- **Board of Directors**
  Asset and Recreation Committee

August 15, 2006 Board Meeting

REVISED 8-1

Subject

Authorize terminating the exclusive negotiating agreement with Shopoff/Centex; authorize entering into discussions ~~negotiations~~ with ~~Lewis/~~Shea/Parsons/LEDO for the Diamond Valley Lake Recreation and Land Development Program; and direct staff to develop a plan for proceeding with the program. **[Conference with real property negotiators: Jill Wicke, Lilly Shraibati, Joseph Vanderhorst, and Curtis Baynes; negotiating parties: J.F. Shea & Company; under negotiations: price and terms; may be heard in closed session pursuant to Gov. Code Section 54956.8]**

Description

Developer Selection Process

In August 2005, Metropolitan issued a Request for Proposals (RFP No. 760) for the Diamond Valley Lake Recreation and Land Development Program. This program involves the construction and operation of recreation facilities on Metropolitan's East Recreation Area at Diamond Valley Lake in connection with the development of the surplus North Property consisting of approximately 731 acres. A total of six teams submitted proposals, and Metropolitan's evaluation committee of staff and consultants reviewed the proposals through a competitive selection process that included presentations attended by four Board member observers.

At the conclusion of the process, the evaluation committee ranked three leading candidates and recommended negotiations with the development team led by The Shopoff Group and Centex Homes (Shopoff/Centex) as the top candidate. The other two development teams evaluated as qualified were Lewis/Shea/Parsons/LEDO and Lennar/Rancon. The Board authorized negotiations with Shopoff/Centex in November 2005, and approved execution of an exclusive negotiating agreement (ENA) for nine months with Shopoff/Centex in March 2006.

Shopoff/Centex Negotiations

On May 31, 2006, Shopoff/Centex completed the first phase of the negotiations by submitting its preliminary plans for the recreation and residential/commercial development, as well as initial cost and revenue estimates. Metropolitan's staff and consultants reviewed the submittal and provided input and requests for additional information. However, on June 27, Shopoff/Centex provided a letter stating their decision to terminate their participation in the program. Metropolitan's staff believes that it is appropriate to terminate the ENA at this time by mutual agreement.

Metropolitan's costs incurred in the negotiations are reimbursed from a deposit made by Shopoff/Centex. The unexpended balance of the $200,000 deposit will be refunded to Shopoff/Centex after all applicable costs have been deducted. The ENA authorizes Metropolitan to utilize any work product generated by Shopoff/Centex in the event of termination, provided that Metropolitan reimburses Shopoff/Centex for Shopoff/Centex's actual costs incurred in generating the work product. Accordingly, Metropolitan plans to make use of topographic mapping based on aerial photography performed by Robert J. Lung & Associates, Inc. for Shopoff/Centex at an estimated cost of $39,000. The cost of the topographic mapping will be reimbursed by the subsequent developer team that makes use of the materials.

Negotiations with ~~Lewis/~~Shea/Parsons/LEDO

At the time the Board approved negotiations with Shopoff/Centex, staff was directed to continue discussions with the two other qualified development teams in the event that the negotiations failed. ~~Both of the remaining~~

~~qualified teams have been contacted and remain available to engage in negotiations for the project based on their proposals. It is recommended that negotiations be commenced with the Lewis/SHEA/Parsons/LEDO based on their second place ranking by the evaluation committee.~~ However, staff was advised that Lewis Operating Corp. had withdrawn as a participant in the Shea/Parsons/LEDO team. The remaining members of the team have advised Metropolitan that they are ready and capable of proceeding in the absence of Lewis.

J.F. Shea Co. and Lewis Operating Corp. originally submitted separate statements of qualification for this project. Based on these statements, staff concluded that each of these companies was qualified on its own. When RFP No. 760 was issued, the firms combined to submit a joint proposal. Even with the withdrawal of Lewis Operating Corp., staff has concluded that J.F. Shea Co. remains individually qualified to undertake the project. Furthermore, the withdrawal of Lewis Operating Corp. does not prejudice the remaining project proposals. The Shea/Parsons/LEDO team has confirmed that their proposal is unchanged by the withdrawal. If Metropolitan questioned the ability of the remaining team members to complete the project, it could decide that the change disqualified this team and justified selecting another developer for the project. However, the withdrawal of a team member without any other change in the proposal or the remaining team members has not deprived any other proponent of a fair evaluation process based on the proposals submitted. For these reasons, it is recommended that negotiations be commenced with the Shea/Parsons/LEDO team based on their second place ranking by the evaluation committee.

As with the Shopoff/Centex negotiations, it is proposed that the process for the negotiations with ~~Lewis/~~Shea/Parsons/LEDO be governed by an exclusive negotiating agreement that includes provision for reimbursing Metropolitan's costs. To ensure progress during the negotiations, the agreement will provide for ~~three~~ four phases with performance measures to be met by the developer team, as follows:

> Phase I: ~~Lewis/~~Shea/Parsons/LEDO submits its preliminary master development plan, cost and revenue estimates, project budget, financial feasibility analysis, and financing approach for development and operation of the project.
>
> Phase II: ~~Lewis/~~Shea/Parsons/LEDO submits preliminary infrastructure plan, updated cost estimates based on input from Metropolitan and Hemet, plan for entitlements and CEQA review, and revised master development plan.
>
> Phase III: ~~Lewis/~~Shea/Parsons/LEDO submits proposed organization for project implementation, operations and maintenance plan, marketing strategy, financing plan, and project pro forma explaining financial feasibility and investment requirements.
>
> Phase IV: Complete negotiations on business terms and project agreement between Metropolitan and ~~Lewis/~~Shea/Parsons/LEDO.

Each phase will be followed by a three-week period to allow Metropolitan, its consultants, and the Board to thoroughly review the information submitted by ~~Lewis/~~Shea/Parsons/LEDO. The purpose of the initial negotiations is to lead to a project agreement that will be brought to the Board for approval. Construction of facilities and conveyance of property will not occur during this negotiating period.

The proposed ENA is flexible and allows Metropolitan to proceed in a different manner at any time during the term of the negotiations. The agreement also specifies a limited time period in which the parties will negotiate exclusively. The agreement does not obligate Metropolitan or ~~Lewis/~~Shea/Parsons/LEDO to carry out a development project. This approach is of low financial risk since ~~Lewis/~~Shea/Parsons/LEDO will reimburse most of Metropolitan's predevelopment costs, and is of high value since Metropolitan gains information with which to develop and finalize business terms for the project either with or without the proponent.

Staff will return to the Board for approval of the ENA in the September/October time frame.

Contingency Planning

Parallel to discussions with ~~Lewis/~~Shea/Parsons/LEDO, staff will develop its own plans for pursuing the entitlement and sale of the North Property, as well as a plan on how to develop the recreation facilities. This plan would be developed as an option that the Board could implement in the event that negotiations with

~~Lewis/~~Shea/Parsons/LEDO fail. The Board may also choose to pursue negotiations with the third qualified developer team, Lennar/Rancon.

Policy

Prior Board Actions: March 14, 2006, Item 8-2, Minute Item 46594; and November 8, 2005, Item 8-2, Minute Item 46451

California Environmental Quality Act (CEQA)

CEQA determination for Options #1 and #2:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #3:

None required

Board Options

Option #1

Adopt the CEQA determination and

a. Authorize the General Manager to terminate the ENA with Shopoff/Centex on terms that include acquisition of the topographic mapping from Shopoff/Centex in accordance with the ENA;
b. Authorize the General Manager to enter into ~~negotiations~~ discussions with ~~Lewis/~~Shea/Parsons/LEDO for the Diamond Valley Lake Recreation and Land Development Program; and
c. Should discussions with ~~Lewis/~~Shea/Parsons/LEDO fail, direct staff to return to the Board with a plan for proceeding with negotiations with Lennar/Rancon or pursuing the entitlement and sale of the North Property and a plan and budget for development of the recreation facilities under direct supervision of Metropolitan's staff.

Fiscal Impact: Metropolitan's expenditures during the term of the ENA will be reimbursed by ~~Lewis/~~Shea/Parsons/LEDO.

Business Analysis: This option allows Metropolitan to pursue the financial benefits that may accrue from the joint development of its proposed recreation facilities at the East Recreation Area with the surplus North Property.

Option #2

Adopt the CEQA determination and

a. Authorize the General Manager to terminate the ENA with Shopoff/Centex;
b. Direct staff to proceed with negotiations with Lennar/Rancon or re-advertise a request for proposals for the Diamond Valley Lake Recreation and Land Development Program; and
c. Direct staff to return to the Board with a plan for the entitlement and sale of the North Property and a plan and budget for development of the recreation facilities under direct supervision of Metropolitan's staff.

Fiscal Impact: None at this time. This option will extend the schedule for the development of the East Recreation Area.

Business Analysis: The limited potential for obtaining new proposals with greater benefits to Metropolitan is offset by the delay in construction of recreation facilities.

Option #3

a. Authorize the General Manager to terminate the ENA with Shopoff/Centex; and

b. Direct staff to return to the Board with a plan for the entitlement and sale of the North Property, and a plan and budget for development of the recreation facilities under direct supervision of Metropolitan's staff.

Fiscal Impact: None at this time. The extent of fiscal impact will depend on the value achieved by the sale of the surplus North Property and the budget for planning, construction, and operation of the recreation facilities.

Business Analysis: This option does not allow Metropolitan to pursue the financial benefits that may accrue from the joint development of its proposed recreation facilities at the East Recreation Area with the surplus North Property.

Staff Recommendation

Option #1

8/8/2006

Jill T. Wicke *Date*
Manager, Real Property Development and Management

8/8/2006

Jeffrey Kightlinger *Date*
General Manager

BLA #4708