

**RESOLUTION 20xx-xxx**

**RESOLUTION MEMORIALIZING DUE DILIGENCE  
AND INFORMATION GATHERING EFFORTS**

**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**, on February 22, 2016, District staff issued a Request for Proposals 16-04ME (RFP) for the 70 acres of land and water located within the District's Central Embarcadero; and

**WHEREAS**, the RFP gives the District broad discretion in how a proposal/prosper 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 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, award agreements to one or more proposers and waive informalities and irregularities in proposals (collectively, Reservation of Rights); and

**WHEREAS**, on May 2, 2016, the District received 11 proposals, of which, six were deemed complete and moved forward for consideration; and

**WHEREAS**, on June 13 and 14, 2016, the District hosted an open house, which over 1,200 members of the public attended to preview the six proposals, meet the development teams and provide comments; and

**WHEREAS**, on July 13, 2016, the Board of Port Commissioners (BPC) after thoroughly considering all the proposers/proposals, directed staff to enter into exclusive discussions with the 1HWY1 team and to further evaluate the Seaport San Diego (Seaport) proposal, while not making a final selection or eliminating the other five proposals/proposers; and

**WHEREAS**, the factors that the BPC expressed in directing staff to enter into the exclusive discussions included, but are not limited to, 1HWY1: provided the most comprehensive approach to the overall project; included a variety of exciting and innovative programmatic components (as identified in the RFP); comprised of a development team that is best in class and is well-qualified; considered existing prioritized land uses on Tidelands; was heavily supported by stakeholders during public comment; and

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**WHEREAS**, following the BPC's direction, staff immediately commenced a due diligence phase by forming a cross-functional team to develop questions regarding areas of the 1HWY1's proposal that staff believed needed clarification; and

**WHEREAS**, that supplemental information and analysis of the same has been presented to the BPC; and

**WHEREAS**, after the BPC considered the entire record, including all proposals/proposers, the criteria in the RFP and how the proposals/proposers meet said criteria, and information provided to the BPC, on November 8, 2016, the BPC adopted Resolution No. \_\_\_\_\_, selecting \_\_\_\_\_, as the successful proposer/proposal, concluding the RFP process and reserving certain rights under the RFP and law, as more particularly described in said Resolution; and

**WHEREAS**, additional due diligence and information is needed by the District related to the 1HWY1 proposal and team; and

**WHEREAS**, the BPC's action, including due diligence and information gathering efforts, does not bind the District to a definite course of action and the District retains the sole and absolute discretion to modify the proposal or any project arising therefrom, or to determine not to approve any project or entitlements for the same; and

**WHEREAS**, the BPC's action does not constitute an "approval" of a "project" under the California Environmental Quality Act and the BPC may, in its sole and absolute discretion, adopt (1) any and all feasible mitigation measures, (2) feasible alternatives to a project that may arise from the proposal, including a no project alternative, and/or (3) a statement of overriding consideration, if applicable.

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

District staff is directed to conduct the following due diligence and gather additional information, which shall exclude, at this time, any District due diligence, information and negotiations on hotel development; provided, however, said due diligence and information gathered is not an all-exclusive list and the District reserves the right to require additional due diligence and information-gathering:

### Approach to Project

1. HWY1 shall identify the anticipated retail tenant mix, including targeted retailers.

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2. A market and feasibility study shall be commissioned by the District, at 1HWY1's expense, to demonstrate the following programs can be supported as proposed:
  - a. Restaurant and retail
  - b. Office
  - c. Attractions, including the aquarium (marine attractions), the SkySpire (observation tower)
  - d. Water-oriented facilities, including commercial fishing, recreational boats and mega yachts
3. 1HWY1 shall further define the proposed existing Seaport Village tenant retention and relocation program beyond the proposed construction phase.
4. 1HWY1 shall provide clarity regarding the anticipated "marine related" office tenant mix, including targeted users, to ensure the proposed office program is consistent with the Public Trust.
5. Due to the proposed height and location of the SkySpire, 1HWY1 shall obtain:
  - a. a determination of no hazard from the Federal Aviation Administration;
  - b. a consistency determination from the San Diego Regional Airport; and,
  - c. a determination from the U.S. Navy to ensure feasibility.
6. A written guarantee shall be provided by ThrillCorp that the Seaport SkySpire shall not be replicated. This shall also be a term of any future real estate agreement between the District and 1HWY1.
7. As a result of the impacts to Ruocco Park proposed under the Seaport proposal, 1HWY1 shall submit a plan to the District to satisfy the obligations under the grant agreement with the San Diego Foundation.
8. 1HWY1 shall provide clarity regarding the marine-focused charter school and evidence that the proposed use and programming is consistent with the Public Trust.
9. A parking study shall be commissioned by the District, at 1HWY1's expense, using the District's parking guidelines to determine whether adequate parking has been proposed; at this time, the study shall exclude any proposed hotel development.
10. The proposed mobility plan shall be refined to reflect coordination with other existing mobility plans in the area, including, but not limited to: City of San Diego, Civic San Diego and the San Diego Association of Governments to identify proposed mobility strategies that could help alleviate any potential parking demand resulting from the proposed uses.
11. 1HWY1 shall provide clarity as to its commitment to existing commercial fishing tenants of the G Street Mole during construction and upon completion.
12. Proposed dock and dine facilities as a public amenity shall be considered as a term of any future real estate agreement between the District and 1HWY1.

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13. The proposed water mobility plan shall be refined to meet site specific objectives and ensure alignment with the Port Master Plan Update (PMPU).
14. 1HWY1 shall provide clarity regarding activation and programming and any applicable charges for the use of public spaces shall be provided to ensure there is adequate public access.
15. 1HWY1 shall confirm whether they will commit 75 percent of the 40 acres of land to parks and open space.
16. 1HWY1 team shall participate in briefings from the PMPU team in order to ensure continued alignment of the proposal with the Integrated Planning Vision and an understanding of how their proposal fits within and will tier-off the larger PMPU process.

### Proposer's Relevant Experience

17. With RCI Marine Group (RCI) being the only proposed member with ground up development experience, their role and level of commitment shall be clarified.
18. 1HWY1 shall form the proposed LLC and identify each of the member's roles and level of financial commitment.

### Capability to Perform

19. Protea Waterfront Development (PWD), as the proposed managing member of 1HWY1, shall form the proposed LLC and identify each of the member's roles, including identification of a managing member, and level of financial commitment.
20. As part of the requirement that the 1HWY1 LLC be formed, the District shall be provided with a copy of the operating agreement, including terms regarding the amount of equity each member shall be responsible for capitalizing, and conditions upon which a member could exit the LLC.
21. 1HWY1 shall obtain and provide to the District commitment letters from all potential equity providers given the scale of equity required to finance the proposal at a time to be designated by the District during the pre-development phase.

### Revenue and Expense

22. As previously detailed in the Approach to Project, market and feasibility studies, excluding, at this time, hotels, shall be commissioned by the District, at 1HWY1's expense, to further validate demand and the revenue and expense assumptions made in the 1HWY1 financial model.
23. The financial model shall be refined to include, at a minimum:
  - a. An allocation of public improvement costs at the programmatic component level,
  - b. A sources and uses projection at the programmatic component

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level, and

c. Inclusion of additional costs and revenue sources.

24. 1HWY1 shall provide clarification on its proposed percentage rents, excluding, at this time, hotels, to confirm whether 1HWY1 is requesting rent concessions and will pay percentage rents(s) that is/are within District standards.
25. 1HWY1 shall conduct an evaluation and provide clarification of 1HWY1's potential returns associated with the charter school, given the proposed lack of District rent payment for this programmatic component.
26. If certain uses are not permitted on Tidelands (i.e. charter school and cinema), 1HWY1 shall conduct an evaluation of potential programmatic component alternatives and submit such evaluation to the District.

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 8<sup>th</sup> day of November, 2016, by the following vote: