



CITY COUNCIL AGENDA STATEMENT



July 28, 2020

File ID: 20-0273

TITLE

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING THE THIRD AMENDED AND RESTATED OPERATING AGREEMENT BETWEEN THE CITY AND LIVING COAST DISCOVERY CENTER

RECOMMENDED ACTION

Council adopt the resolution.

SUMMARY

This resolution approves the City of Chula Vista and the Living Coast Discovery Center to enter into a Third Amended and Restated Operating Agreement with an expiration date of December 31, 2021, including an automatic term-extension provision which will extend the term of the Agreement to June 30, 2023. General Fund financial support continues to be included in the City Manager's proposed FY 2020-21 budget.

ENVIRONMENTAL REVIEW

The proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the activity is not a "Project" as defined under Section 15378 of the state CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. Notwithstanding the foregoing, it has also been determined that the activity qualifies for an Exemption pursuant to Section 15061(b)(3) of the California Environmental Quality Act State Guidelines. Thus, no environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

DISCUSSION

Effective February 6, 2010, the City of Chula Vista and the Living Coast Discovery Center agreed on the terms and conditions of a license to manage and control LCDC operations, pursuant to a formal "Operating Agreement."

Since then, the Parties have agreed to modify and/or extend the Operating Agreement as follows: (1) On or about November 23, 2010, the Parties agreed to amend the Operating Agreement in order to extend the

term until June 30, 2012; (2) Effective July 1, 2012 the Parties entered into a new Operating Agreement for a period of 1 year, ending June 30, 2013; (3) On June 11, 2013, the Parties entered into that certain First Amendment to extend the Operating Agreement until June 30, 2014; (4) on or about June 19, 2014 the City Manager agreed to extend the Operating Agreement until September 30, 2014; On October 1, 2014, the Parties entered into that certain Amended and Restated Operating Agreement for the term ending December 31, 2015; and on February 4, 2016 the City Manager extended the term to June 30, 2017 under the Article 3.2 of the Operating Agreement; (5) On July 1, 2017, the Parties entered into the Second Amended and Restated Operating Agreement for the term ending December 31, 2018; in June 2019 the City Manager extended the term to June 30, 2020 under the Article 3.2 of the Operating Agreement.

In order to further extend the Operating Agreement, and to update certain provisions thereof, the Parties now desire to enter into this Second Third Amendment and Restated Operating Agreement.

The Third Amended and Restated Operating Agreement includes:

- An initial term through December 31, 2021.
- An automatic term extension to June 30, 2023 conditioned upon performance measurements being met including: (a) a separate operational reserve fund established and funded for LCDC operations with a minimum unencumbered balance of \$100,000; (b) established and documented 27 new partnerships, collaborations, and/or programs that increase, in the aggregate, LCDC net revenues; (c) maintained or augmented LCDC Board membership; (d) over a 12 month period, maintained LCDC general attendance equal to or greater than the previous 12 month period; and (e) complied with all material terms and conditions of this Third Amended Agreement. (Section 3.2)
- No Material Modifications Without City Approval. Operator shall not make material modifications to the LCDC Improvements without City's prior written approval, which such approval shall not be materially withheld or delayed. For purposes of this Section "material modifications" shall mean the addition, removal or alteration of Improvements valued at in excess of \$10,000. (Section 5.5)
- Accounting Requirements and Financial Reports. The Living Coast Discovery Center will continue to submit quarterly financial reports to the City. In addition, every other fiscal year, Operator shall engage an independent, licensed, certified public accountant, reasonably approved by City to conduct a financial audit of Operator's books and records. The audit shall be prepared at Operator's cost and provided to the City of Chula Vista Finance Director by no later than November 1 of the audit year. (Section 9.2)

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

There is no additional fiscal impact as the Third Amended and Restated Operating Agreement continues to provide financial support and in-kind services which were included in the City's adopted budget for FY 2020-21 for approximately \$180,000 (\$60,000 debt service payments, \$40,000 repair and maintenance and \$80,000 for utilities and fuel).

ONGOING FISCAL IMPACT

This resolution approves a Third Amended and Restated Operating Agreement, with an opportunity for term extension of eighteen (18) months with performance measures met. Future financial support for the Living Coast Discovery Center will continue to be included in the City Manager's proposed budget each year for City Council consideration.

ATTACHMENTS

1. Third Amended and Restated Operating Agreement between the City and the Living Coast Discovery Center
2. Exhibit A – LCDC Land and Improvements
3. Exhibit B – LCDC Fauna Inventory

Staff Contact: Tim Farmer, Parks and Recreation Administrator