

DRAFT**SAN DIEGO UNIFIED PORT DISTRICT****ORDINANCE xxxx****ADOPT AN ORDINANCE GRANTING AN OPTION
TO LEASE AGREEMENT WITH HIW ASSOCIATES,
L.P., WITH CONDITIONS, FOR A FORTY YEAR
AMENDED AND RESTATED LEASE WITH ONE
TEN-YEAR OPTION TO EXTEND**

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, Section 87(b) of the Port Act grants authority to the District to lease the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held, by the State of California; and

WHEREAS, HIW Associates, L.P., a California limited partnership (HIW) is proposing the redevelopment of the Harbor Island West Marina (HIWM), which would involve the following (collectively, the "Project"): demolition of all existing onsite building space and reconstruction of new building space; demolition of the existing paved parking lot and construction of a new paved parking lot increasing the number of parking spaces by 29 for a total of 380 spaces with 12 spaces available to the general public; removal of existing landscaping and installation of new drought tolerant, non-invasive landscaping with an area for bicycle parking; reconstruction of an existing public viewing deck and construction of a new 12-foot-wide waterside public promenade; reconstruction of swimming pool and spa; demolition of 11 existing docks providing 620 boat slips, construction of 11 new docks providing 623 boat slips; and modernization of on-site utilities and lighting; and

WHEREAS, to implement the Project, staff has negotiated with HIW an Option to Lease Agreement (Option) in the form attached as Attachment F to the Agenda Sheet to which this Ordinance relates, which Option includes as Exhibit 1 a 40-year Amended and Restated Lease (A&R Lease), with one 10-year option to extend; and

WHEREAS, the Option has a term of 18 months and sets forth various preconditions that HIW must timely satisfy within the Option term before the A&R Lease may be executed by HIW and the District, which preconditions are intended to ensure that the Project is successfully completed in a timely manner; and

WHEREAS, HIW currently occupies HIWM under that certain Lease dated August 10, 1981 on file in the Office of the District Clerk as Document No. 14085,

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as amended by that certain First Amendment to Lease dated September 8, 1994 on filed in the Office of the District Clerk as Document No. 31805 (together, the "Current Lease"); and

WHEREAS, while the Option is in effect, HIW will be permitted to occupy HIWM pursuant to and in accordance with its Current Lease, including, but not limited to, the requirement to pay minimum annual rent as well as percentage rent due thereunder; and

WHEREAS, the preconditions HIW must timely satisfy in order to enter into the A&R Lease include: (i) developing the Project plans from conceptual drawings to working drawings; (ii) providing evidence of equity and debt commitments sufficient to complete the Project, including a source of funds for expenses related to Project construction; (iii) obtaining all required construction and development permits necessary for the Project; (iv) providing a Performance Bond and Payment Bond in form and substance as required by the A&R Lease; (v) submitting executed construction contract(s) with competent contractors; and (vi) remaining in compliance under the Current Lease; and

WHEREAS, provided HIW timely satisfies the conditions set forth in the Option, then District and HIW will execute the A&R Lease, which contains the key terms described in the Agenda Sheet to which this Ordinance and as further described in the A&R Lease; and

WHEREAS, should HIW successfully exercise the Option and enter into the A&R Lease, future rental revenue from HIWM over the 50-year A&R Lease term (including the 10-year option to extend) is estimated to be approximately \$29.3 million in net present value to the District; and

WHEREAS, the percentage rental rates in the A&R Lease establish a valuable new comparable for the District to use in future marina rent negotiations; and

WHEREAS, the A&R Lease would require HIW to make a minimum investment of \$45,000,000 in the Project; and

WHEREAS, the Option (coupled with the A&R Lease, if executed), incentivizes HIW to successfully complete the Project and make significant improvements to District tidelands; and

WHEREAS, for the reasons stated above, staff recommends granting the Option to Lease Agreement to HIW Associates, L.P., with conditions, that includes an Amended and Restated Lease attached as Exhibit 1.

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

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1. The Option to Lease Agreement with HIW Associates, L.P., with conditions, for a forty-year Amended and Restated Lease with one ten-year option to extend and in substantial form as that attached as Attachment F to the Agenda Sheet to which this Ordinance relates, is hereby approved.

2. The Executive Director or their designated representative is hereby authorized (i) to execute said Option to Lease Agreement with HIW Associates, L.P., with conditions, in substantially the same form attached as Attachment F to the corresponding Agenda Sheet to which this Ordinance relates, and (ii) if deemed necessary by the Executive Director or their designee, to update the plat and legal description of the applicable leasehold that is attached to the Amended and Restated Lease to make non-material revisions.

3. This Ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 14th day of November 2023, by the following vote: