



**SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT**

**Item No.
20**

Meeting Date: **AUGUST 4, 2011**

Subject:

Grant a Concession Lease to Mission Yogurt, Inc. for Development and Operation of Food Service Package #4

Recommendation:

Adopt Resolution No. 2011-0100, awarding a concession lease to Mission Yogurt, Inc. for development and operation of Food Service Package #4, as included in the Request for Proposals (RFP) for Food Service and Retail Concessions, for a maximum term of nine (9) years and two (2) months, which includes a period not to exceed twenty-six (26) months to allow for Package Completion, and a first year Minimum Annual Guarantee (MAG) of \$288,200 following Package Completion; and authorizing the President/CEO to take all necessary actions to execute the concession lease.

Background/Justification:

For the past three years, staff has been planning for a new concession program at San Diego International Airport (SDIA). The Concession Development Program (CDP) incorporates additional concession opportunities from the Terminal 2 West (Green Build) and Terminal 2 East expansion projects and the re-concepting of most existing locations beginning in December 2012. At its October 26, 2009 meeting, the Board was first informed of the CDP including the goals, objectives, and business strategy of the initiative. Staff further informed the Board of different concession management approaches and recommended a hybrid approach of multiple prime concessionaires with the option for direct leasing. At its November 4, 2010 meeting, staff updated the Board on the CDP Request for Proposals planning and business community outreach efforts. Finally, at its January 6, 2011 meeting, the Board was briefed on RFP packaging guidelines and concession locations in advance of the release of the RFP in February 2011.

On February 2, 2011, eight (8) food service and eight (8) retail concession packages were released via the CDP RFP. The CDP will expand from today's approximately 60,000 square feet to approximately 85,000 square feet of food service and retail space when completed. At full build-out in 2014, the number of food service and retail concession locations will increase from 55 today to up to 86.

000256

As previously briefed to the Board, the CDP RFP included the following goals and objectives:

- Diversity of concepts from local, regional, national, and international brands
- Encourage healthy competition
- Optimize concession revenues
- Capture the spirit of the San Diego region
- Create opportunities for local, small and Airport Concession Disadvantaged Business Enterprises (ACDBE)
- Maximize concession opportunities
- Provide an efficient operating environment
- Exceed passengers' expectations

Each package of the RFP required respondents to propose rent terms that included a fixed MAG and percentage rents of gross sales within a specified range. To ensure a diversity of concepts and encourage competition, the RFP also established the following limitations on the award of concession leases to a single proposer:

- 30% of food service square footage
- 35% of retail square footage
- 30% of total program square footage

On May 25, 2011, a combined total of 48 responsive proposals for food service and retail packages were received from 20 business entities. However, four of the food service packages included in the CDP RFP either did not receive any proposals or received only one proposal. Interviews were conducted with several proposers who submitted responsive food service proposals to determine aspects of those four packages that may have caused the low number of proposals. Based on their input staff changed certain elements of the four packages. A new RFP covering the revised four packages (Supplemental RFP) was released on July 12, 2011. Only pre-qualified entities that submitted proposals during the initial CDP RFP process were eligible to submit proposals under the Supplemental RFP. Proposals for the Supplemental RFP were due on July 26, 2011. Recommendations for awards are planned to be presented for Board consideration on September 1, 2011.

Food Service Package 4 Details

Food Service Package #4 encompasses 2% of the total food service square footage. Food Service Package #4 includes the following 2 locations and concept types:

Location	Square Footage	Concept
T2W Pre-Security	372	Gourmet Coffee w/ Prepared Food and Baked Goods
T1 Post-Security	734	Gourmet Coffee w/ Prepared Food and Baked Goods
Total	1,106	

A map depicting the Food Service Package #4 locations within the terminals is provided in Attachment 1.

The term of the concession lease includes up to 26 months to allow build out of all locations included in the Package (Package Completion), during which time, percentage rent shall be paid. After Package Completion, the MAG requirements set forth below shall apply.

Food Service Package #4 included the following minimum requirements:

Minimum Investment in Fixed Improvements per Square Foot	\$350	
Percentage Rent Range	Food/ Non-Alcohol	14.5% to 17.5%
Minimum Annual Guarantee		
1st Annual Period	\$288,200	
2nd Annual Period following Package Completion Date	90% of the actual rent paid to Authority during the first Annual Period, or 103% of the MAG for the first Annual Period, whichever is greater.	
3rd through 7th Annual Periods	90% of the actual rent paid to Authority during the prior Annual Period, or 103% of the MAG for the prior Annual Period, whichever is greater.	

Food Service Package #4 Proposals

On May 25, 2011, nine proposals were received for Food Service Package #4 from the following entities:

- Green Beans Coffee Co., Inc. (Green Beans Coffee) - Proposed business entity is a Corporation, stock is held by Jason Araghi (55% ownership), and Jon Araghi (45% ownership)
- Guava & Java SFO Inc. (Guava & Java) - Proposed business is a California S Corporation
- High Flying Foods San Diego Partnership (High Flying Foods) - Proposed business entity is comprised of a joint venture between High Flying Foods San Diego, LLC (95% ownership) and Procurement concepts, Inc. (5% ownership).

- Host International, Inc. (Host) - Proposed business entity is comprised of Host International, Inc. as prime Concessionaire with a sublease to a Joint Venture comprised of Host International, Inc. (65% ownership) and Concession Management Services, Inc. (35% ownership)
- Mission Yogurt, Inc. (Mission Yogurt) - Proposed business entity is wholly owned subsidiary of Smokin' Bear LLC, Roderick Tafoya (50% ownership), Reyes Tafoya (50% ownership)
- Nine Dragons, Inc. (Nine Dragons) - Proposed business entity is a California S Corporation
- RMS Enterprises, LLC (RMS Enterprises) - Proposed business entity is 100% owned by Rinku Marwaha Sodhi
- SAN Airport Partners, Inc. (SAN Airport Partners) - Proposed business entity is comprised of a joint venture between First Class Concessions (40% ownership), Aero Service Group (40% ownership), Sayed Ali (20% ownership)
- SSP America, Inc. (SSP) - Proposed business entity is 100% owned by its principal shareholder of voting stock: SSP America (USA), LLC, a Delaware limited liability company

A comparison of the proposed concepts associated with the two locations in Food Service Package #4 is provided below:

Location	T2W-1095	T1E-2000
Square Feet	372	734
Proposer	Concepts	
Green Beans Coffee	Green Beans Coffee	Green Beans Coffee
Guava & Java	Guava & Java	Guava & Java
High Flying Foods	Pannikin	Pannikin
Host	St. Tropez Bakery	Starbucks
Mission Yogurt	Einstein Bros. Bagels	Einstein Bros. Bagels
Nine Dragons	The Living Room	The Living Room
RMS Enterprises	Subway	Subway
SAN Airport Partners	Caribou Coffee	People's Organic Coffee
SSP	Ryan Brothers	Coffee Bean & Tea Leaf

Financial Offer

Proposer	Proposed Percentage Rent	Year One MAG
Green Bean Coffee	\$0-\$1.0M 14.5% \$1.0M-\$1.5M 15% \$1.5M-\$2.0M 15.5% \$2.0M-\$2.5M 16% \$2.5M-\$3.0M 16.5% \$3.0M-\$3.5M 17.0% Over \$3.5M 17.5%	\$ 288,200
Guava & Java	17.5%	\$ 288,200
High Flying Foods	\$0-\$2.0M 15% Over \$2.0M 17.5%	\$ 288,200
HMS Host	14.5%	\$ 288,200
Mission Yogurt	15.0%	\$ 288,200
Nine Dragons	17.5%	\$ 288,200
RMS Enterprise	16.0%	\$ 288,200
SAN Airport Partners	17.5%	\$ 288,200
SSP	17.5%	\$ 288,200

Evaluation Process

The Authority's evaluation panel was comprised of six panelists: (a) three Authority Division Vice Presidents, (b) one Authority Department Director, and (c) two airport concession program managers from San Francisco International and Seattle-Tacoma International Airports.

Proposals were evaluated using the following criteria and weighting factors:

Criteria	Weighting %
Company Background, Experience, Financial Capability and Financial Offer	35
Concept/Brand Development and Merchandise/Menus	20
Designs, Materials, and Capital Investment	15
Management, Staffing Plan, and Training	15
Operations and Maintenance Plan	10
Marketing and Promotions Plan	5

Additional consideration was given in the evaluation process for proposals that met or exceeded the Authority's standards for small business preference (Authority Policy 5.12) and worker retention (Board Resolution 2010-0142R).

The evaluation panel reviewed the nine proposals using the above criteria and ranked the proposals from "1" (best suited) to "9" (least suited). The results of the rankings of each panel member (PM) are presented in the matrix below:

Proposer	PM1	PM2	PM3	PM4	PM5	PM6	Total
Green Beans Coffee	6	8	5	2	5	8	34
Guava & Java	3	3	2	1	8	2	19
High Flying Foods	5	5	4	6	3	7	30
Host	4	6	3	7	4	6	30
Mission Yogurt	1	4	9	3	2	4	23
Nine Dragons	2	1	6	5	7	5	26
RMS Enterprise	9	9	8	6	9	9	50
SAN Airport Partners	7	7	1	8	1	1	25
SSP	8	2	7	4	6	3	30

After reviewing the rankings, the evaluation panel elected to short list the proposers and interview the four highest ranked proposers. The four proposers who proceeded to the interview phase included:

- Guava & Java
- Mission Yogurt
- Nine Dragons
- SAN Airport Partners

Following interviews, the evaluation panel ranked the proposers based on their presentations and answers to standard questions from "1" (best suited) to "4" (least suited):

Proposer	PM1	PM2	PM3	PM4	PM5	PM6	Total
Guava & Java	2	3	2	2	2	4	15
Mission Yogurt	1	2	3	1	1	1	9
Nine Dragons	3	1	4	3	3	2	16
SAN Airport Partners	4	4	1	4	4	3	20

As a result, the evaluation panel recommends that a concession lease be awarded to Mission Yogurt, Inc. for development and operation of Food Service Package #4 (as included in the Request for Proposals for Food Service and Retail Concessions) for a maximum term of nine (9) years and two (2) months with a first year MAG of \$288,200.

Depictions of Mission Yogurt, Inc.'s concepts for this package are presented in Attachment 2.

Fiscal Impact:

Annual revenue for the Authority will be no less than the MAG amount of \$288,200 for Food Service Package #4. In addition, based on the projected gross sales of the concessionaires, the Authority estimates that total CDP annual operating and maintenance costs (including operating costs for the Central Receiving and Distribution Center) will be recoverable from concessionaires.

Environmental Review:

- A. This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act Pub. Res. Code §30106.

Equal Opportunity Program:

The Authority's small business program promotes the utilization of small, local, disadvantaged, and other business enterprises, on all contracts, to provide equal opportunity for qualified firms. By providing education programs, making resources available, and communicating through effective outreach, the Authority strives for diversity in all contracting opportunities.

The Authority has an Airport Concession Disadvantaged Business Enterprise ("ACDBE") Plan as required by the Department of Transportation, 49 CFR Part 23. The ACDBE Plan calls for the Authority to submit a triennial overall goal for ACDBE participation on all concession projects.

Mission Yogurt, Inc. is a certified ACDBE and will not be subleasing any portion of this package. They will account for 100% ACDBE participation.


Prepared by:

VERNON D. EVANS
VICE PRESIDENT, FINANCE/TREASURER



SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

Board Communication

Date: August 1, 2011
To: Board Members
From: Angela Shafer-Payne, Vice President, Planning and Operations 
Subject: Findings Related to Two Protests Received - Concessions Development Program RFP

The Authority received two protests related to the Request for Proposals for the Concessions Development Program: one protest from XpresSpa and one protest from Nine Dragons. Copies of the protests were provided to Board Members in their Board packet. Since the Board packets were distributed, the Authority's Procurement Administrator has rendered her findings with regard to the protests. Attached are the Procurement Administrator's findings. Each protestor has five (5) business days upon receipt of the Procurement Administrator's findings to file an appeal.

Attachment



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SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

July 29, 2011

Via E-Mail and US Mail
diana.9dsd@gmail.com

Diana MarJip-Chuh
Nine Dragons, Inc.
1034 14th Street
San Diego, CA 92101

Re: Protest Letter, Food Service and Retail Concessions RFP

Dear Ms. MarJip-Chuh:

On July 22, 2011, the San Diego County Regional Airport Authority ("Authority") received a letter from Nine Dragons, Inc. ("Protest") indicating that the letter serves as a protest to the "Protest Procedures contained in the San Diego County Regional Airport Authority's Request for Proposals ("RFP") for Food Service and Retail Concessions published February 02, 2011." The basis of the Protest is that the "Protest Procedures contained in the RFP are extremely biased, unfair and possibly illegal" for 8 reasons detailed in the Protest. This letter constitutes the written decision of the Procurement Administrator in accordance with Part 14.G of the RFP. Each assertion in the Protest is set forth below followed by the Procurement Administrator's determination.

First Assertion: "Section 2) of the Protest Procedures requires that the protest document specifically refer to the part of another (unspecified) document that forms the basis for the protest. This suggests that a protester is only allowed to protest a particular document and does not identify what document. This requirement is impossible to fulfill".

Procurement Administrator's Response: Part 14.G. states that a protest relative to a particular proposal process must be submitted in writing and: (1) contain "a full and complete statement specifying in detail the grounds of the protest and the facts in support thereof"; (2) contain "a complete statement of the factual and legal basis for the for the protest"; and (3) "refer to the specific portion of the document that forms the basis of the protest." [RFP, Part 14.G, Page 88]. The Protest received from Nine Dragons does not allege that the RFP process was unfair, rather that the "Protest Procedures" are unfair. Nine Dragons alleges that the protest procedures are unfair without providing any factual or legal basis supporting this allegation. The protest requirements and procedure contained in the RFP described in *MCM Construction v. City & County of San Francisco* 66 Cal. App. 4th 359, 378 (1998) (which were enforced by the court) are almost identical to those contained in the Authority's RFP. Bidders in



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the *MCM* case were required to make their protests in writing, with accompanying documentation, including "a complete statement for the basis for the protest." The bid instructions also provided that "[t]he procedure and time limits ...are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest and failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings." *MCM Const., Inc.*, 66 Cal. App. 4th 359, 378-379. The protest procedures contained in the Authority's RFP are fair and unbiased. Accordingly, the Protest is denied as to Nine Dragon's first assertion.

Second Assertion: "It is impossible to protest a solicitation process, much less provide a factual and legal basis for such a protest (as required in Section 1) of the Protest Procedures, when details of the selection process have not been made available".

Procurement Administrator's Response: The documents related to the solicitation process which are public records, and not otherwise exempt, as defined under the California Public Records Act are available upon request. Accordingly, the Protest is denied as to Nine Dragon's second assertion.

Third Assertion: "Section 4 of the Protest Procedures require any party filing a protest to concurrently transmit a copy of the protest document to all others might be adversely affected by the outcome of the protest including other respondents. This is an impossible requirement to fulfill because the names and contact information of other respondents are not available at this time".

Procurement Administrator's Response: The names of all respondents who participated in the RFP process are public records that are available upon request. Accordingly, the Protest is denied as to Nine Dragon's third assertion.

Fourth Assertion: "The 5 day time limit allowed to gather information, seek professional advice and file a protest is unusually and unreasonably short".

Procurement Administrator's Response: Allowing five business days to file a protest is not an unusually or unreasonably short period of time and is consistent with the industry standard. RFP protest deadlines are typically short (usually five to ten days), and are routinely enforced in California and courts have not hesitated in enforcing these short deadlines. [*MCM Const., Inc.*, 66 Cal. App. 4th 359, 378-379 (holding that failure to protest within a 10 day deadline constituted a waiver or rights); Cal. Pub. Cont. Code § 12102 (statute requiring that RFP protests for California I.T. acquisition contracts must be filed no later than five working days after the issuance of an intent to award); 31 U.S.C.A. §3553(a)(4)(A)(the protest period for unsuccessful bidders on Federal contract awards is 10 days); *Automated Processes, Inc.*, Comptroller General, 1974 WL 7796 (the US Army enforces a 5 day protest period in its RFP procedure); *Biometrics, Inc. v. Anthony*, 13 Cal. App. 4th 1145, 1156 (1993)(refusing to rule on issues not raised within the ten day protest period); *Imagistics Int'l, Inc. v. Dep't of Gen. Services*, 150 Cal. App.



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4th 581, 588-89 (2007) (strictly enforcing a seven day RFP protest deadline and stating that the most reliable way to ensure that everyone is treated "fairly and equally" is to not allow agencies discretion to accept protests even a day late). Accordingly, the Protest is denied as to Nine Dragon's fourth assertion.

Fifth Assertion: "Under the Protest Procedures the San Diego County Regional Airport Authority, who is ultimately responsible for awarding the contracts under this solicitation, is not part of or even made aware of any protest. By the time the protest procedure has run its course, the SDCRAA will have likely awarded these contracts. At that point it will be too late to rectify any mistakes – illegal or otherwise – that may have been made".

Procurement Administrator's Response: The Protest will be forwarded to all Board members prior to the August 4th Board Meeting which allows consideration of the Protest by the Board members prior to any action being taken. Moreover, the Authority's Board Meetings are subject to the Brown Act. The public is given notice of all matters before the Authority's Board and any person may appear before them prior to its determination to award a contract. Accordingly, the Protest is denied as to Nine Dragon's fifth assertion.

Sixth Assertion: "An unidentified "Procurement Administer" who is overseeing the RFP is responsible for making a determination on any protest. It is not clear if this administrator is the same person this Protest is being addressed to. Further, it does not seem remotely fair that someone who is overseeing a process should be allowed judge if that process is fair. Clearly the "judge" in this case is biased".

Procurement Administrator's Response: The Procurement Administrator for this solicitation is identified in Part 7 of the RFP. The Procurement Administrator responsible for the RFP Process is the same individual who makes the first level determination regarding the Protest. The protest procedure also allows an appeal to the Director of Procurement who reviews the Protest *de novo*. There is no factual basis supporting the allegation that the Procurement Administrator is "biased". The term "bias" means that the decision maker has some kind of personal animus against the party or a group to which the party belongs to or that he/she is prejudice which means that the decision maker has already decided the facts of the case before the hearing. The Procurement Administrator has no personal animus toward Nine Dragons and has not pre-judged Nine Dragons or the Protest. Accordingly, the Protest is denied as to Nine Dragon's sixth assertion.

Seventh Assertion: "If a protest is initially rejected, the Protest Procedures require that another appeal be made, this time to the Director of the Procurement Department. It is not clear if the Director is the same person as the "Procurement Administrator" or even if the Director reports to the Administrator (and therefore is unlikely to overrule his



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superior). Overall, it is unreasonable to expect (or even believe) that the same organization will overrule one of its prior decisions”.

Procurement Administrator's Response: The Director of the Procurement Department is not the same person as the Procurement Administrator. The Director of Procurement does not report to the Procurement Administrator. The standard of review for all appeals to the Director of Procurement is *de novo*. The protest procedures contained in the Authority's RFP are fair, unbiased and legal. The protest procedures and requirements contained in the RFP as described in *MCM Construction v. City & County of San Francisco* 66 Cal. App. 4th 359, 378 (1998) (which were enforced by the court) are almost identical to those contained in the Authority's RFP. There is no requirement that protests be handled by a third party. In fact, courts have consistently upheld a public entity's protest process where protest findings are made by the same public entity overseeing the competitive process. The protest procedures contained in the Authority's RFP are fair and unbiased. Accordingly, the protest is denied as to Nine Dragon's seventh assertion.

Eighth Assertion: "Because all of the procedures and time limits are mandatory – and, at the same time, some of them are impossible to fulfill – the whole protest process is seriously flawed”.

Procurement Administrator's Response: The protest procedures contained in the Authority's RFP are fair and unbiased. Nine Dragons has offered no evidence to support its allegation that the protest procedures are unfair or impossible to fulfill. Indeed, others have complied with the procedures. The protest requirements and procedures contained in the RFP as described in *MCM Construction v. City & County of San Francisco* 66 Cal. App. 4th 359, 378 (1998) (which were enforced by the court) are almost identical to those contained in the Authority's RFP. Bidders in the *MCM* case were required make their protests in writing, with accompanying documentation, including "a complete statement for the basis for the protest." The bid instructions also provided that "[t]he procedure and time limits . . . are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest and failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings." *MCM Const., Inc.*, 66 Cal. App. 4th 359, 378-379. Allowing five business days to file a protest is not an unusually or unreasonably short period of time and is not a violation of law. RFP protest periods and protest deadlines are usually very short (usually five to ten days), and courts have not hesitated in enforcing these short deadlines. [*MCM Const., Inc.*, 66 Cal. App. 4th 359, 378-379 (holding that failure to protest within a 10 day deadline constituted a waiver of rights); Cal. Pub. Cont. Code § 12102 (statute requiring that RFP protests for California I.T. acquisition contracts must be filed no later than five working days after the issuance of an intent to award); 31 U.S.C.A. §3553(a)(4)(A) (the protest period for unsuccessful bidders on Federal contract awards is 10 days); *Automated Processes, Inc.*, Comptroller General, 1974 WL 7796 (the US Army enforces a 5 day protest period in its RFP procedure); *Biometrics, Inc. v. Anthony*, 13 Cal. App. 4th 1145,



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1156 (1993) (refusing to rule on issues not raised within the ten day protest period); *Imagistics Int'l, Inc. v. Dep't of Gen. Services*, 150 Cal. App. 4th 581, 588-89 (2007) (strictly enforcing a seven day RFP protest deadline and stating that the most reliable way to ensure that everyone is treated "fairly and equally" is to not allow agencies discretion to accept protests even a day late.)] Accordingly, the Protest is denied as to Nine Dragon's eighth assertion.

Conclusion:

The protest by Nine Dragons fails to state even one basis for finding that the RFP itself is legally flawed, that the RFP process was unfair/biased, or that the recommended proposers are not qualified or any other basis to invalidate the process. Based upon the information received, the Protest is denied on the grounds set forth herein.

Please be advised that pursuant to Part 14, section G entitled "Protest Procedures", Nine Dragons, Inc. may appeal this decision. The pertinent section states: If the protest is rejected, the party filing the protest has five (5) working days to file an appeal to the Director of Procurement. The Director will issue a ruling within fifteen (15) working days following receipt of the written appeal. If the Director determines that the protest is frivolous, the party originating the protest may be determined to be irresponsible and that party may be determined to be ineligible for future contract awards."

Sincerely,

A handwritten signature in black ink that reads "Karie Webber".

Karie Webber
Senior Procurement Analyst
San Diego County Regional Airport Authority
P.O. Box 82776 San Diego, CA 92138-2776
619.400.2547



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INFORMATION RECEIVED FROM THE PUBLIC

July 22, 2011

President/Chief Executive Officer
San Diego Airport Authorities
Authority Procurement Department (Protest)
3225 North Harbor Drive
San Diego, CA 92101

NINE DRAGONS, INC.



Concessionaire
Retail
Food & Beverage

To Whom It May Concern,

I am writing to formally protest the Protest Procedures contained in San Diego County Regional Airport Authority's Request for Proposal ("RFP") for Food Service and Retail Concessions published February 02, 2011. As a qualified proposer for multiple food & beverage packages in this solicitation, I was recently notified of recommendations to award all of these contracts to other firms. I believe that the Protest Procedures contained in the RFP are extremely biased, unfair and possibly illegal for the following reasons:

3665 North Harbor Dr.
Suite 210
San Diego, CA 92101
619.231.5150 Office
619.231.5173 Fax

1. Section 2) of the Protest Procedures requires that the protest document specifically refer to the part of another (unspecified) document that forms the basis for the protest. This suggests that a protester is only allowed to protest a particular document and does not identify what document. This requirement is impossible to fulfill.
2. It is impossible to protest a solicitation process, much less provide a factual and legal basis for such a protest (as required in section 1) of the Protest Procedures), when details of the selection process have not been made available.
3. Section 4) of the Protest Procedures require any party filing a protest to concurrently transmit a copy of the protest document to all others who might be adversely affected by the outcome of the protest including other respondents. This is an impossible requirement to fulfill because the names and contact information of other respondents are not available at this time.
4. The 5 day time limit allowed to gather information, seek professional advice and file a protest is unusually and unreasonably short.
5. Under the Protest Procedures the San Diego Regional Airport Authority, who is ultimately responsible for awarding the contracts under this solicitation, is not part of or even made aware of any protests. By the time the protest procedure has run its course, the SDCRAA will have likely awarded these contracts. At that point it will be too late to rectify any mistakes -- illegal or otherwise-- that may have been made.

6. An unidentified "Procurement Administer" who is overseeing the RFP is responsible for making a determination on any protest. It is not clear if this administrator is the same person this Protest is being addressed to. Further, it does not seem remotely fair that someone who is overseeing a process should be allowed to judge if that process is fair. Clearly the "judge" in this case is biased.
7. If a protest is initially rejected, the Protest Procedures require that another appeal be made, this time to the Director of the Procurement Department. It is not clear if the Director is the same person as the "Procurement Administrator" or even if the Director reports to the Administrator (and therefore is unlikely to overrule his superior). Overall, it is unreasonable to expect (or even believe) that the same organization will overrule one of its prior decisions.
8. Because all of the procedures and time limits are mandatory —and, at the same time, some of them are impossible to fulfill—the whole protest process is seriously flawed.

NINE DRAGONS, INC.



Concessionaire
Retail
Food & Beverage

3665 North Harbor Dr.
Suite 210
San Diego, CA 92101

619.231.5158 Office
619.231.5173 Fax

The Authority promised a fair and transparent process. It specifically solicited and claimed that it would favor both local and women/minority participation. As a current tenant and an experienced local ACDBE with seventeen years of experience owning and operating food and beverage and retail concessions in San Diego Airport, I can't help but question why I am not being recommended for any of the spaces I proposed on. The Protest Procedures specifically make it impossible to lodge a protest.

I am asking for a fair opportunity to gather information and to ascertain for myself if this was a fair solicitation process.

Please send all future communications to:

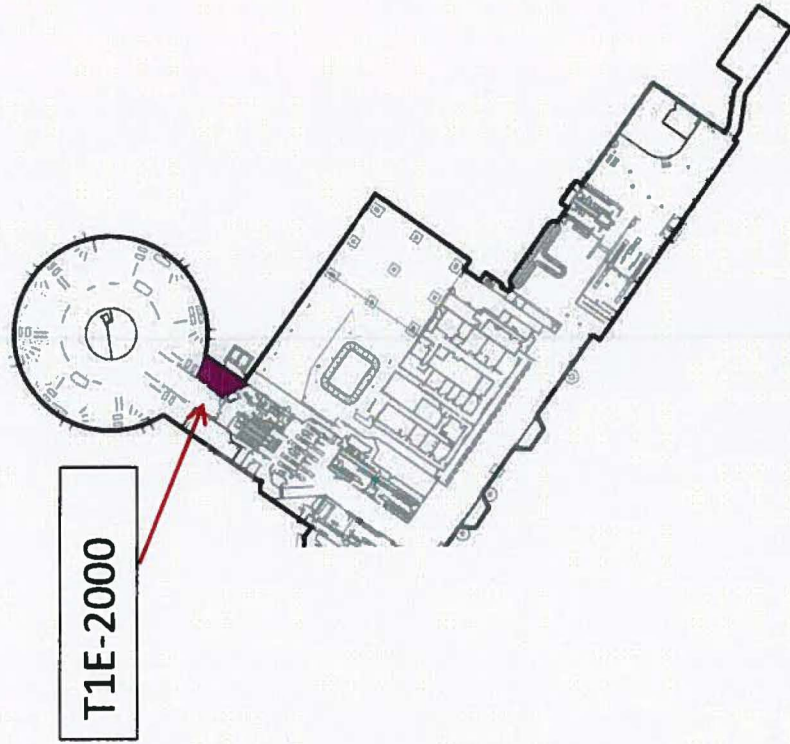
Diana MarJip-Chuh
Nine Dragons Inc.
1034 14th Street
San Diego, CA 92101

Sincerely,

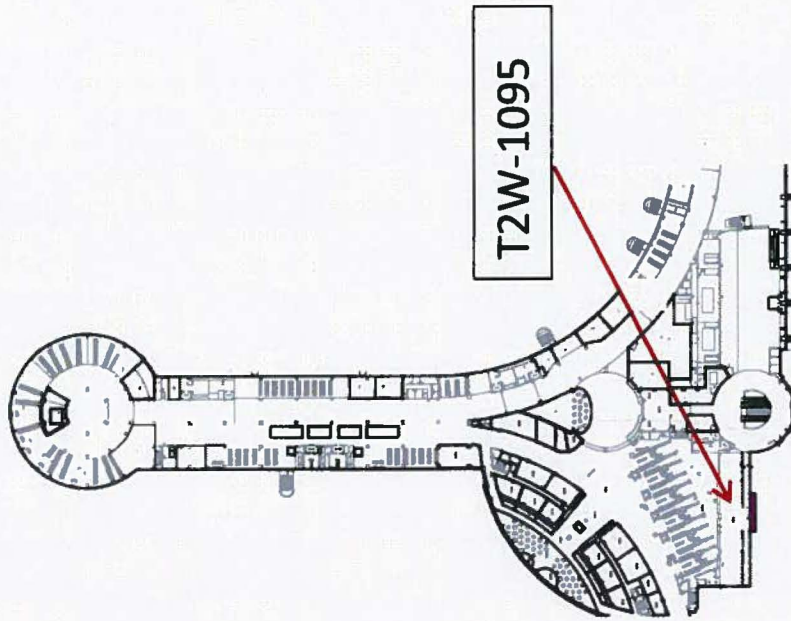
Diana MarJip-Chuh
President
Nine Dragons Inc.
619-231-9108

FOOD SERVICE PACKAGE 4

Terminal 1 East

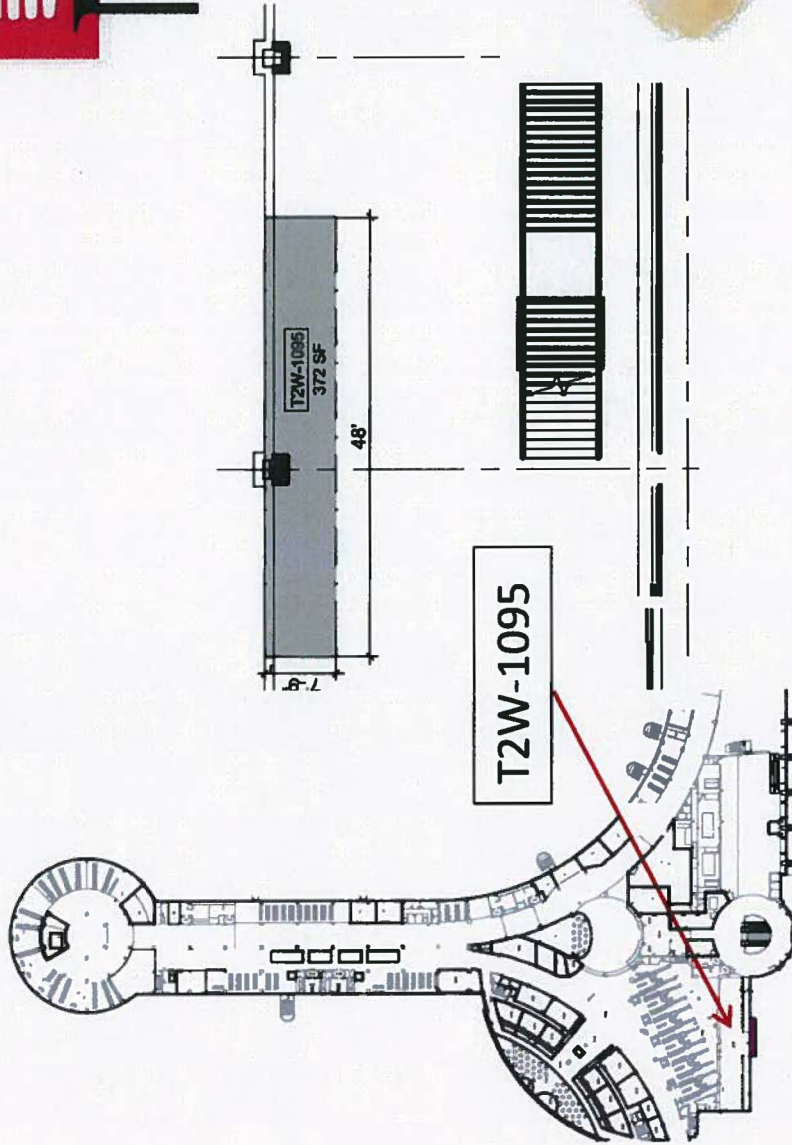


Terminal 2 West

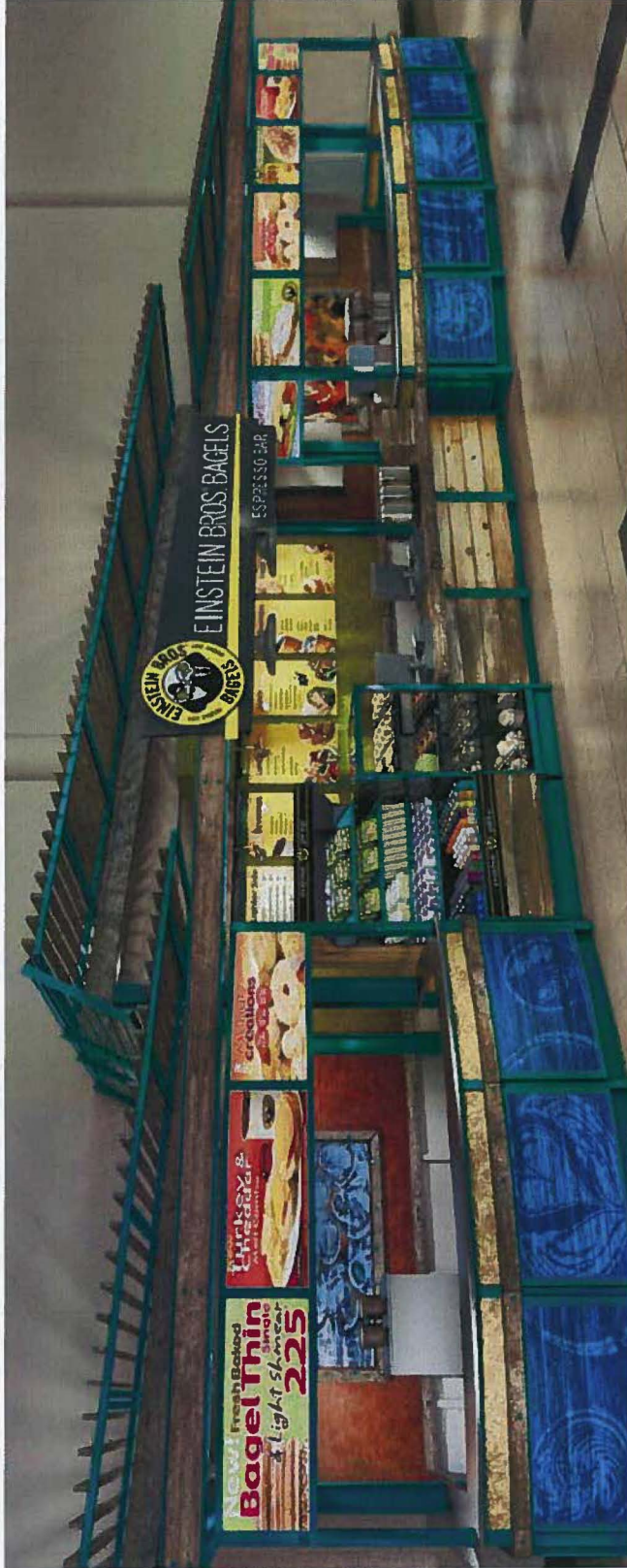


FOOD SERVICE PACKAGE 4 T2W-1095 – 372 SF

Terminal 2 West

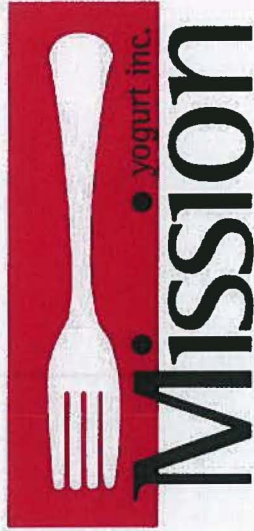
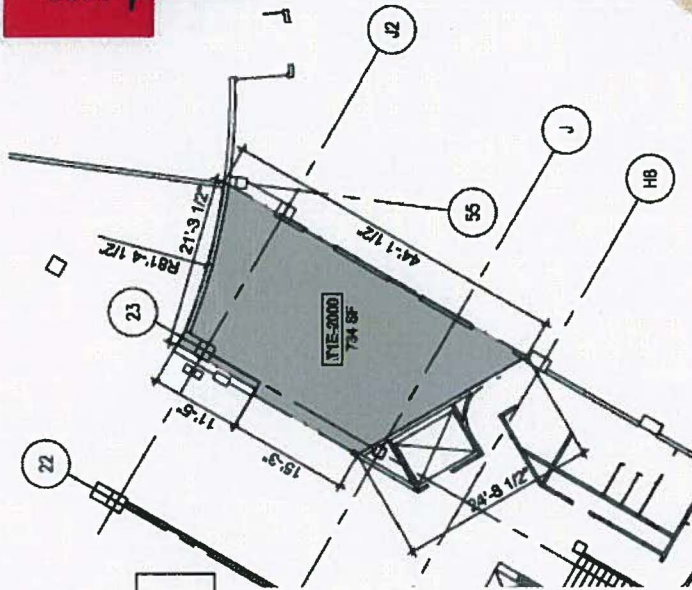
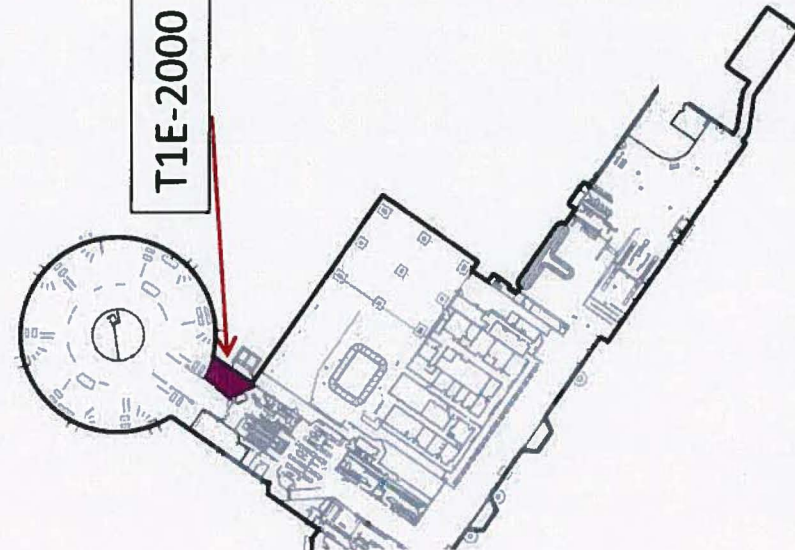


Food Pkg 4: Mission Yogurt

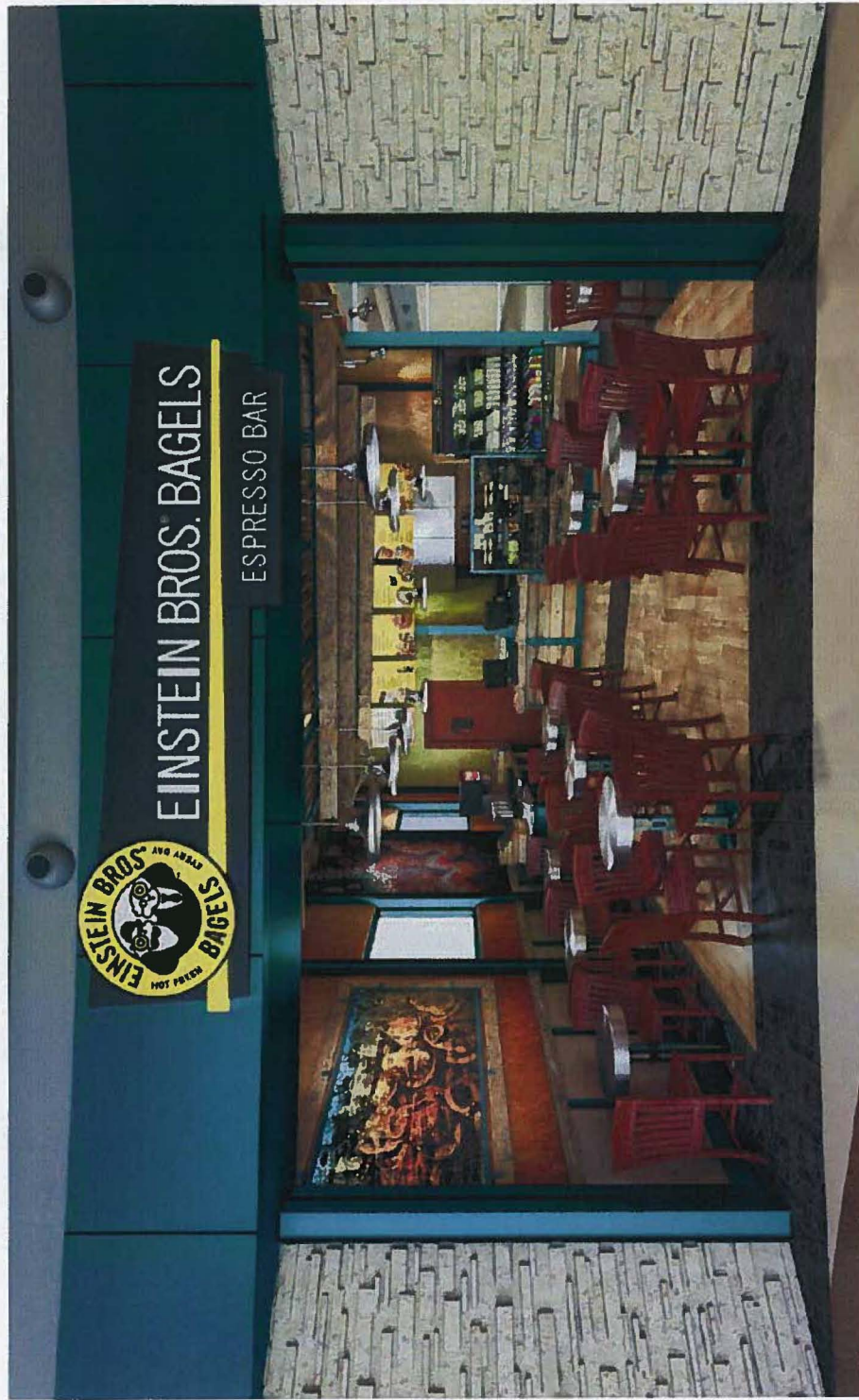


FOOD SERVICE PACKAGE 4 T1E-2000 – 734 SF

Terminal 1



Food Pkg 4: Mission Yogurt



RESOLUTION NO. 2011-0100

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, AWARDING A CONCESSION LEASE TO MISSION YOGURT, INC. FOR DEVELOPMENT AND OPERATION OF FOOD SERVICE PACKAGE #4, AS INCLUDED IN THE REQUEST FOR PROPOSALS (RFP) FOR FOOD SERVICE AND RETAIL CONCESSIONS, FOR A MAXIMUM TERM OF NINE (9) YEARS AND TWO (2) MONTHS, WHICH INCLUDES A PERIOD NOT TO EXCEED TWENTY-SIX (26) MONTHS TO ALLOW FOR PACKAGE COMPLETION, AND A FIRST YEAR MINIMUM ANNUAL GUARANTEE (MAG) OF \$288,200 FOLLOWING PACKAGE COMPLETION; AND AUTHORIZING THE PRESIDENT/CEO TO TAKE ALL NECESSARY ACTIONS TO EXECUTE THE CONCESSION LEASE

WHEREAS, for the past three years, staff has been planning to solicit responses via a Request for Proposal (RFP) for a new food service and retail concession program at San Diego International Airport; and

WHEREAS, the Concession Development Program (CDP) RFP provides for new concession locations from the Terminal 2 West (Green Build) and Terminal 2 East Expansion projects and complete re-concepting of existing locations, beginning in December 2012; and

WHEREAS, at its October 26, 2009 meeting, the Board was informed of the goals, objectives and business strategy of the CDP; and

WHEREAS, at its November 4, 2010 meeting, staff informed the Board of CDP RFP planning, involving business community outreach efforts; and

WHEREAS, at its January 6, 2011 meeting, the Board was briefed on RFP packaging guidelines and concession locations; and

WHEREAS, on February 2, 2011, the CDP RFP was released. The CDP RFP included eight food service packages totaling 46 locations and eight retail packages totaling 40 locations; and

WHEREAS, each package required respondents to propose a fixed Minimum Annual Guarantee and percentage rents within a specified range; and

WHEREAS, to ensure a diversity of concepts and encourage competition, the CDP RFP also established the following limitations on the award of concession leases to a single proposer:

- 30% of food service square footage
- 35% of retail square footage
- 30% of total program square footage; and

WHEREAS, Food Service Package #4 includes two locations encompassing approximately 1,106 square feet; and

WHEREAS, on May 25, 2011, nine proposals were received for Food Service Package #4; and

WHEREAS, the proposers were evaluated by an evaluation panel using the following criteria:

- company background, experience, financial capability and financial offer;
- concept/brand development and merchandise/menus;
- design, materials and capital investment;
- management, staffing plan, and training;
- operations and maintenance plan; and
- and marketing and promotions plan; and

WHEREAS, additional consideration was given in the evaluation process for proposals that met or exceeded the required standards for small business participation and worker retention; and

WHEREAS, the evaluation panel reviewed the proposals and recommended that a concession lease be awarded to Mission Yogurt, Inc. for development and operation of Food Service Package #4 (as included in the CDP RFP) for a maximum term of nine (9) years and two (2) months (which includes a period not to exceed twenty-six (26) months to allow for base building construction, Authority shell construction and renovation, and build out of the concession locations (Package Completion)) with a total first year Minimum Annual Guarantee (MAG) of \$288,200; and

WHEREAS, the Board finds that awarding a concession lease to Mission Yogurt, Inc. is in the best interest of the Authority.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby AWARDS a concession lease to Mission Yogurt, Inc. for development and operation of Food Service Package #4, as included in the Request for Proposals (RFP) for Food Service and Retail Concessions, for a maximum term of nine (9) years and two (2) months, which includes a period not to exceed twenty-six (26) months to allow for Package Completion, and a first year Minimum Annual Guarantee (MAG) of \$288,200 following Package Completion; and AUTHORIZES the President/CEO to take all necessary actions to execute the concession lease; and

BE IT FURTHER RESOLVED that the Board of the San Diego County Regional Airport Authority finds that this Board action is not a "project" as defined by the California Environmental Quality Act ("CEQA"), Pub. Res. Code §21065; and is not a "development" as defined by the California Coastal Act, Pub. Res. Code §30106.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 4th day of August, 2011, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

BRETON K. LOBNER
GENERAL COUNSEL

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