



# City of Chula Vista

## Staff Report

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**File#: 16-0191, Item#: 5.**

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CONSIDERATION OF APPROVING FINAL TERMS FOR THE AGREEMENT WITH THE POINT LOMA TRUST FOR THE OPERATIONS OF THE CHULA VISTA ELITE ATHLETE TRAINING CENTER

RESOLUTION NO. 2016-061 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING FINAL TERMS FOR THE AGREEMENT WITH THE POINT LOMA TRUST FOR THE OPERATIONS OF THE CHULA VISTA ELITE ATHLETE TRAINING CENTER AND DIRECTING STAFF TO FINALIZE AGREEMENTS CONSISTENT THEREWITH

This item further implements City Council action taken on March 15, 2016 where the Council approved general terms for City's engagement of The Point Loma Trust (PLT) to be City's third-party operator of the Chula Vista Olympic Training Center (CVOTC). Final terms have now been negotiated and are presented for City Council approval, with direction to staff to finalize agreements consistent with these terms. This action is one of series that the City Council has taken to effect the transfer of fee title and operational control of the CVOTC from the United States Olympic Committee (USOC) to the City. City Council has already approved the Transfer Agreement and Core Agreement with the USOC that provides for this transfer to occur on December 31, 2016. Under the proposed agreement with PLT, working with City and the USOC, PLT would start transitioning its operations of the center immediately, with full responsibility for day to day operations occurring on January 1, 2017.

### **RECOMMENDED ACTION**

Council adopt the resolution.

### **SUMMARY**

In 2014, the United States Olympic Committee ("USOC") approached the City to determine if the City would be interested in acquiring the Chula Vista Olympic Training Center land, facilities and equipment, and in continuing to operate the facility as a U.S. Olympic and Paralympic Training Site. After extensive analysis and negotiations with the USOC, on February 23, 2016, staff presented to the City Council, and the City Council approved, the key agreements with the USOC to implement this transaction. Attached is City's final approval of an agreement for the operations of the facility (now known as the Chula Vista Elite Athlete Training Facility) with The Point Loma Trust. City staff has now negotiated the final terms for this agreement with the Point Loma Trust ("PLT"). This item presents these terms to the City Council for its consideration and approval.

### **ENVIRONMENTAL REVIEW**

#### **Environmental Notice**

The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act ("CEQA") State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

### **Environmental Determination**

The Director of Development Services has reviewed the proposed for compliance with CEQA and has determined that the activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines because the activity consists of approval of proposed business terms for an operating agreement for the USOC site, and does not involve a potentially significant physical impact on the environment. Therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

### **BOARD/COMMISSION RECOMMENDATION**

Not Applicable

### **DISCUSSION**

In 2014, the USOC approached the City to determine if the City would be interested in acquiring the Chula Vista Olympic Training Center land, facilities and equipment, and in continuing to operate the facility as a U.S. Olympic and Paralympic Training Site. Negotiations commenced and an operating model was developed that was intended to allow the City to continue operation of the facility as an Olympic and Paralympic Training Site, with other uses and events compatible with the existing elite sports training activities. The model included the construction of additional athlete dorms (which Council approved in its action on March 15, 2016 pursuant to a contract for the development of 100 beds with Baldwin & Sons). and selection of a third-party operator to minimize risk to the City's general fund.

In July 2015, the City issued a Request for Expressions of Interest (RFEI) for a third party operator. Eleven potential operators responded. Through a series of evaluations, the City and the USOC narrowed the selection and ultimately selected the Point Loma Trust (PLT), and affiliate of Point Loma Nazarene University ("PLNU"), as its preferred operator. PLT was selected because of PLNU's experience with operating high quality sports facilities, buildings, residence halls and dining facilities; its understanding the need to market the facility for additional revenue generation that complements the core business such as increased use by international athletes, grass root camps, hosting additional NGB's, sport and teambuilding clinics; its existing investment in Chula Vista with their relationship with Southwestern College; its acceptance and desire to embrace and promote the vision of the City and the USOC regarding the Olympic movement and support of the Elite Athletes training at the center; its desire to exceed the expectations of USOC and the City; its desire to develop strategic partnerships with, and to maintain or enhance service levels for Easton Archery Center of Excellence; and its willingness to bear risks of operating deficits.

A summary of the proposed key terms for the Operator Agreement between the City and PLT for the operation of the CVTC are set forth below. These terms are substantially the same as those previously approved by the Council on March 15th, however, items listed then as "pending" have now been fully negotiated. Any significant updates or changes have been noted. Note: Section references provided [in brackets] are to Sections in the actual signed "term sheet" between the parties, which is attached to this report.

**1. In General [Term Sheet Section 1]**

- a. Parties. City of Chula Vista (“City”), and The Point Loma Trust, a California trust, or a wholly owned subsidiary thereof (“PLT”), acting as an independent contractor. [Sections 1.1 and 1.6]
- b. Basic Agreement. PLT shall have the exclusive right and duty to operate and maintain the Chula Vista Elite Athlete Training Center (“CVTC”) consistent with (1) the terms set forth in the Agreement; (2) City’s Core Agreement with the United States Olympic Committee (“USOC”); and (3) the initial CVTC Business Plan approved by both parties (“Business Plan”), described in Section 3, below. City’s rights and obligations under the Core Agreement will be assigned to PLT except as expressly provided in the Agreement. Without City approval PLT shall not have the right to transfer or modify any portion of the CVTC real property, facilities or equipment. [Sections 1.2, 1.3 and 1.4]
- c. Additional Standards of Performance/Duties. In the performance of its duties, PLT shall also be required to: (1) comply with all laws; (2) maintain an adequate and effective work force; (3) maintain the CVTC facilities and equipment per agreed upon schedules and standards; (4) maintain records and accounting system(s) in accordance with GAAP; (5) propose and comply with an annual budget approved by the City Manager with quarterly reports demonstrating adherence to the budget and the Core Agreement. [Section 1.5]

**2. Term**

- a. Term. After a transition period from April 1, 2016 until December 31, 2016, commencing January 1, 2017, PLT shall have the right and obligation to operate the Agreement for a period of up to ten (10) years (until December 31, 2026). This includes an eight (8) year initial term and a two (2) year extension at PLT’s discretion. Extension terms beyond 10 years are possible, up to an additional eight (8) years, subject to each party’s approval in its sole discretion. [Sections 2.1 and 2.2]
- b. PLT’s Early Termination Rights. PLT may initiate a potential early termination of the Agreement by providing written notice to City at two junctures during the Term: after four (4) years and six (6) years of operation. If PLT initiates the early termination process, before termination becomes final, the parties agree to meet and confer in good faith for at least three (3) months to determine if there are mutually agreeable terms to continue PLT’s operations. In the event that the parties are unable to reach agreement, PLT can then elect to terminate the Agreement with 9 months’ notice to City. [Section 2.3]

PLT also has early termination rights with 60 days’ notice to City if (1) the Transfer from USOC to City does not occur by March 1, 2017, (2) prior to the Transfer the facility suffers in excess of \$750K of material damage, (3) the 100 bed new housing facility (or alternative housing) is not ready for occupancy by July 15, 2017, or (4) in the event of the early termination of City’s four year Core Agreement with USOC. [Section 2.3]

**Note:** New provisions give PLT additional early termination rights if the CVTC suffers pre-Transfer damages in excess of \$750K, or if the 100 bed housing project (or alternative housing) is not available for occupancy by July 15, 2017. These do create additional risks, but staff believes such risks are manageable. In the event of early termination by

PLT in any of the above-described circumstances, City would need either to transition operations to another third party provider, operate the facility itself, or terminate operations through a negotiated arrangement with USOC.

### **3. Business Plan**

a. Initial Business Plan. PLT shall prepare a draft Business Plan that does not conflict with the Core Agreement for City review/approval. The draft Business Plan shall include, at a minimum, the following elements: (1) mission/vision statement, (2) transition plan, (3) list of the targeted types and desired mix of users, (4) marketing plan summary, (5) principles for rate setting and/or a proposed preliminary rate structure for facility users, (6) principles for budget development and compliance, including operational and capital reserves, (7) community outreach plan summary, (h) special event plan summary, (8) staffing plan, (9) retail store proposal for at least 2 years of operation, and (10) plan for identifying/funding capital enhancements, and (11) plan for identifying potential business opportunities, including without limitation, the addition of on-site retail operations such as restaurant and/or coffee retailers. [Section 3.1 and 3.2]

b. USOC Review. The City-approved draft Business Plan shall be submitted to USOC for review and input, with reasonable consideration by Operator given to USOC proposed adjustments. [Section 3.3]

c. Comprehensive Business Plan. Based upon and consistent with the draft Business Plan, PLT shall develop a more detailed and comprehensive Business Plan and shall submit that plan for City Manager review and approval by no later than July 1, 2016. [Section 3.4]

d. Annual Review Process. The parties shall meet and confer each year of the term starting March 1<sup>st</sup> to discuss possible updates and modifications to the Business Plan. PLT shall submit its updated plan to the City Manager for review and input, with reasonable consideration given to the City Manager's proposed modifications. [Section 3.5]

### **4. Staffing/Oversight**

a. In General. PLT shall have the right and responsibility to hire/manage and terminate employees as necessary to operate/maintain the CVTC per the standards required by the Agreement. [Section 4.1]

b. Key Positions. Initially, City Manager (or designee) and PLT shall confer to identify key existing CVTC employees that may be offered positions with PLT. Until December 31, 2021, PLT shall continue to consult with City Manager (or designee) in advance of hiring, material changes in employment or termination of these individuals/positions. Notwithstanding the foregoing, the ultimate decisions regarding hiring, managing or terminating PLT employees shall be at PLT's sole discretion. [Section 4.2]

c. City CVTC Coordinator/Liaison. There shall be a CVTC “Coordinator/Liaison” to be employed by City, or a non-profit created thereby (“City Coordinator/Liaison”). The City Coordinator/Liaison shall be responsible for City’s obligations with respect to CVTC operations, shall assist with marketing of the CVTC, and shall be PLT’s point of contact with the City. PLT shall provide the City Coordinator Liaison with full access to the CVTC, along with reasonable office space and reasonable office support services at Operator’s cost. Until December 31, 2021, City shall consult with PLT in advance of hiring, material changes in employment or termination of this position. Notwithstanding the foregoing, the ultimate decisions regarding hiring, managing or terminating the City Coordinator/Liaison shall be at City’s discretion. [Section 4.3]

d. Facility Operations Advisory Committee (“FOAC”). City envisions representative(s) from USOC, Easton, PLT, City and CVTC coaches/athletes to share ideas and issues relative to CVTC operations. This entity shall have no decision making or governance function but shall be consulted from time to time for its input on CVTC operations and policy. This entity shall have not less than 20% CVTC resident athlete representation. The FOAC could potentially serve as the agent for administering the annual review process [Core Agreement Section 11], and/or the “athlete representative” function [Core Agreement Section 30] required under the Core Agreement. [Section 4.4]

## 5. Revenues/Compensation

a. In General. All CVTC revenues generated by PLT’s operations of CVTC shall go to CVTC operations and maintenance as PLT shall direct, consistent with terms of Business Plan and Budget, except as otherwise expressly provided in the Agreement. [Section 5.1]

b. Operator Fee. In consideration of PLT’s provision of services under the Agreement, PLT shall be entitled to a fee equal to the greater of \$300,000, or ten percent (10%) of CVTC gross revenues (“Operator Fee”). The Operator Fee shall only be payable out of CVTC revenues on an annual basis, in arrears (“Operator Fee”); provided, however, starting in calendar year 2018, and each year of the term thereafter, the Operator Fee shall be payable monthly out of CVTC revenues based upon PLT’s revenue projections for that calendar year, subject to a year-end reconciliation. To the extent that there are not sufficient CVTC revenues to pay PLT’s Operator Fee in any given year, any unpaid amount of such fee shall be “carried forward” and be payable out of future CVTC revenues. The first \$300,000 of any year’s unpaid Operator Fee shall earn interest at the 10 Year Treasury Bill rate (currently 1.85%). [Section 5.2]

**Note:** The terms for the Operator Fee were pending on March 15<sup>th</sup> and are now final, on essentially the terms proposed then: a minimum fee of \$300K, with a likely annual fee of 10% of CVTC gross revenues. The interest factor on “deferred” fees is now set at the 10 Year Treasury Bill rate (currently around 1.85%), with the understanding that only the “minimum” portion (\$300K) of any “deferred” Operator Fee earning interest. This interest rate also applies to any of PLT’s “Deferred Operator Losses” as provided in Section 5.d, below.

c. Surplus Revenues. To extent any “Surplus Revenues” are generated from PLT’s operations of the CVTC (meaning revenues above and beyond amounts expended for CVTC

operations, including PLT's Operator Fee), then (a) 20% of such Surplus Revenues shall be dedicated towards agreed upon "CVTC Special Projects" (to be defined by the parties mutually, but generally CVTC facility additions or enhancements) and (b) 80% of such Surplus Revenues shall be paid to PLT as an additional fee for PLT's services under the Agreement. 70% of the 80% shall be expendable by PLT as it sees fit in its sole discretion and 10% shall be dedicated by PLT towards enhancing or adding to existing PLT projects or programs benefitting Chula Vista residents or students. "Surplus Revenues" shall be determined annually, in arrears, based upon a reconciliation of revenues generated and costs incurred for that budget year, after funding required operational and capital reserves, and paying off, in order, any operational/capital costs for the current year under the approved Budget, and any "Deferred Operator Losses" (defined below) that may have been carried forward from any previous year(s). [Section 5.3]

d. Losses and Loss Recovery. The Operator shall be responsible for the payment of all costs associated with the operation of the CVTC except to the extent such costs are expressly allocated to the City under the Agreement. If Operator's obligation to pay CVTC costs results in an operating losses, such that Operator is required to pay any such losses out of Operator's own funds, the amount of such losses ("Deferred Operator Losses") may be recovered by Operator from subsequent year's revenues, plus interest at the 10 Year Treasury Bill rate per annum (currently 1.85%). Deferred Operator Losses shall be reimbursed as a priority to funding budgeted operator/capital reserves and the distribution of what otherwise would be treated and distributed as Surplus Revenues. [Section 5.4]

e. City Responsibility for Certain Costs. City shall be solely responsible for payment of each of the following CVTC expenses: (1) all costs to investigate and/or remediate any environmentally sensitive materials and/or hazardous materials or substances at the CVTC existing prior to the Transfer, or relating to its operations, except to the extent caused or allowed by Operator; (2) City's violation of any and all obligations under the Core Agreement not assumed by Operator under the Agreement, (3) events hosted, sponsored or organized by the City and agreed to by the Operator to be held at the CVTC, (4) all costs necessary to change the signage at the CVTC, or on any off-site locations including on public streets, (5) any taxes or fees imposed on City directly, and (6) maintenance of the CVTC lateral sewer system. [Section 5.5(a)]

