

RESOLUTION 2018-089

RESOLUTION AUTHORIZING CONTRIBUTION AGREEMENT BETWEEN THE DISTRICT AND THE CITY OF SAN DIEGO FOR DEVELOPMENT IMPACT FEES IN THE AMOUNT OF \$2,181,407.74 RELATED TO THE LANE FIELD SOUTH PROJECT LOCATED IN THE CITY OF SAN DIEGO, WITH CONDITIONS

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, Section 87(b) of the Port Act grants authority to the District to lease the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held, by the State of California; and

WHEREAS, the District entered into a 66-year Lease (Lease) with LFS Development, LLC (Lane Field South) on May 4, 2016 to operate a 400-room single-branded Intercontinental Hotel located between Pacific Highway and North Harbor Drive, north of Broadway, in the City of San Diego (City); and

WHEREAS, as part of the Lease, Lane Field South was required to build a 55 foot setback park from West Broadway (Broadway Setback Park) and the 271 public parking spaces required by the Coastal Development Permit for the development of Lane Field South and Lane Field North (Parking Spaces, together with the Broadway Setback Park are collectively referred to herein as, the South Public Improvements); and

WHEREAS, on February 22, 2017, to obtain building permits, Lane Field South paid the City \$2,181,407.74 (LFS DIF Amount) for the Lane Field South project; and

WHEREAS, Lane Field South requested assistance from the District with securing a reimbursement of the LFS DIF Amount Lane Field South paid to the City; and

WHEREAS, with the opening of the project scheduled for Summer 2018, Lane Field South met with the City last year to discuss ways in which Lane Field South might be reimbursed for the LFS DIF Amount; and

WHEREAS, since Lane Field South did not qualify for the City's customary reimbursement procedure, the City offered an alternative path to reimbursement through a contribution to the District of the LFS DIF Amount; and

WHEREAS, the South Public Improvements are integral to the implementation of the North Embarcadero Visionary Plan (NEVP) and can be funded through a contribution from the City's Downtown Development Impact Fee Fund provided in the 2015 Downtown Public Facilities Financing Plan; and

WHEREAS, for so long as the South Public Improvements exist, the general public will be able to use the South Public Improvements in accordance with any applicable federal, state, and local laws, rules, policies and regulations, including without limitation those of the District, and subject to any rights of Lane Field South and any permittee of the South Public Improvements; and

WHEREAS, the City is willing to contribute the LFS DIF Amount paid by Lane Field South to the District through the Contribution Agreement for North Embarcadero Visionary Plan Public Improvements between the District and the City (Contribution Agreement) because the amount paid by Lane Field South is fixed and is duplicative of impacts mitigated by the construction of the South Public Improvements and the NEVP contemplated cost sharing and contribution of public improvements; and

WHEREAS, the District would reimburse Lane Field South the LFS DIF Amount received from City for the South Public Improvements through the Reimbursement Agreement for North Embarcadero Visionary Plan Public Improvements between the District and Lane Field South (Reimbursement Agreement) if the BPC adopts the resolution authorizing the Reimbursement Agreement; and

WHEREAS, the Contribution Agreement and Reimbursement Agreement follow the same format and reference each other; and

WHEREAS, the essential terms of both agreements include that upon notification to the District from Lane Field South of the completion of the South Public Improvements (anticipated completion in late August or early September 2018), within 10 days the District must perform a site inspection to confirm completion; if improvements are complete, the District shall issue a letter to Lane Field South within 7 days of the site inspection confirming completion of the improvements (Confirming Letter); and within 2 days of delivery of Confirming Letter to Lane Field South, District delivers to City a copy of the Confirming Letter and a request for payment of the LFS DIF Amount; and

WHEREAS, pursuant to the Contribution Agreement, the City would then have 60 days from the date of its receipt of the District's request to deposit the LFS DIF Amount with the District; and

WHEREAS, pursuant to the Reimbursement Agreement, the District would have to reimburse the amount of the LFS DIF Amount received from the City to Lane Field South within 30 days of the District's receipt of the City's deposit; and

WHEREAS, for the Contribution Agreement to be effective, both the BPC and Council for the City of San Diego (Council) must approve the Contribution Agreement and both the City and District must execute the Contribution Agreement; and

WHEREAS, the City has informed staff that the City approval is a two-step process wherein the Contribution Agreement must be considered by the Infrastructure Committee first and if approved, the Contribution Agreement would then be considered by the Council at its next meeting; and

WHEREAS, the Contribution Agreement was considered and approved by the Infrastructure Committee on April 25, 2018 and the Council is scheduled to consider the Contribution Agreement in mid to late June of 2018; and

WHEREAS, Lane Field South has agreed – and District staff has required – that any LFS DIF Amount that is reimbursed to Lane Field South by the District will be reinvested back into the Lane Field South hotel and any adjacent public improvements that benefit the premises; and

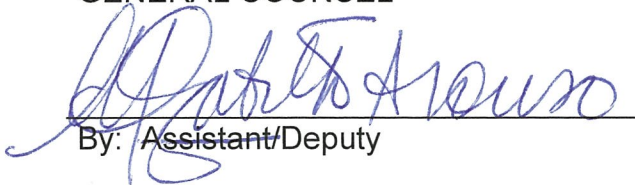
WHEREAS, no more than fifty percent (50%) of the total LFS DIF Amount received by Lane Field South can be used for tenant improvements that directly benefit the property and the remainder of the total LFS DIF Amount must be used for public facing improvements; and

WHEREAS, staff will review and approve all tenant improvements and public facing improvements in conformance with BPC Policy No. 357 prior to Lane Field South's expenditure of the LFS DIF Amount for such improvements.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners (BPC) of the San Diego Unified Port District that the Executive Director or her designated representative is hereby authorized to enter into the Contribution Agreement for North Embarcadero Visionary Plan Public Improvements between the District and the City of San Diego for Development Impact Fees in the amount of \$2,181,407.74 related to the Lane Field South Project located in the City of San Diego, conditioned upon the Council for the City of San Diego approving the Contribution Agreement in the same form as authorized by the BPC herein.

BE IT FUTHER RESOLVED, that the BPC finds, based on the review of the entire record, including, without limitation, the Master Environmental Impact Report (MEIR) and Addendum to the MEIR (Addendum), that the Contribution Agreement, is consistent with the project analyzed in the MEIR and Addendum, that no further environmental review is required in accordance with CEQA Guideline Section 15378(c) as the BPC action is a step in furtherance of the original project for which environmental review was performed. The BPC further finds that the Contribution Agreement complies with Section 87 of the Port Act which allows for visitor-serving commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed project is consistent with the Public Trust Doctrine.

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 8th day of May, 2018, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Valderrama, and Zucchet

NAYS: None.

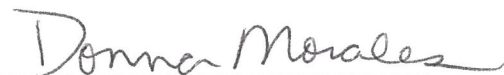
EXCUSED: Moore

ABSENT: None.

ABSTAIN: None.


Rafael Castellanos, Chairman
Board of Port Commissioners

ATTEST:


Donna Morales
District Clerk

(Seal)