



DATE: March 5, 2014

TO: Honorable Mayor and City Council Members

FROM: Property Management

SUBJECT: **APPROVAL OF CHANGE ORDER TO THE CONTRACT WITH BONSALL PETROLEUM CONSTRUCTION, INC. FOR THE REVISED EL CORAZON RECLAMATION PLAN GRADING IMPROVEMENT PROJECT IN THE AMOUNT OF \$256,000 AND APPROVAL OF AN AMENDMENT TO THE LEASE AGREEMENT WITH SOCAL SC, L.P. FOR THE MULTI-USE FIELDS AT EL CORAZON**

SYNOPSIS

Staff recommends that the City Council approve Change Order No. 2 in the amount of \$256,000 to the Contract with Bonsall Petroleum Construction, Inc. to accelerate the completion of the Revised El Corazon Reclamation Plan Grading Improvement Project; approve Amendment 1 in the amount of \$100,000 to the Lease Agreement with Socal SC, L.P. to provide for a loan to offset a portion of the cost to accelerate the grading project; approve a budget appropriation of \$256,000 from the El Corazon Reserve Account to the Silica Reclamation Account in order to pay for the contract amendment; and authorize the City Manager to execute the change order and amendment.

BACKGROUND

In January 2013 the City Council approved the Recreational Disposition and Development Agreement ("DDA") with Sudberry Development Inc. ("Sudberry"). The DDA required the City of Oceanside ("City") to grade a portion of El Corazon ("Property") so as to provide a pad for 22 multi-use athletic fields, a parking lot, a park area, and other ancillary uses ("Field Improvements"). Also, as part of the DDA, a Lease Agreement ("Lease") was approved with Socal SC, L.P. ("Lessee"), for the development and use of the Property.

A contract for the Revised El Corazon Reclamation Plan Grading Improvement Project for the Property ("Project") was expected to be awarded in early 2013. Unfortunately, the original proposal came in significantly higher than the projected amount of \$1,500,000. Staff had to revise the scope of work to reduce some of the grading components. The Project went out to rebid in April 2013.

In June 2013 the City Council approved a grading contract with Bonsall Petroleum Construction, Inc. ("Contractor") for the Project. The scope of work for the Project is to

grade the Property so as to create a "finished" pad for the development of the Field Improvements by Lessee. The contract is in the amount of \$1,455,705 and calls for moving 850,000 cubic yards ("CY") of material onsite as part of the grading of the Property.

Although the contract with Contractor calls for a completion date of December 2014, that date and corresponding contract price was based on the Contractor only moving fill material on-site in order to grade the Property. To complete the grading of the Property before said date and within the contract price it was anticipated that the grading of the Property would be accelerated due to the regular importing of fill material from outside third parties as part of the El Corazon Reclamation Plan. Under this scenario, the grading of the Property was anticipated to be completed in April 2014.

As the Project commenced a significant amount (i.e., potentially up to 300,000 CY) of fill material from the outside was received and placed on the Property. This circumstance allowed the Project to progress with the anticipated completion date of April 2014. Unfortunately, there was an unforeseen stoppage of this significant source of fill material from the outside due to a change in the construction of that related project. This caused a delay in the accelerated completion date of the Project.

Lessee had planned to begin constructing the irrigation system and planting of sod in April of 2014 so as to schedule the "Surf Cup" tournament in July 2014. Lessee has indicated that unless the grading of the Property is completed and delivered to Lessee by May 2014, Lessee will have to cancel the "Surf Cup" tournament and other tournaments. Lessee also indicated that, in any event, the Property needs to be delivered by July 2014 in order to allow the sod to establish before the dormant season and also stay on schedule for the "Surf Cup" tournament in November 2014.

ANALYSIS

Staff began looking at what is needed to complete the Project in order to try and keep the "Surf Cup" tournament on schedule for July 2014 and other significant tournaments scheduled shortly thereafter. After discussions with the Contractor, staff was informed that the delivery of the significant source of outside fill material has resumed and should continue on a regular basis. With this event, Contractor informed staff that for the amount of the change order, the grading of the Property can be accelerated.

