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Staff Report for a Resolution of the City Council of the City of San Leandro to Approve and Authorize the City Manager to Execute a Non-Exclusive License with PropSF for Access to the Wes McClure Public Boat Launch

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council adopt the attached Resolution that would approve and authorize the City Manager to execute a Non-Exclusive License Agreement between the City of San Leandro and PropSF for non-exclusive access to the Wes McClure public boat launch and associated parking to conduct weekday private charter boat service at the San Leandro Shoreline.

BACKGROUND

The San Leandro Shoreline area includes a number of amenities that are used by lessees and the public at large for recreation-related activities, including the Wes McClure boat launch, which is located near the intersection of Monarch Bay and Pescador Point Drives. This boat launch and its associated parking are available to the public for loading and unloading of vessels.

PropSF ("Prop") is a commercial maritime transportation company that provides a private charter ferry service under contract to various entities who desire to travel by water, and has ongoing operations in other areas of the San Francisco Bay Area. Prop's mission is to offer an "innovative ferry service" that provides a shorter and more consistent commute for employees throughout the Bay Area. Prop would like to utilize the City's public boat launch for a pilot program in San Leandro to pick up and drop off passengers associated with Prop's private charter service. In addition, Prop's riders would like to use parking spaces within the adjacent parking area, which are open and available for public parking.

Prop is currently working with Genentech, a biotechnology corporation that wants to utilize Prop's services to provide private charter boat service to help its employees commute to Genentech's headquarters in South San Francisco. The proposed boats from San Leandro would be just one part of Genentech's transportation program, which provided over 1.25 million rides in 2017 alone.

Genentech has approximately 50 employees who live in San Leandro and approximately 600 employees located within a 20-minute drive time of San Leandro and has heard from a number of employees interested in a San Leandro ferry service. With an approximate 25-minute ride across the Bay, travelling by boat greatly reduces the commute time for east-bay based Genentech employees while also helping to encourage alternative means of transportation that help reduce vehicle traffic and air pollution region-wide. Prop currently provides private charter boat services for Genentech and other employers out of marinas in Emeryville, Berkeley, Richmond, Benicia, and Tiburon. Prop's proposed use of the public boat launch for a private charter service is permitted under San Leandro Code. Prop's use is subject to the general regulations for the Marina and public boat launch, as well as additional conditions as may be approved by the City Council. The proposed Non-Exclusive License Agreement ("License Agreement") was developed as a means to officially provide Prop with a non-exclusive license to utilize the boat launch, specify the parameters of Prop's use (frequency of access, utilization of parking, etc.), provide for a time-limited term of approval, clarify Prop's rights and expectations with regards to access to the boat launch and parking area now and in the future, and ensure that Prop provides appropriate indemnification and insurance to the City.

The general approach and terms of the License Agreement were developed with input from various departments and divisions, including Community Development, Public Works, Finance, Engineering and Transportation, and the City Attorney's Office. Staff worked together to develop a proposed approach that was found to be appropriate for the scope and impact of the service being provided, while also taking into consideration the time-limited scope of the project due to expected changes to the Shoreline area. As this type of service has not been previously provided at the Shoreline, a "pilot" approach that provides flexibility for both the City and user to make changes and account for any unanticipated impacts, is proposed. Based upon this, the attached Non-Exclusive License Agreement was drafted.

ANALYSIS

Prop's proposal was brought to the City Council at the November 19, 2018 meeting. At this meeting, the City Council referred the item to the City Council Facilities and Transportation Committee for further review and discussion. The proposal was discussed at the December 5, 2018 and January 9, 2019 Facilities and Transportation Committee meetings. Based upon the Committee's direction, the following additional conditions are included in the proposed License Agreement, as further described below:

- License Fee of \$1,000 per month, as consideration for use of the boat launch and designated public parking
- Designation of Parking Area where Prop's riders are to park and a requirement that they not park in other areas
- Requirement that Prop restripe Parking Area according to the City's specifications

Under the proposed Non-Exclusive License Agreement, Prop will be permitted to utilize the public dock up to eight times per weekday, with four pick-ups and four drop-offs. Prop plans to have shuttle

service generally occur once per hour between the hours of 5:00 AM - 9:00 AM and 3:00 PM - 7:00 PM. Prop's boats seat 36 people, with a potential for up to 144 riders per day. Prop is required to obtain a Business License.

A License Fee of \$1,000 per month is proposed for Prop's use of the boat launch. The fee is recommended based upon research of fees charged at Prop's other launch locations and is aligned with the average fee that other marinas charge.

