

## SAN DIEGO UNIFIED PORT DISTRICT

### ORDINANCE xxxx

#### ORDINANCE REGARDING PROJECT LABOR AGREEMENTS AND LABOR PEACE AGREEMENTS FOR CERTAIN CONSTRUCTION AND OPERATIONS ON DISTRICT TIDELANDS

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

**WHEREAS**, the District has a significant Proprietary Interest in District construction projects costing \$1 million or more; and

**WHEREAS**, the District also has a significant Proprietary Interest in certain construction projects performed by or at the direction of District tenants as well as in the operation of certain tenant businesses because of the revenue that the District derives from such tenants, and because such activities occur on granted tidelands and submerged lands in which the District has a Proprietary Interest; and

**WHEREAS**, it is essential that the District's construction projects costing \$1 million or more, certain construction projects performed by or at the direction of District tenants, and the operation of certain tenant businesses proceed in a timely manner and without interruption. Given the risk that labor disputes, including but not limited to work stoppages and economic interference, would cause to such construction projects and operations, the District desires to reduce such risk by requiring that Project Labor Agreements or Labor Peace Agreements be utilized where such projects or operations satisfy the criteria set forth in this Ordinance; and

**WHEREAS**, Project Labor Agreements and Labor Peace Agreements will increase the likelihood that construction projects will be completed on time and without delay, and that operations at completed projects will proceed without interruption or interference. Project Labor Agreements and Labor Peace Agreements have been successfully used by both private and public entities to advance their Proprietary Interests, including by the Ports of Los Angeles, Long Beach, and Oakland, as well as the San Diego County Regional Airport Authority and airports owned by the cities of Los Angeles and Long Beach; and

**WHEREAS**, the Project Labor Agreements and Labor Peace Agreements requirements set forth in this Ordinance are important tools to protect the District's Proprietary Interest in the construction projects and operations covered by this Ordinance; and

**WHEREAS**, the Project Labor Agreements and Labor Peace Agreements requirements set forth in this Ordinance are narrowly tailored to apply to only certain construction projects and operations that satisfy the specific criteria set forth herein and which are needed to protect the Proprietary Interest of the District; and

**NOW, THEREFORE**, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. Definitions

- (a) "District Public Project" means a "public project" (as defined in Board of Port Commissioners Policy No. 110.I) that is competed and awarded by the District in accordance with Board of Port Commissioners Policy No. 110.I.
- (b) "Project Labor Agreement" has the same meaning as defined in California Public Contract Code, Section 2500(b)(1), as such may be amended by the Legislature.
- (c) "Labor Peace Agreement" means a binding and enforceable agreement between an employer and a Labor Organization, which includes, without limitation, terms prohibiting the Labor Organization and its members from engaging in picketing, work stoppages, boycotts, or any other economic interference with the District development covered by the agreement for the term of the District lease.
- (d) "Proprietary Interest" means the right to an advantage, share or interest in the property or an asset. Proprietary Interest includes, but is not limited to, the following: (i) deriving revenue from property leasing; (ii) deriving revenue from the development's operating revenue; and (iii) the District's ongoing economic and non-regulatory interest in the financial success of the development and in business operations on the District's granted tidelands or submerged lands.
- (e) "Labor Organization" means an organization of any kind, or an agency or employer representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work of employees at a construction project or development on District tidelands or submerged lands.
- (f) "CPI" means Consumer Price Index for All Urban Consumers for all items in Los Angeles, Long Beach, and Anaheim, CA. Items based

on the period 1982 - 84 = 100 as published by the United States Department of Labor's Bureau of Labor Statistics. In the event the currently specified index is no longer published, CPI shall mean the one reported in the U. S. Department of Labor's comprehensive official index determined by District to be the one most nearly corresponding to the currently specified index. If the Department of Labor indices are no longer published, another index generally recognized as authoritative shall be substituted by District.

- (g) "CPI Adjustment" means taking the current amount multiplied by a fraction, the numerator of which shall be the CPI for the September of the recently ended calendar year, and the denominator of which shall be the CPI for the September of the year prior to the recently ended calendar year.

Section 2. For any District Public Project with an anticipated construction contract value of One Million Dollars (\$1 million) or more (based on the District's pre-bid estimates), however, not including emergency projects or those being funded, in whole or in part, by any government entity which prohibits the use of Project Labor Agreements, the President/CEO shall take all steps reasonable and necessary to require all contractors performing work on such Public Project to enter into a Project Labor Agreement with Labor Organizations. Any such Project Labor Agreement shall include the terms required by California Public Contracts Code Section 2500(a), as may be amended, and shall comply with all applicable federal and state laws.

Section 3. Requirements for certain new development proposals submitted to the District:

- (a) All development proposals submitted to the District which include at least two hundred fifty (250) or more hotel rooms must address the following: (i) a commitment to engage in efforts to reduce or eliminate the risk of labor disruptions which could have an adverse effect on the District's Proprietary Interest in the timely completion of the development's construction and the uninterrupted operation of the development once completed; (ii) a description of past efforts by the developer or operator to reduce the risk of labor disruptions on prior construction projects and development operations; (iii) a description of past efforts by the developer or operator to utilize small business enterprises (SBE) on past construction projects and development operations, and (iv) an acknowledgement by the developer or operator that any District lease related to the proposal will include the terms set forth in Section 4(a).
- (b) All development proposals submitted to the District which include at least one restaurant, venue/event space, or attraction with an anticipated construction cost of the entire development of Fifteen

Million Dollars (\$15 million) or more, as adjusted annually on January 1 by a CPI Adjustment, as determined by District staff based on developer's proposal must contain: (i) a commitment to reduce or eliminate the risk of labor disruptions which would have an adverse effect on the District's Proprietary Interest in the timely completion of the development's construction; (ii) a description of past efforts by the developer or operator to reduce the risk of labor disruptions on prior construction projects; (iii) a description of past efforts by the developer or operator to utilize small business enterprises (SBE) on past construction projects, and (iv) an acknowledgement by the developer or operator that any lease resulting from the proposal will include the terms set forth in Section 4(b), below, and that such terms will apply to and bind the developer.

- (c) Subsections (a) and (b), above, shall not apply to proposals to amend an existing District lease. Such proposals are addressed in Section 5, below.

#### Section 4. Requirements for certain new leases

- (a) Any lease which results from a proposal covered by Section 3(a), above, shall include terms that require the developer or operator to (i) enter into a Project Labor Agreement with a Labor Organization(s) for the construction of the development, and (ii) enter into a Labor Peace Agreement covering the term of the lease with any Labor Organization requesting one in writing.
- (b) Any lease which results from a proposal covered by Section 3(b), above, shall include terms that require the developer or operator to enter into a Project Labor Agreement with a Labor Organization(s) for the construction of the development.

#### Section 5. Requirements for certain leases amendments, and amendment and restatements

- (a) Any amendment to, or amendment and restatement of, an existing lease which includes at least one hotel, restaurant, venue/event space, or attraction, and which includes an anticipated construction cost of Fifteen Million Dollars (\$15 million) or more, as adjusted annually on January 1 by a CPI Adjustment, as determined by District staff based on tenant's proposal shall also require tenant to enter into a Project Labor Agreement with a Labor Organization(s) covering any construction included in the amendment, or amendment and restatement.
- (b) Any amendment to, or amendment and restatement of, an existing lease which (1) includes at least one hotel with at least two hundred

fifty (250) or more hotel rooms before such amendment or amendment and restatement, or cumulatively authorized by the amendment or amendment and restatement, and (2) which involves the extension of the lease or permit term of twenty five (25) years or more, shall also require tenant to enter into, or require operator(s) of the premises to enter into, a Labor Peace Agreement covering operation of the premises during the remaining term of the lease with any Labor Organization requesting a Labor Peace Agreement in writing. Nothing in this Ordinance grants a tenant any right to an extension of term. Further, tenant shall comply with Board of Port Commissioners Policy No. 355, as amended or restated from time to time when seeking a term extension, specifically, without limitation, Administrative Practices – Leasing Policy, Section II(C)(2)(b).

**Section 6. Inability to Agree to Project Labor Agreement or Labor Peace Agreement**

In the event that a tenant or contractor and a Labor Organization (collectively “parties”) are unable to agree to a Project Labor Agreement or Labor Peace Agreement required by this Ordinance or a District lease, then within sixty (60) days of either party’s written request to the other party for mediation, the parties shall submit the dispute to a mutually agreed upon mediator to assist the parties in reaching a reasonable Project Labor Agreement Labor Peace Agreement. If the parties cannot agree on a mediator within thirty (30) days of the initial request, the parties shall submit the dispute to a mediator appointed by Federal Mediation and Conciliation Services (FMCS), or, if such agency is unavailable, to a mediator appointed by an entity selected by the District. Each party to the mediation shall bear its own costs, and the cost of the mediator shall be equally split between the tenant/contractor and the Labor Organization(s).

In the event that the tenant or contractor and a Labor Organization are unable to reach a reasonable Project Labor Agreement or Labor Peace Agreement through mediation, the mediator shall prepare a report to the Board of Port Commissioners within thirty days of conclusion of the mediation and the tenant or contractor may submit the dispute to the Board of Port Commissioners who may, in its sole and absolute discretion, conditionally or unconditionally waive any or all of the requirements of this Ordinance or the applicable lease. Further, if a Labor Organization does not agree to participate in the mediation, the tenant or contractor may submit the dispute to the Board of Port Commissioners who may, in its sole and absolute discretion, conditionally or unconditionally waive any or all of the requirements of this Ordinance or the applicable lease.

**Section 7.** Based on an analysis of the criteria set forth in this Ordinance, and the knowledge and experience of the District, the District has significant Proprietary Interests in the construction and operation of the projects and

developments covered by Section 2-5, above, and such sections have been narrowly tailored to address these significant Proprietary Interests.

#### Section 8. Limitations and Severability

- (a) This Ordinance is not intended to, and shall not be interpreted to, conflict with federal or state law and shall be interpreted to be compatible with federal and state enactments, not limited to those dealing with employee/employer and labor relations, and in furtherance of the public purposes which those enactments encompass.
- (b) This Ordinance does not require any proposer, developer, tenant, contractor, or employer to be unionized, or to recognize a particular Labor Organization, or any particular recognition process, nor does it mandate that employees unionize.
- (c) This Ordinance does not require any proposer, developer, tenant, contractor, or employer to make any particular promise in order to secure a Project Labor Agreement or Labor Peace Agreement. The terms of any Project Labor Agreement or Labor Peace Agreement are to be negotiated directly by the contracting parties.
- (d) This Ordinance is not intended to, and shall not be interpreted to, enact or express any generally applicable policy regarding labor-management relations or to regulate those relations in any way.
- (e) This Ordinance is not intended to, and shall not be interpreted to, favor any particular outcome in the determination of whether employees are represented and, if so, by which Labor Organization.
- (f) Nothing in this Ordinance permits or requires the District or any proposer, developer, tenant, contractor, or employer to enter into any agreement in violation of the National Labor Relations Act of 1935, approved July 5, 1935 (49 Stat. 449; 29 U.S.C.S. § 151 et seq.).
- (g) If any provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Ordinance that can be given effect without the invalid provision or application; and to this end, the provisions or applications of this Ordinance are severable.
- (h) A development proposal shall only be responsive and considered by the District if it complies with this Ordinance. A lease, amendment or amendment and restatement of a lease, shall only be effective if it complies with this Ordinance. There shall be no criminal or administrative penalty for violation of this Ordinance.

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Section 9. This Ordinance shall take effect on the 31<sup>st</sup> day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

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By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 14<sup>th</sup> day of February 2023, by the following vote: