

RESOLUTION 2017-078

RESOLUTION DIRECTING STAFF TO ENTER INTO A TWO-YEAR EXCLUSIVE NEGOTIATING AGREEMENT (ENA) WITH PROTEA WATERFRONT DEVELOPMENT (PWD), THE PROPOSED MANAGING MEMBER OF THE SELECTED PROPOSER 1HWY1, AND REQUIRE IN THE ENA THAT (1) PWD FORM, OR CAUSE THE FORMATION OF, 1HWY1 WITHIN NINETY DAYS OF ENTERING INTO THE ENA, (2) PWD ASSIGNS ALL OF PWD'S RIGHTS AND OBLIGATIONS UNDER THE ENA TO 1HWY1 ONCE THE ENTITY HAS BEEN FORMED, (3) PWD, OR 1HWY1 ONCE IT IS FORMED AND ASSUMES THE RIGHTS AND OBLIGATIONS UNDER THE ENA, SUBMIT A PROJECT DESCRIPTION WITHIN 1 YEAR OF PWD ENTERING INTO THE ENA, AND (4) PWD, OR 1HWY1 ONCE IT IS FORMED AND ASSUMES THE RIGHTS AND OBLIGATIONS OF PWD UNDER THE ENA, SUBMITS REGULAR PROGRESS REPORTS ON THE PROPOSED DEVELOPMENT'S FINANCIAL FEASIBILITY AND ACCESS TO EQUITY AND DEBT SOURCES AND IF SUCH PROGRESS REPORTS ARE NOT SUBMITTED OR ACCEPTABLE TO THE DISTRICT, THE DISTRICT WOULD HAVE THE OPTION TO DELAY, PAUSE OR TERMINATE THE ENA

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, on February 22, 2016, staff issued a Request for Proposals 16-04ME (RFP) for 70 acres of land and water situated between downtown and the Bay in the District's Central Embarcadero area (Redevelopment Site); and

WHEREAS, on May 2, 2016, the District received 11 proposals and six were deemed complete - Gafcon, Inc. (on behalf of 1HWY1), Great Western Pacific, HKS, McWhinney, Oliver McMillan, Inc., and Ripley Entertainment, Inc.; and

WHEREAS, on July 13, 2016, the Board of Port Commissioners (BPC) directed staff to enter into exclusive discussions with the 1HWY1 team to further

evaluate the Seaport San Diego (Seaport) proposal, while not making a final selection or eliminating the other five proposals/proposers; and

WHEREAS, following the BPC's direction staff conducted a preliminary due diligence phase and issued a Supplemental Information Request to the 1HWY1 team and responses were provided between August 5 and September 19, 2016; and

WHEREAS, at its November 8, 2016 meeting, the BPC selected 1HWY1 as the successful proposer, concluded the RFP process, eliminated the other five proposers, directed staff to continue due diligence excluding any hotel due diligence and return to the BPC at a future date to enter into a preliminary agreement with 1HWY1; and

WHEREAS, following the BPC's direction, staff worked with the 1HWY1 team to prepare a due diligence schedule, which included the list of recommended due diligence items that were included in the draft resolution attached to the November 8, 2016 agenda sheet; and

WHEREAS, the due diligence schedule was sent to the 1HWY1 team on January 5, 2017 requiring an update on March 17, 2017 and 1HWY1 provided the update on March 16, 2017 and a supplemental update on April 6, 2017; and

WHEREAS, the 1HWY1 team consists of the following entities: Protea Waterfront Development (PWD) as the proposed managing member, Thrillcorp, RCI Group, and OdySea; and

WHEREAS, the BPC selected 1HWY1 as the successful respondent to the RFP and is the proposed ground lessee and developer for the Redevelopment Site; and

WHEREAS, the 1HWY1 operating agreement will identify the roles and level of financial commitment of each of the proposed members of 1HWY1 and will be provided to the District once the entity is formed; and

WHEREAS, in the interim, as the proposed managing member of 1HWY1 and a California limited liability company, PWD has been acting as the lead on the proposal; and

WHEREAS, staff recommends negotiating and entering into an Exclusive Negotiating Agreement (ENA) with PWD, and the ENA will require that PWD cause the formation of 1HWY1 within 90 days of entering into the ENA and that PWD assigns its rights and obligations under the ENA to 1HWY1 once the entity has been formed and 1HWY1 assumes such rights and obligations under the ENA; and

WHEREAS, under the ENA, staff will work with PWD, until 1HWY1 is formed and PWD assigns its rights and obligations under the ENA to 1HWY1, to (1) complete post-selection due diligence; (2) refine the proposed development program; and (3) refine development cost estimates and pro forma financial analysis for the proposed development as described in detail in the corresponding agenda sheet; and

WHEREAS, at the May 16, 2017 BPC meeting, the BPC required that the ENA include a 2 year term, a requirement that a project description be submitted to the District within 1 year of PWD's execution of the ENA, and that regular progress reports be submitted on the proposed development's financial feasibility and access to equity and debt sources which, if not submitted or acceptable to the District, the District would have the option to delay, pause or terminate the ENA; and

WHEREAS, by the end of the ENA period, staff would return to the BPC with a preliminary project review and request direction to commence environmental review; and

WHEREAS, the requested BPC action does not constitute a "project" or an "approval" of a "project" under the definitions set forth in the California Environmental Act (CEQA) Guidelines Sections 15352 and 15378, nor does it allow for "development" or "new development" pursuant to the California Coastal Act and the District's Coastal Development Permit Regulations.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Executive Director or her designated representative is hereby authorized and directed on behalf of the San Diego Unified Port District to enter into a 2-year Exclusive Negotiating Agreement (ENA) with Protea Waterfront Development (PWD), the proposed managing member of the selected proposer, 1HWY1, and require in the ENA that (1) PWD form, or cause the formation of, 1HWY1 within 90 days of entering into the ENA; (2) PWD assigns all of PWD's rights and obligations under the ENA to 1HWY1 once the entity has been formed; (3) PWD, or 1HWY1 once it is formed and assumes the rights and obligations of PWD under the ENA, submit a project description within one year of PWD entering into the ENA; and (4) PWD, or 1HWY1 once it is formed and assumes the rights and obligations of PWD under the ENA, submits regular progress reports on the proposed development's financial feasibility and access to equity and debt sources and if such progress reports are not submitted or acceptable to the District, the District would have the option to delay, pause or terminate the ENA.

2017-078

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL


By: Assistant Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 16th day of May, 2017, by the following vote:

AYES: Castellanos, Malcolm, Merrifield, and Nelson

NAYS: None.

EXCUSED: Bonelli, Moore, and Valderrama

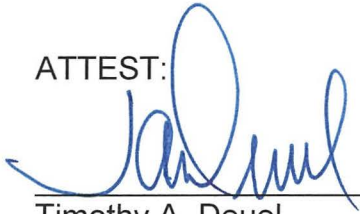
ABSENT: None.

ABSTAIN: None.



Robert Valderrama, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)