With the change order to the contract, the Contractor can use more machinery to move more fill material onsite. The Contractor anticipates a new completion date of July 2014 (subject to certain conditions) without a need for outside fill material. This allows the Project to be potentially completed by the desired May 2014 date with the current rate of fill material being delivered from outside third parties completed (subject to weather and soils conditions).

In order to offset some of the \$256,000 cost to fund the change order to the contract, Lessee will be responsible for \$100,000 of the additional cost. The City would pay the

Contractor Lessee's share and Lessee would repay the City the amount, together with interest, over the term of the Lease. This loan to and repayment by Social SC, L.P., will be set forth in an amendment to the Lease.

Additionally, the Contractor would also provide a portion of the total cost. Contractor will offset \$56,000 by providing in-lieu services as permitted between the Professional Services Agreement that Contractor (doing business as Moody's) has with the City. Under the agreement, the Contractor can provide grading-related activities at El Corazon in-lieu of paying the City revenue it receives from outside third parties for reclamation activities at El Corazon.

FISCAL IMPACT

By paying an additional \$256,000 to fund the accelerated grading of the Project under the contract (of which \$100,000 will be repaid by Lessee), Lessee can again look to schedule the "Surf Cup" tournament and other significant tournaments in July, August and September of 2014. By having the grading of the Project completed in May 2014, the City has the opportunity to receive additional revenue and benefits as follows:

1. The "Surf Cup" and other tournaments potentially generate 10,000 room nights. At \$135 per room night the total revenue is \$1,350,000 of which the City gets 10 percent as TOT or the amount of \$135,000.
2. Additionally, for a tournament event that is equivalent of the "Surf Cup" it is estimated that participants will spend an additional amount of \$1,200,000 in Oceanside.
3. The Oceanside Soccer Club can begin using the fields so as to free up other fields at City facilities, which can then be utilized by other recreational users in the City.

The funding for the \$256,000 change order will be funded out of the El Corazon Reserve Account No. 501.3020.0189, which has sufficient funds. The amount will need to be appropriated to the Silica Reclamation Business Account No. 912880500501.5305.10200 in order to pay the Contractor. The funds in this account can only be used for reclamation (e.g., grading) related activities at El Corazon and thus would eventually be used for a similar activity in the future.

The loan to the Lessee and the repayment terms will be added as condition to the Lease. Lessee will begin repayment of the loan beginning in Year 3 of the Lease (or earlier as cashflow permits). Payment will be principle and interest amortized over 23 years at a 5 percent interest rate. Loan repayments will be placed in the Silica Reclamation Revenue Account No. 912880500501.4351.0012.

INSURANCE REQUIREMENTS

Contractor and Lessee will continue to comply with the City minimum coverage requirements throughout the term of their respective agreements.

COMMISSION OR COMMITTEE REPORT

The Economic Development Commission has previously approved the Project and the lease agreement for the use of the Property.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

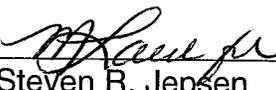
Staff recommends that the City Council approve Change Order No. 2 in the amount of \$256,000 to the Contract with Bonsall Petroleum Construction, Inc. to accelerate the completion of the Revised El Corazon Reclamation Plan Grading Improvement Project; approve Amendment 1 in the amount of \$100,000 to the Lease Agreement with Social SC, L.P. to provide for a loan to offset a portion of the cost to accelerate the grading project; approve a budget appropriation of \$256,000 from the El Corazon Reserve Account to the Silica Reclamation Account in order to pay for the contract amendment; and authorize the City Manager to execute the change order and amendment.

PREPARED BY:



Douglas E. Eddow
Real Estate Manager

SUBMITTED BY:



Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Scott Smith, City Engineer

James R. Riley, Financial Services Director







AMENDMENT NO. 1 TO LEASE AGREEMENT

THIS AMENDMENT NO. 1 TO LEASE AGREEMENT ("Amendment") is entered into this 5th day of March 2014, by and between the City of Oceanside, a public body, corporate and politic ("City"), and SOCAL SC, L.P., a California limited partnership ("Lessee").

RECITALS

WHEREAS, on January 2, 2013, the City and Sudberry Development, Inc. ("Developer"), entered into a Recreational Disposition and Development Agreement ("Agreement") to establish the roles and responsibilities of the City and the Developer pending the close of escrow for the creation and commencement of the leasehold estate for the recreational development of a portion of El Corazon;

WHEREAS, on November 14, 2014, the City and Lessee (whose controlling interest is with affiliates of the Developer) entered into a Lease Agreement ("Lease") and closed escrow in connection therewith to commence the leasehold estate for the recreational development of a portion of El Corazon;

WHEREAS, as a requirement of City under the Agreement, the City has commenced and is in the process of grading the Premises as described in the Lease so as to allow for the development of multi-use athletic fields and ancillary uses related thereto upon the Premises by Lessee;

WHEREAS, the parties are desirous of accelerating the completion of the grading of the Premises by the City, which would entail increasing the compensation to be paid by City to its grading contractor and in sharing in the cost associated therewith; and

WHEREAS, the parties are further desirous of amending the Lease to provide for a loan from City to Lessee to reflect Lessee's share of the cost to accelerate the completion of the grading of the Premises.

NOW THEREFORE, in consideration of the mutual covenants, conditions and provisions contained herein, the parties hereto agree as follows:

AGREEMENT

1. **Subsection 3.06 Loan Repayment**. shall be added to **SECTION 3:** to read as follows:

3.06 Loan Repayment.

Upon payment by the City to its grading contractor of the sum of Two Hundred Fifty-Six Thousand and No/100 Dollars for the accelerated grading of the Premises,

Lessee agrees to repay the City the amount of One Hundred Thousand and No/100 Dollars (\$100,000)(the "Loan") payable as follows:

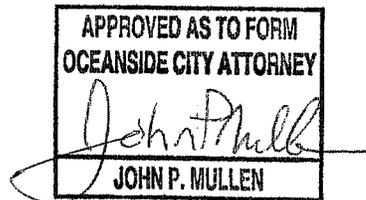
1. The Loan shall be amortized over 25 years and bear interest at the rate of 5% commencing June 1, 2014, with the initial monthly payments of principal and interest from June 1, 2014, to November 1, 2016 (the "Deferred Payment Period") being deferred to the end of the term.
2. Lessee shall not be required to make a loan payment until November 2016. The payments occurring during the Deferred Payment Period shall be deferred to end of the 25 year Lease term and shall be due and payable in a final balloon payment.
3. During the remaining 23 years of the original Lease term, commencing on November 1, 2016, Lessee shall pay to the City monthly, the amount of Five Hundred Eighty-Four and 59/100 Dollars (\$584.59) or until the entire principal and interest of the Loan have been paid in full.
4. At the end of the 25 year Lease term, Lessee shall pay any remaining principal and interest owing on the Loan.
5. The Loan may be prepaid without premium or penalty at any time.

2. Except as set forth in this Amendment all other terms and conditions of the Lease shall remain in full force and effect. All capitalized terms set forth in this Amendment shall have the same meaning as originally set forth in the Lease. Should there be a conflict between this Amendment and the Lease, the terms of this Amendment shall prevail.

"City"

CITY OF OCEANSIDE
a public body, corporate and politic

By: _____
Steven R. Jepsen, City Manager



"Lessee"

SOCAL SC, L.P.,
a California limited partnership

By: Sudberry Development, Inc.
-Its general partner-

By: Charles J. Todd
Name: Charles J. Todd
Title: Chief Operating Officer

NOTARY ACKNOWLEDGEMENT OF LESSEE'S SIGNATURE MUST BE ATTACHED

State of California)
)ss.
County of San Diego)

On February 24, 2014 before me, Victoria S. Millay, a Notary Public, personally appeared Charles J. Todd who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Victoria S. Millay