Under the proposed Agreement, riders of the Prop boats would be permitted to park only in the parking lot directly adjacent to the boat launch (as indicated in Exhibit B to Agreement). They would not be permitted to park in other adjacent parking areas. Prop would also be required to make necessary improvements to the parking lot to restripe the parking spaces and add any necessary pavement marking and signage. The parking lot would be restriped to maintain two rows of larger boat/trailer parking and the remaining parking would be converted to standard vehicle parking. Upon restriping, it is expected that approximately 66 standard vehicle parking spaces would be available for Prop's riders (as well as any other users of the boat launch) in the parking area. Prop's customer, Genentech, will manage their employees' use of the parking area and provide alternate transportation, to include limited buses or vans, for riders who are not able to park in the designated area to ensure that they do not park in other areas.

In order to better serve users, Prop and Genentech also intend to make improvements to the docks at the public boat launch. Under the terms of the agreement, Prop may perform improvements and upgrades to the dock with City approval and would dedicate such improvements to the City for public use. Additional provisions are included to ensure that Prop performs such work according to applicable regulations, and provides appropriate insurance coverage for the dock work as well as its ongoing operations.

The agreement as currently proposed is for an initial one-year term, with additional terms permitted on a one-year basis, subject to City Manager approval. Amendments to the agreement are permitted with approval of both parties and there is a provision for cancellation of the agreement with 30 days' notice. Prop's initial service at the boat launch is intended to act as a pilot project, with potential for changes and additional provisions in the agreement as the Shoreline area is developed.

The agreement includes provisions related to indemnification and insurance, which were developed and reviewed by the City Attorney's Office and the Risk Manager. Proposed provisions were developed to provide the City broad protection against liability, including Section 6.A, which states that *"the City shall not, in any event whatsoever, be liable for any injury or damage to any property or to any person in or about the Shoreline property and its improvements or appurtenances, nor for any injury or damage to any property belonging to Prop or Prop's passengers or to any other person which may be caused by any cause whatsoever . . ."* Additionally, Prop is required to carry broad insurance, including a \$5 million commercial general liability policy listing the City as additional insured.

The City currently has an exclusive negotiating rights agreement (ENRA) with Cal-Coast Development, LLC, for development of a portion of the Shoreline property, north of Fairway Drive. Under the terms of the ENRA, the City may enter into a long-term lease of portions of the Shoreline property that will result in the relocation of the Wes McClure public dock. Staff discussed the planned

redevelopment of the Shoreline area with Prop and Genentech. Additionally, Cal-Coast is aware of the proposal and open to exploring long-term options in the future for Prop's use that integrates with the planned development.

The agreement acknowledges that the existing boat launch location, and in particular, availability of parking spaces, will likely be impacted as a part of the redevelopment of the surrounding area by Cal-Coast. Genentech provides a wide network of bus shuttle service to its employees across the Bay Area and will explore providing bus shuttle service to employees to the San Leandro Shoreline from an off-site lot in the future. Despite these proposed changes to the future facilities, Prop and Genentech remain highly interested in using the boat launch during this interim period before construction of the broader Shoreline project commences.

Utilization of Prop's proposed service from San Leandro has the potential to improve the quality of life for its riders, reducing their daily commute times and allowing them more productive use of their commute (e.g., utilizing Prop's onboard Wi-Fi). Prop's service also has environmental benefits, reducing carbon emissions by encouraging individuals to lessen their vehicle miles travelled.

Previous Actions

The proposal was reviewed by the City Council at its November 19, 2018 meeting. At that time the City Council deferred the item to its Facilities and Transportation Committee for further review.

Committee Review and Actions

The proposal was reviewed by the City Council Facilities and Transportation Committee at its December 5, 2018 and January 9, 2019 meetings. At the January 9 meeting, the proposal was referred back to the City Council with a positive recommendation.

Environmental Review

As a private boat utilizing an existing public boat launch and public waterways in the manner in which they were designed for use, the proposal does not qualify as a project under the California Environmental Quality Act (CEQA), and as such is not subject to environmental review.

Legal Analysis

This Agreement was reviewed by the City Attorney and approved as to form.

Fiscal Impacts and Budget Authority

This Agreement will have no cost to the City, with the licensee, PropSF, performing additional work at the Shoreline at its own cost and obtaining an annual permit to utilize the public boat launch.

Attachment to Resolution

- Non-Exclusive License Agreement

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Department