f. Major Repairs. In the event that any "Major Repairs" are required to be made to the CVTC, defined as a repair that must be made in order for Operator to operate the facility per the terms of the Agreement costing in excess of \$750,000, where neither party is at fault, then the parties agree to meet and confer to determine how to proceed and if there should be a sharing of costs between City and Operator. In making such determination, among other factors, consideration will be given to (1) the total cost of the repair, (2) if the repairs are covered by insurance, (3) Operator Fees paid to date and projected, (4) the remaining Term of the Agreement, and (5) the ability of Operator to generate Surplus Revenues. Notwithstanding the foregoing, Operator shall be required to make the Major Repairs at its sole cost if it can be reasonably expected to recover the cost of such repairs, plus interest, out of CVTC revenues projected through the remainder of the Term. Either party's contribution to the making of such Major Repairs shall be recoverable as a priority, plus interest, out of future Surplus Revenues. If the parties agree to make additional capital contributions to the CVTC to build new facilities or enhance existing ones, reimbursements of capital shall be treated similarly, unless otherwise agreed. [Section 5.5(b)]

**Note:** The agreement regarding “Major Repairs” set forth in this Section was referenced as “pending” in the term sheet approved by Council on March 15<sup>th</sup> and is now final. In effect, this provision provides for the parties to meet and confer to discuss possible cost sharing if there is a major breakdown at the facility that needs to be repaired to avoid materially adverse impacts on operations. PLT will be solely responsible for repairs if the cost is reasonably recoverable. If not, the City may need to consider either contributing towards the cost of the repair, or modifying the terms of the Agreement to enhance PLT’s ability to recover the repair amount.

g. Records/Audit Rights. PLT shall maintain records in accordance with GAAP. City shall have the right to access and review CVTC books, financial statements and records. PLT shall pay for one complete independent audit per year, with any additional audit work required at City’s cost. PLT proprietary records shall be kept confidential, but otherwise records shall be subject to disclosure under applicable public records act laws. [Section 5.6]

h. Budget Process. A process similar to that used for the Business Plan shall be used for budget preparation and annual review. [Section 5.7]

## **6. City Reservation of Access/Events**

PLT shall provide City a certain number passes to special CVTC events to be distributed by City under City policies at no cost, subject to reasonable restrictions. City to have access to the CVTC (time/space permitting) for a certain number and type of City events. For example, a certain number of City staff/official retreats/meetings would be at cost only, with preferred rates on a certain number of additional events (e.g., the City Library Foundation, Friends of Parks and Rec. and Police Activities League). Any such City events shall be scheduled with approval of Operator. [Section 6]

## **7. Creation of Fundraising Non-Profit**

The parties shall meet and confer with intent of creating a separate non-profit to fund-raise and otherwise support CVTC facilities and programs. It is intended for both parties to have a role and representation, with potential addition of USOC and/or Easton. [Section 7]

## **8. Security for Performance**

As security for Operator’s performance under the Agreement, Operator shall ensure that Operator (a) has initial capitalization of not less than \$1.5 million, and (b) maintains cash reserves throughout the Term of no less than \$500,000. [Section 8]

**Note:** The terms for PLT’s provision of security for its performance were “pending” on March 15<sup>th</sup>. Staff believes this mechanism is acceptable.

## **9. Insurance and Indemnity.**

a. Insurance. Insurance will be required of both parties, patterned after the requirements under the Core Agreement unless additional/special coverages are deemed necessary/appropriate.

[Section 9.1]

b. Mutual Indemnities. The parties will indemnify each other in accordance with customary practice in commercial agreements, including without limitation for breach of the Agreement and for either party's negligence or willful misconduct. [Section 9.2]

c. Assignment of Indemnities. To the extent allowed by law, City shall assign its benefits as an indemnified party under its Core Agreement and Transfer Agreement with USOC. [Section 9.3]

d. City Special Indemnities. City agrees to indemnify PLT on specified terms for damages arising from (1) environmental conditions on the CVTC property not caused by Operator, (2) adverse title or possessions claims against the CVTC property, (3) any event or circumstance for which City obtains reimbursement under claims it may have under its agreements with USOC, and (4) City use of the facility or City sponsored events. [Section 9.4]

**Note:** These provisions were not presented in detail on March 15<sup>th</sup>. They have been significantly negotiated and refined since then. Full detail is available in the attached formal term sheet.

## **10. General Provisions.**

a. City Covenants. City covenants to the Operator as follows: (a) unless required by the Core Agreement, City shall not make material alterations to any existing facilities or improvements at the CVTC or to any new facilities at the CVTC if Operator will be required to maintain and operate such facility without first receiving Operator's prior written approval, (b) City shall not take any actions to violate any use restrictions applicable to the Property, (c) City shall use reasonable efforts to work with PLT to explore cost savings and reduced utility rates for the facility, (d) City shall waive taxes or fees imposed by City related to the improvements to and/or operation of the CVTC to the extent it is legal to do so and City is not otherwise required to pay such fees itself; and (e) City shall rigorously enforce and will endeavor in good faith to make Operator a third party beneficiary of its remedies related to its contract for the construction of a new 100-bed facility at the CVTC. [Section 10.1(a)]

b. Mutual Covenants. The parties will work together to negotiate mutually beneficial terms for the assignment of the Easton lease and housing agreements, and encourage USOC usage of the CVTC over and above its minimum commitment. [Section 10.1(b)]

c. Naming Rights and Revenues. After meeting and conferring with PLT, City shall have reasonable approval over any agreement for naming rights for any CVTC facility, subject to PLT approval of any naming tied to a third party college or university. Naming Rights revenues that result in "Surplus Revenues" shall be specially allocated such that an increased amount (from 10% to 40%) shall be spent by PLT on Chula Vista based PLT programs and projects. [Sections 5.1 and 10.5]

**Note:** This provision is new.

### **Next Steps:**

This item presents these detailed terms to the City Council for its consideration and approval. If the City Council so directs, staff will proceed to finalize agreements consistent with these terms for



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execution by the City Manager.

### **DECISION-MAKER CONFLICT**

Staff has reviewed the property holdings of the City Council members and has found no property holdings within 500 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)(11), 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.

### **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 operations of the Olympic Training Center support the Economic Vitality goal as the City will be able to maximize the use of this valuable asset as an economic driver. Continued operations will also support the Healthy Community goal because it will provide the highest level of fitness, training and nutrition for elite athletes (both resident and visiting). Fitness, training and nutrition education and activities are also expected to be continued and expanded for local residents and programs.

### **CURRENT YEAR FISCAL IMPACT**

Staff does not anticipate any impacts to the General Fund reserves in the current fiscal year as a result of this item. There may be in-kind services from Public Works to perform some minor capital repairs at the OTC. The capital cost of these repairs are expected to be borne by the USOC out of its budget.

### **ONGOING FISCAL IMPACT**

Based on the terms noted in the staff report, there may be some City responsibility for certain costs as noted in Section 5 as follows: "City shall be solely responsible for payment of each of the following expenses on a timely basis, and the Operator shall have no obligation at any time to pay any of the following expenses: (1) all costs to investigate and/or remediate any environmentally sensitive materials and/or hazardous materials or substances at the CVTC existing prior to the Transfer, (2) City's violation of any and all obligations under the Core Agreement that expressly remain City's responsibilities under the Agreement, (3) events hosted, sponsored or organized by the City and agreed to by the Operator to be held at the CVTC, (4) all costs necessary to change the signage at the CVTC, or on any off-site locations including on public streets, and (5) any taxes or fees imposed on City directly." Most of these items are potential costs as opposed to projected certain costs. To the extent that the City funds any Major Repairs or capital improvements the cost of such potential repairs would be paid out of the City's General Fund and then such costs would be

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recovered, plus interest per annum at the rate equal to that of the ten (10) year U.S. Treasury rate, out of future Surplus Revenues.

**ATTACHMENTS**

Term Sheet for Facility Operations Agreement, Chula Vista Elite Athlete Training Center, dated April 1, 2016, between the City and PLT signed by PLT and the City Manager