

DRAFT

RESOLUTION 20xx-xxx

RESOLUTION CONSENTING TO A SUBLEASE THROUGH SEPTEMBER 30, 2025, WITH ONE FIVE-YEAR OPTION TO EXTEND THE TERM FROM VB RUN, LLC TO SPRINT PCS ASSETS, LLC FOR WIRELESS COMMUNICATION EQUIPMENT

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; and

WHEREAS, the Board of Port Commissioners (BPC) adopted BPC Policy No. 355 to establish general policies for leasing the San Diego Unified Port District real estate assets; and

WHEREAS, Sprint PCS Assets, LLC, a Delaware limited liability company (Sprint) occupies one wireless communication equipment site, located behind the San Diego Convention Center at 224 Marina Park Way in Embarcadero Marina Park South under a Tideland Use and Occupancy Permit (TUOP) (District Clerk Document No. 56867); and

WHEREAS, the TUOP currently expires September 30, 2025, with one, five-year option to extend the term, which if exercised would extend the expiration date to September 30, 2030; and

WHEREAS, Sprint is proposing to assign its rights and obligations under the TUOP to VB Run, LLC, a Delaware limited liability company (VB Run), which is a subsidiary of Vertical Bridge, REIT, LLC a Delaware limited liability company; and

WHEREAS, conditioned on the approval of the Board of Port Commissioners (Board) of the assignment of the TUOP, VB Run will assume the ownership interest of the above-referenced wireless communication equipment currently owned by Sprint and in turn, VB Run will sublease the TUOP site and accompanying equipment back to Sprint for the remainder of the term of the TUOP; and

WHEREAS, the proposed assignment and assumption of the TUOP to VB Run is consistent with BPC Policy No. 355; and

WHEREAS, staff recommends the Board consent to a Sublease through September 30, 2025, with one five-year option to extend the term from VB Run, LLC to Sprint PCS Assets, LLC for the TUOP site and accompanying wireless communication equipment located behind the San Diego Convention Center at 224 Marina Park Way, subject to the following:

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1. Notwithstanding anything to the contrary stated or implied in the Sublease (as the same may be amended), the Sublease shall at all times be subject and subordinate, in all respects, to the TUOP, and the Sublease is a sublease being created under the authority of the TUOP, the terms of which shall be incorporated into the Sublease;

2. In no event shall Sprint have any rights under the Sublease which have not been granted to VB Run under the TUOP nor may Sprint take any action under the Sublease that would violate any term, provisions, requirement, or condition of the TUOP;

3. Nothing contained in the Sublease shall in any way amend or modify any of the rights and obligations of District and VB Run under, nor be used in the interpretation of any provision of, the TUOP; and

4. By effectuating the Sublease, VB Run and Sprint understand and agree that nothing contained in the Sublease shall be binding on or enforceable against District, nor will District incur any liability arising out of or relating to the Sublease, and VB Run and Sprint release and agree to jointly and severally indemnify and hold District harmless from and against any litigation, claim, action, proceeding, loss, damage, cost, expense (including, without limitation, all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment arising out of, or relating to, the Sublease.

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, conditioned upon the foregoing terms of this Resolution, hereby consents to a Sublease through September 30, 2025, with one five-year option to extend the term from VB Run, LLC to Sprint PCS Assets, LLC for the TUOP site and accompanying wireless communication equipment located behind the San Diego Convention Center at 224 Marina Park Way; provided that the consent granted hereunder shall be null and void and of no further force and/or effect if the assignment of the TUOP to VB Run, LLC fails to take place (and in turn, the Sublease to Sprint PCS Assets, LLC fails to become effective) on or before August 31, 2022.

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 12th day of April 2022, by the following vote: