

**DRAFT**

**RESOLUTION 20xx-xxx**

**RESOLUTION SELECTING PROTEA PROPERTY MANAGEMENT, INC. AS THE SUCCESSFUL PROPOSER OF THE REQUEST FOR PROPOSALS (RFP 17-52ME, WATERFRONT RETAIL OPPORTUNITY) (RFP) AND CONCLUDING THE RFP, RESERVING CERTAIN RIGHTS THEREUNDER**

**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 1 (Port Act); and

**WHEREAS**, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 to establish a policy governing the processing and administration of public projects, consulting and service agreements, the purchasing of supplies, materials and equipment, and grants; and

**WHEREAS**, on August 28, 2017, District staff issued the Request for Proposals (RFP 17-52ME, "Waterfront Retail Opportunity") (RFP) for the interim management and operations of Seaport Village (Seaport) after the lease with Seaport Village Operating Company, LLC expires on September 30, 2018, which leasehold is currently managed by Terramar Retail Centers, LLC; and

**WHEREAS**, Seaport consists of approximately 90,000 square feet of specialty retailers, restaurants, outdoor entertainment, and parking on an approximately 14-acre Bayfront site located at 849 West Harbor Drive in San Diego, CA; and

**WHEREAS**, the RFP gives the District broad discretion in how a proposal/proposer is selected, as well as reserves certain District rights including, without limitation, the District's ability to reject or move forward any or all proposals or parts thereof, issue subsequent requests for proposals, postpone opening for its own convenience, remedy technical errors in the request for proposals process, approve or disapprove the use of a particular proposer's sub-service providers, negotiate with any, all, or none of the proposers, solicit best and final offers from all or some of the proposers, award an agreement to one or more proposers, and waive informalities and irregularities in the proposals (collectively, Reservation of Rights); and

**WHEREAS**, at the January 9, 2018, BPC meeting, the BPC considered the entire record including staff's findings and recommendations and conditionally selected Protea as the successful proposer of the RFP, with conditions; and

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**WHEREAS**, the BPC's conditional selection of Protea was based on multiple factors including: (1) Protea's relationships with Central Embarcadero stakeholders and (2) Protea's affiliation with 1HWY1; and

**WHEREAS**, the BPC also found that the selection of Protea would allow for an efficient transition to 1HWY1 once the redevelopment of the Central Embarcadero was ready to commence; and

**WHEREAS**, the BPC's conditional selection of Protea as the successful proposer of the RFP was conditioned upon staff renegotiating the management fee with Protea which shall not include incentive management fees, transition fees or leasing commissions (as the BPC directed staff to remove leasing services from the scope of services); and

**WHEREAS**, a construction management fee could be negotiated but only as an optional add-on; and

**WHEREAS**, the BPC's selection of Protea was not final and the RFP remained open until the BPC took action to conclude the RFP; and

**WHEREAS**, on January 24, 2018, staff received a revised management fee proposal (Revised Proposal) from Protea; and

**WHEREAS**, as a result of staff's negotiations, Protea reduced their management fees by over 50% and the District costs were reduced by over 70%; and

**WHEREAS**, the Revised Proposal reduces the base management fee to 1.7% of gross revenues which would commence when the District begins collecting revenues on October 1, 2018; and

**WHEREAS**, the Revised Proposal includes a monthly minimum fee of \$10,000 effective on the commencement date of the agreement between the District and Protea until October 1, 2018 when the District expects to begin collecting revenues and paying the base management fee of 1.7% of gross revenues through the remaining term of the agreement; and

**WHEREAS**, in making the selection of Protea, the District reserves all its rights under the RFP, including without limitation the Reservation of Rights, and all other rights and terms and conditions of the RFP as permitted under the law; and

**WHEREAS**, the BPC's action does not constitute an "approval" or a "project" under the California Environmental Quality Act; the proposed BPC action complies with Section 87 of the Port Act and is consistent with the Public

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Trust Doctrine; and, the BPC action does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit Regulations; and

**WHEREAS**, the BPC has considered all of the information regarding the Revised Proposal and that its terms satisfy the requirements set forth by the BPC on January 9, 2018.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners of the San Diego Unified Port District as follows:

Protea Property Management, Inc. (Protea) is selected as the successful proposer of the Request for Proposals (RFP 17-52ME, “Waterfront Retail Opportunity”) (RFP) for the interim management and operations of the approximately 14-acre waterfront retail opportunity located at 849 West Harbor Drive in the City of San Diego; the RFP is concluded, and the other proposers are eliminated; provided, however, said selection is conditioned on the District’s reservation of all its rights under the RFP and under applicable law.

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 10<sup>th</sup> day of April 2018, by the following vote: