “Amended and Restated JEP A Agreement”). The Council and the District’s Board of Port Commissioners (the “District Board”) approved the Amended and Restated JEP A Agreement on June 18, 2019, including all necessary appointments to the Governing Board of the Authority.

The Authority held its first meeting on July 25, 2019. At that meeting, the Authority took the following actions: adopted Bylaws; elected Mayor Casillas Salas Chair of the Board; elected Port Commissioner Moore Vice-Chair of the Board; confirmed appointment of the Authority’s officers; established 3:00 pm on the last Wednesday of each month, beginning August 28, 2019, as the regular time for meetings of the Board; established that the place for regular meetings of the Board will rotate between the Port and City offices; adopted Conflict of Interest Codes of the members; and authorized and ratified the taking of other actions.

RIDA Development

On May 6, 2014, the District issued a Request for Qualifications (RFQ) for development of a hotel and convention center project located on an approximately 36-acre site (CVBMP parcel H-3), with potential development opportunities on the adjacent parcel H-23. RIDA Development Corporation’s highly-qualified response was selected by the District Board in October of 2014 and initial negotiations with RIDA began soon thereafter.

Following the 2014 RFQ, the District entered into an Exclusive Negotiating Agreement (ENA) with RIDA Chula Vista, LLC, the entity formed by RIDA Development Corporation for this project. The ENA established a timeline of deliverables during the term of the agreement, including programming the type and size of hotel and convention center facilities. The ENA was subsequently extended via two amendments, dated August 9, 2016 and January 25, 2017. Beginning with initial approval of the ENA, the District and City worked collaboratively in negotiating key deal terms with RIDA. These negotiations led to the approval of a non-binding Letter of Intent (LOI) between the parties (approved June 20, 2017) and a Disposition and Development Agreement (approved April 24, 2018).

The DDA obligates RIDA to design and construct the following Phase 1A Infrastructure Improvements:

1. In-Road Sewer Improvements
 - a. E Street (from G Street to H Street)
 - b. The G Street Connection
 - c. H-3 Utility Corridor
2. Bayfront Development Impact Fee (BFDIF) Improvements
 - a. E Street (from G Street to H Street)
 - b. The G Street Connection
 - c. H Street (from Bay Boulevard to Street A)
 - d. H Street (from Marina Parkway to E Street)
 - e. Harbor Park Pedestrian Improvements
3. Other Improvements
 - a. E Street (from G Street to H Street)
 - b. The G Street Connection
 - c. H Street (from Bay Boulevard to Street A)
 - d. H Street (from Marina Parkway to E Street)
 - e. Harbor Park (Initial Phase of Park Improvements)
 - f. H-3 Site Preparation
 - g. H-3 Utility Corridor

In addition to obligating RIDA to construct the Phase 1A Infrastructure Improvements, the DDA also includes related funding commitments of the public agencies. These include the City’s obligation to fund the in-road sewer improvements listed above and the joint obligation of the City and the District to reimburse RIDA in cash for all funds expended prior to the DDA close of escrow in connection with the design of the Phase 1A Infrastructure Improvements. In order to meet these obligations, the City has negotiated two reimbursement agreements with RIDA (see Attachments 1 and 2). The proposed resolutions approve the negotiated reimbursement agreements and take certain procurement related actions, as requested by RIDA.

Council Action Summary

Resolution A applies to the design and construction of the facilities designated as (1) In-Road Sewer Improvements above. Resolution B applies only to the design of the facilities designated as (2) BFDIF Improvements and (3) Other Improvements, above. Resolution C applies only to the construction of the facilities designated as (2) BFDIF Improvements above. The construction of the facilities designated as (3) Other Improvements and the planned convention center fall under the purview of the Authority and do not require additional action by the Council. The following matrix summarizes the actions currently before the Council and the anticipated future actions of the Authority.

		Resolution A	Resolution B	Resolution C	Future Action of Authority
In-Road Sewer Improvements	Design	X			
	Construction	X			
BFDIF Improvements	Design		X		
	Construction			X	

		Resolution A	Resolution B	Resolution C	Future Action of Authority
Other Improvements	Design		X		
	Construction				X
Convention Center	Design & Construction				X

RIDA’s proposed procurement process and the proposed agreements and resolutions are discussed in further detail below.

RIDA’s Proposed Procurement Process

Chula Vista Municipal Code (CVMC) Section 2.56.160(H) establishes procurement rules for public works that are constructed, or designed and constructed, by or at the direction of a developer or private property owner and subsequently accepted by, dedicated to, or acquired by the City (“developer-performed public works”). For those improvements that will be funded by the City, either in the form of cash reimbursement or development impact fee credits, RIDA is subject to these procurement rules. For those improvements that will be funded through the Authority (see (3) above, Other Improvements and the planned convention center), RIDA will be subject to the procurement rules of the Authority. The Authority has not yet adopted procurement rules; however, is anticipated that the Authority will adopt rules mirroring the provisions of the City’s ordinance at its next meeting. In addition, the Authority will grant approvals and waivers pursuant to its procurement rules, if appropriate, for the Other Improvements and the convention center.

City Council Findings and Waivers

As authorized by CVMC Section 2.56.160(H)(1)(b), RIDA intends to sole source the construction of the convention center and the hotel to MMJV, a joint venture comprised of M.A. Mortenson Company (“Mortenson”) and McCarthy Building Companies, Inc. (“McCarthy”). RIDA has selected MMJV for this work because Mortenson is an industry leader with a wealth of experience in similar large-scale projects, including the recent construction of the Gaylord Rockies Resort and Convention Center project developed with a RIDA affiliate. McCarthy provides a strong local presence, a positive reputation, relationships with the local subcontractor community, and a resume of large-scale development projects. As previously described, the approval of sole sourcing the convention center will be subject to future consideration by the Authority. RIDA is requesting to also sole source the Phase 1A Infrastructure Improvements (including in-road sewer facilities) to the same general contractor, MMJV. RIDA believes that the award of this contract to the same entity constructing the convention center and hotel will provide for a compatible, streamlined, and successful approach that will result in time and cost efficiencies and avoid logistical coordination issues that would impede the overall schedule for the construction of the project. Staff concurs that the MMJV is highly qualified to build all aspects of the project and concurs with RIDA’s assessment that having one contractor build both the public and private improvements will enhance project implementation quality and timeliness. Accordingly, staff recommends that the City Council find that the sole source award of the general contract to MMJV is in the “best interests” of the public.

For developer performed public improvements, CVMC Section 2.56.160(H)(2) also provides that all subcontract solicitations must be sealed, competitive bids and may be awarded to the lowest responsive and responsible bidder or the bidder that is determined by the developer to be the “best qualified contractor”.

The determination of “best qualified contractor” shall be based on the following: bidder’s demonstrated competence; qualifications; ability to achieve timely completion; capacity; skill; compliance with bid documents; costs; and other relevant criteria. Per the same section of the CVMC, if the subcontracts are awarded to a bidder other than the lowest responsive and responsible bidder, then all payments, reimbursements, and credits against development impact fees are limited to the amount of the lowest responsive and responsible bid for that individual line item or unit of work. This not-to-exceed limitation can be waived, where: (1) the amount of the bid does not exceed the approved estimate for the developer-performed work by more than 10%; and (2) the City approves the waiver.

RIDA has notified the City that the sealed bid provision is impractical for their subcontractor solicitation process and is requesting a waiver of this requirement, pursuant to CVMC Section 2.56.160(H)(6). Staff has reviewed this request and determined that the subcontractor selection process to be employed by RIDA controls project costs and supports timely completion of the improvements, while including appropriate safeguards to protect the public interest. Staff recommends City Council waiver of the requirement to solicit subcontractors via sealed bids.

In addition, RIDA intends to award subcontracts to “best qualified contractors” and not to lowest responsive and responsible bidders and may request a waiver of the not-to-exceed limitation previously described. Because final bids are not in place for this work, it is recommended that the City Council direct the City Manager, or designee, to oversee and implement the subcontractor solicitation and award process, including making findings and approving the award of subcontracts to “best qualified contractors” and making findings and waiving the above the above-described not-to-exceed limitation in accordance with Chula Vista Municipal Code Section 2.56.160(H).

While not currently known, it is also possible that market conditions will require a limited number of sole source awards to subcontractors. CVMC Section 2.56.160(H)(1)(b) establishes the conditions and circumstances under which a sole source contract may be approved. These conditions/circumstances include: (A) performance capabilities of the proposed entity or contractor; (B) project characteristics; (C) manufacturing processes; (D) compatibility requirements; and (E) market or other conditions/circumstances that render the award of a sole source contract to be in the best interest of the public. Staff recommends that the City Council authorize and direct the City Manager, or their designee, to make findings and waive the requirement to competitively bid subcontracts, subject to the sole source bid award considerations prescribed in CVMC Section 2.56.160(H)(1)(b).

Sewer Reimbursement Agreement (*Resolution A*)

Per the DDA, in-road sewer improvements (the “Sewer Improvements”) to be constructed by RIDA will be funded by the City’s Sewer Facility Contribution. RIDA’s Sewer Improvements are estimated to cost a total of \$1,195,000, including design. Actual costs will be determined during the bidding and construction process. The City has identified sufficient funds to reimburse RIDA for these expenses in the City’s Sewer Income Fund. Per Chula Vista Municipal Code (CVMC) Section 13.14.030, the Sewer Income Fund is a repository for one-time fees collected from persons connecting, directly or indirectly, to the City’s sewer system. CVMC Chapter 3.16 provides that these funds may be used, in the discretion of the City Council and pursuant to written contract, to reimburse any person who constructs sewer facilities that benefit other properties. The

Sewer Improvements are qualifying facilities. An agreement to allow for the reimbursement of eligible Sewer Improvement expenses has been negotiated with RIDA (the “Sewer Reimbursement Agreement”, see Attachment 1).

Adoption of Resolution A approves the proposed Sewer Reimbursement Agreement and implements the City’s related commitments in the DDA. The resolution also approves the award of a sole source prime contract, waives the sealed bid requirement for subcontractors, and directs the City Manager, or their designee to oversee and implement the subcontractor solicitation and award process, including without limitation the following: (1) the authority to make findings and waive the requirement to competitively bid subcontracts, after consideration of factors for sole source contracts; (2) the authority to make findings and approve the award of subcontracts to “best qualified contractors”; and (3) the authority to make findings and waive the not-to-exceed limitation for award of subcontracts for the Project. These actions are necessary in order for RIDA to move forward with their preferred procurement process, ensuring efficient progression and timely completion of the project. Sufficient safe guards are in place to protect the public interest. Resolution A also includes an appropriation from the Sewer Income Fund in the amount of \$1,195,000.

Bayfront Public Infrastructure Improvements Design Reimbursement Agreement (*Resolution B*)

Section 4.7(c) of the DDA provides that the District and the City will reimburse the Developer in cash for any and all funds expended prior to the DDA close of escrow in connection with design, architectural work, and engineering work for the Developer’s Phase 1A Infrastructure Improvements. An agreement to allow for the reimbursement of eligible pre-close professional services has been negotiated with RIDA (the “Design Reimbursement Agreement”, see Attachment 2). As design costs associated with RIDA’s Sewer Improvements will be reimbursed by the City pursuant to the Sewer Reimbursement Agreement discussed above, they are excluded from the Design Reimbursement Agreement. Adoption of Resolution B approves the Proposed Design Reimbursement Agreement and implements the City’s related commitments in the DDA. The City estimates that the total reimbursement amount will not exceed \$715,000 and has identified and set aside funds generated by the Bayfront project for this purpose. The City may be reimbursed from bond proceeds and the BFDIF for this expense in the future.

Resolution Delegating Waiver Authority Relating to BFDIF Facilities (*Resolution C*)

The DDA also obligates RIDA to construct certain BFDIF eligible improvements, as listed above. Per the BFDIF Ordinance, any developer that constructs a BFDIF facility is eligible for credits against the BFDIF fees that would otherwise be due with their building permits. The BFDIF Ordinance requires that developers follow the provisions of CVMC Section 2.56.160(H) (*Developer-Performed Public Works*).

As with the Developer’s Sewer Improvements, the Developer is requesting approval of a sole source prime contract, waiver of the sealed bid requirement for subcontractors, waiver of the requirement to competitively bid subcontracts, and waiver of the not-to-exceed provision of CVMC 2.56.160(H)(2)(d). If approved, Resolution C approves the award of a sole source prime contract, waives the sealed bid requirement for subcontractors, and directs the City Manager, or their designee, to oversee and implement the subcontractor solicitation and award process, including without limitation the following: (1) the authority to make findings and waive the requirement to competitively bid subcontracts, after consideration of factors for sole source contracts; (2) the authority to make findings and approve the award of subcontracts

to “best qualified contractors”; and (3) the authority to make findings and waive the not-to-exceed limitation for award of subcontracts for the Project. These actions are necessary in order for RIDA to move forward with their preferred procurement process, ensuring efficient progression and timely completion of the project. Sufficient safe guards are in place to protect the public interest.

DECISION-MAKER CONFLICT

Staff has reviewed the property holdings of the City Council members and has found no property holdings within 1,000 feet of the boundaries of the property which is the subject of this action. Consequently, this item does not present a disqualifying real property-related financial conflict of interest under California Code of Regulations Title 2, section 18702.2(a)(7) or (8), for purposes of the Political Reform Act (Cal. Gov’t Code §87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

CURRENT-YEAR FISCAL IMPACT

All costs associated with the preparation of this report and associated agreements are included in the operating budget for the Development Services Fund. There is no current fiscal year impact to the General Fund as a result of this action. Approval of Resolution A authorizes the City to enter into a Reimbursement Agreement with RIDA for construction of specified sewer improvements in the CVBMP and appropriates \$1,195,000 from the Sewer Income Fund for this purpose. Approval of Resolution B authorizes the City to enter into a Reimbursement Agreement with RIDA for design of CVBMP infrastructure improvements and appropriates \$715,000 from the Bayfront reserve set aside in the General Fund for this purpose, subject to future reimbursement from the BFDIF Fund and bond proceeds. Approval of Resolution C has no fiscal impact.

ONGOING FISCAL IMPACT

All funds are anticipated to be expended in the current fiscal year. There is no ongoing fiscal impact as a result of this action.

ATTACHMENTS

1. Reimbursement Agreement with RIDA Chula Vista, LLC to Construct Specified Bayfront Sewer Improvements
2. Reimbursement Agreement with RIDA Chula Vista, LLC to Design Specified Bayfront Infrastructure Improvements

Staff Contact: Tiffany Allen, Assistant Director of Development Services