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**File #:**2015-1684

**DATE:** November 17, 2015

**SUBJECT:**

**RESOLUTION SELECTING AND AUTHORIZING NEGOTIATIONS WITH THE BRIGANTINE, INC. FOR REDEVELOPMENT AND OPERATION OF ICONIC WATERFRONT RESTAURANT LOCATION AT 1360 NORTH HARBOR DRIVE**

**EXECUTIVE SUMMARY:**

At the May 12, 2015 Board meeting, staff was directed to issue a Request for Proposals (RFP) for the redevelopment and operation of 1360 North Harbor Drive (Location). The Location is currently leased to Anthony's Fish Grotto of La Mesa (Anthony's), which has a 52-year lease with the District that commenced in 1965 and expires on January 31, 2017. The Location includes an approximately 16,580 square foot building, surrounded by an outdoor deck area, constructed on an over-water platform (Attachment A).

On August 11, 2015, staff recommended to the Board to commence negotiations on price and terms with two of the RFP respondents: Sunroad Enterprises (Sunroad) and The Brigantine, Inc. (Brigantine) (Attachment B). The Board agreed with staff's recommendation, but also requested that staff include Fish Market Restaurants, Inc. (Fish Market), an entity in partnership with the existing tenant, Anthony's, in the negotiations. Based upon direction from the Board to proceed with three of the respondents, staff issued a Supplemental Information Request (Supplement) (Attachment C) to: Fish Market; Sunroad; and, Brigantine on August 21, 2015. All three respondents submitted responses to the Supplement (summarized on Attachment D), which staff evaluated comprehensively in conjunction with each respondent's initial submittal to the RFP.

As a successful local family restaurant developer and operator, staff believes Brigantine demonstrates the best balance of activating the Location through increased public access as well as maximizing revenues to the District. First, Brigantine's response to the RFP received the highest overall score from the selection panel based upon the initial evaluation criteria. Second, Brigantine's response to the Supplement was the only proposal to include both an expanded dock and dine facility and public viewing deck as project features. Brigantine's proposed price and terms also maximize the gross revenues of the Location, while providing the highest proposed rent to the District. Therefore, staff recommends the Board select and authorize negotiations with Brigantine for the redevelopment and operation of the Location.

**RECOMMENDATION:**

Adopt a Resolution Selecting and Authorizing Negotiations With The Brigantine, Inc. for Redevelopment and Operation of the Iconic Waterfront Restaurant Location at 1360 North Harbor Drive.

**FISCAL IMPACT:**

The proposed Board action has no direct fiscal impact. If the Board selects and authorizes negotiations with Brigantine, staff will negotiate a lease, which will be presented to the Board for action at a future meeting. Although a lease has not yet been negotiated, the rent structure proposed by Brigantine could result in a minimum annual rent of \$1.1 million a year.

**COMPASS STRATEGIC GOALS:**

As part of efforts to support a vibrant and active waterfront, the District initiated a public solicitation process for redevelopment and operation of the Location. Due to the high profile nature of the Location and the end of a long lease, it was important to test the market and have a competitive process to ensure that the Location's potential is maximized.

This agenda item supports the following Strategic Goals:

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.

**DISCUSSION:**

***RFP Process***

At the May 12, 2015 Board meeting, staff was directed to issue an RFP for the Location. On May 20, 2015, staff issued the RFP and received six proposals from the following respondents:

- Fish Market
- HEG Enterprises
- Landry's, Inc.
- P & J North County Enterprises
- Sunroad
- Brigantine

All six respondents were interviewed by a selection panel of staff on July 9, 2015. Following the interviews, the selection panel conducted a decision analysis and evaluated the proposals on the following five, weighted criteria, which were included in the RFP:

- Ownership Entity's Relevant Experience
- Proposed Management Team's Relevant Experience

- Approach to Project
- Capability to Perform
- Revenue and Expense Projections

While respondents were asked to include revenue and expense projections in the RFP, they were not asked for rent proposals.

On August 11, 2015 staff presented the Board with a recommendation to select the top two respondents, Sunroad and Brigantine, for price and term negotiations. The Board modified the staff recommendation and directed staff to commence negotiations with Sunroad, Brigantine and Fish Market. The Board also directed staff to allow the respondents to make modifications to their proposals. In response to the Board's direction, staff issued the Supplement on August 21, 2015 to all three respondents requesting price and terms and allowing the respondents to amend their initial proposal submittals. The Supplement highlighted the possible inclusion of the following project features discussed by the Board at the August 11, 2015 meeting:

- Public access
- Expansion or utilization of dock and dine opportunities
- Activation of the waterfront
- Provision of a variety of cuisine and price points options to reach a variety of demographics

On September 4, 2015, staff received responses from all three respondents.

### ***Proposal Summaries***

Summaries of the initial proposals are included as part of Attachment B. Responses to the Supplement are summarized below and detailed in Attachment D.

### ***Fish Market Restaurants, Inc.***

Fish Market proposed a joint venture with the current lessee, Anthony's.

### **Proposal Amendment**

Fish Market's amended proposal increases public access through the provision of an observation deck, but did not include an expansion of dock and dine. They also revised their proposal to expand their concepts from three restaurants on two levels to six restaurants on two levels, branded as "Embarcadero Landing." The revised concepts included the addition of a coffee and pastry cart, an Italian themed bar and a craft beer and cocktail bar. It was also proposed that the existing Fishette concept would be revised to provide a broader variety of menu options.

### **Proposed Price and Terms**

- Term - 40 years
- Minimum Investment - \$12 million
- Minimum Annual Rent - \$825,000

- Percentage Rent - 5.5 % gross sales
- Net Present Value of Rent (1<sup>st</sup> 10 years of lease using 6% discount rate) - \$8,963,664

Based on the Fish Market's projections, the net present value of the projected rent to be paid to the District over the first 10 years of the lease is \$8,963,664. Although Fish Market proposed to pay a blended percentage rental rate of 5.5% on gross sales, they proposed to pay the lowest minimum annual rent.

## ***Sunroad***

### Proposal Amendment

Sunroad was the only respondent to not amend their initial proposal. Although Sunroad did not amend their proposal, they noted that they would reevaluate the dock and dine facility once the proposed project was operational.

### Proposed Price and Terms

- Term - 40 years
- Minimum Investment - \$12 million
- Minimum Annual/Incentive Rent - 75% of projected post construction rent or \$1 million
- Reversionary Interest: Up to \$1 million over 10 years
- Percentage Rent: Board adopted percentage rental rates
- Construction Rent: 100% of current tenant rent during construction period, with 50% applied to future percentage rental payments in excess of the minimum annual rent
- Net Present Value of Rent (1<sup>st</sup> 10 years of lease using 6% discount rate) - \$8,364,115

Sunroad proposed the lowest rent of the three proposals, with the net present value of the rent Sunroad projected to be paid to the District during the first 10 years of the lease being \$8,364,115. Sunroad proposed to pay the District's standard minimum and percentage rental rates; however, they also proposed to pay a minimum annual "incentive rent" of \$1 million for the first six years. The incentive rent would guarantee the District \$1 million in annual rent, in the case that the minimum annual rent or percentage rents did not reach that level. Sunroad was also the only respondent to request discounted construction rent, but did include an option to pay the District up to \$1 million in reversionary interest over the first 10 years of the lease if Sunroad reused existing improvements that were valued at that amount.

## ***Brigantine***

### Proposal Amendment

Brigantine amended their proposal to create a public viewing deck above the proposed Miguel's space, making theirs the only proposal to include a public viewing deck **and** expanded dock and dine facilities. While it was optional for the respondents to provide revised renderings, Brigantine provided the renderings included as Attachment E.

Proposed Price and Terms

- Term - 40 years
- Minimum Investment - \$13 million
- Minimum Annual Rent - \$1.1 million
- Percentage Rent - 5% gross sales
- Revenue Sharing - 5.5% to 6% gross sales
- Net Present Value of Rent (1<sup>st</sup> 10 years of lease using 6% discount rate) - \$10,478,307

Brigantine proposed the highest rent to the District, with the net present value of the rent Brigantine proposes to pay the District over the first 10 years of a lease being \$10,478,307. The net present value is slightly more than \$1.5 million higher than Fish Market and slightly more than \$2 million higher than Sunroad. Brigantine also proposed the highest minimum investment of \$13 million. Brigantine proposed a minimum annual rent of \$1.1 million, a blended 5% percentage rental rate on gross sales and a revenue sharing structure of 5.5% or 6% as detailed on Attachment D. Brigantine is also committed to negotiating the following additional terms under a lease: paying the District a percentage of proceeds on a sale; paying the District a percentage of proceeds on a refinance; and, providing public enhancements to the leasehold area, consistent with the North Embarcadero Visionary Plan improvements.

**Staff Recommendation**

Staff recommends that the Board select and authorize negotiations with Brigantine for the redevelopment and operation of the Location. Brigantine received the highest overall score from the selection panel on their initial response to the RFP. Brigantine's response to the Supplement also demonstrates the most comprehensive proposal for activating the Location, providing public access and maximizing the Location's revenues and rent paid to the District.

Brigantine is a family-owned entity that has been developing and operating restaurants since 1969 in San Diego County, including their current 12 restaurants operating as Brigantine Seafood and Oyster Bar and Miguel's Cocina. Brigantine has a proven track record as a strong operator that has redeveloped and rebranded underperforming restaurant locations, and they continue to reinvest \$2-3 million in their restaurants each year. They also have a strong management team with over 20 years of experience and diverse backgrounds. Most notably, Mike Morton, Jr., CEO of Brigantine, was named 2014 Restaurateur of the Year by the San Diego County chapter of the California Restaurant Association.

**Next Steps**

The Board has the discretion to accept, modify or reject staff's recommendation. If the Board approves the staff recommendation, staff would commence environmental review on the proposed project on a parallel track to negotiating a lease with Brigantine based upon the initial terms proposed on Attachment D. Staff will ultimately return to the Board for the adoption or certification of the environmental review document and the subsequent approval of the lease and other necessary permits or entitlements; however, the Board's action does not commit the District to making any physical change to the Location and does not constitute a binding contractual commitment to the

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Brigantine. As discussed above, staff believes that all three proposals are exceptional, but that the Brigantine proposal is the most responsive to the goals of the RFP, including the Supplement, and will likely activate the Location and generate the most rent to the District over time.

**General Counsel's Comments:**

The General Counsel's Office has reviewed the agenda sheet and attachments as presented to it and approves them as to form and legality.

**Environmental Review:**

The proposed Board action would not result in a physical change to the environment. Additionally, authorization to negotiate for the redevelopment and operation of the property located at 1360 North Harbor Drive (Location) does not constitute an "approval" of a project under the definitions set forth in the California Environmental Quality Act (CEQA) Guidelines Sections 15387 and 15352 and is therefore, not subject to CEQA. The proposed action sets forth the parties intent to further explore the redevelopment and operation of the Location, which may ultimately result in a lease, permits, and improvements at the Location, as well as operation of a restaurant(s) at the Location; as a condition of approval of the resolution, CEQA review must be conducted prior to issuance of any lease, permits or entitlements necessary to operate and improve the Location. Additionally, the Board reserves its discretion to adopt any and all feasible mitigation measures, alternatives to the project, including a no project alternative, a statement of overriding consideration, if applicable, and approve or disapprove the project and any permits or entitlements necessary for the same. Those decisions may be exercised in the sole and absolute discretion of the Board. Based on the totality of the circumstances and the entire record, the Board's action does not commit the District to a definite course of action, including, but not limited to, approval or commencement of a lease, or operation or improvements by the proposer at the Location prior to CEQA review being conducted. No further action under CEQA is required for this item.

The proposed Board action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations. Therefore, issuance of a CDP or exclusion is not required for the proposed Board action. The Board will consider the redevelopment and operation of the Location after the appropriate documentation under District's Port Master Plan (if required), and the District's CDP Regulations has been completed and authorized by the Board, if necessary.

**Equal Opportunity Program:**

There was no Small Business Enterprise (SBE) goal established for this phase of the selection process. If selected, staff will request Brigantine submit an SBE plan for the redevelopment and operation of the restaurant.

**PREPARED BY:**

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**Attachments:**

- Attachment A: Location Map
- Attachment B: August 11, 2015 Agenda Sheet, File #2015-1493
- Attachment C: Supplemental Information Request
- Attachment D: Summary of Responses to Supplemental Information Request
- Attachment E: Revised Brigantine Renderings