

DRAFT

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE xxxx

ORDINANCE GRANTING LEASE AMENDMENT NO. 2 TO OLD TOWN TROLLEY TOURS OF SAN DIEGO LOCATED AT 996-B NORTH HARBOR DRIVE, IN THE CITY OF SAN DIEGO, AMENDING THE RENT AND OPTION TERM PROVISIONS, AND OTHER PROVISIONS

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, Section 21 of the Port Act requires that all grants, franchises, leases, permits or privileges for more than five (5) years shall be made by ordinance; and

WHEREAS, Old Town Trolley Tours of San Diego (OTT) has two long term leases with the District for the Visitor Information Center (VIC) and a ticket kiosk (Kiosk) (collectively, the OTT Leases) both located on the Embarcadero; and

WHEREAS, both of the OTT Leases have an initial ten-year term with a five-year option to extend and both commenced on December 1, 2014; and

WHEREAS, OTT directs visitors to attractions and businesses both on and off of tidelands, provides important information on District tenants, and sells tickets for attractions around San Diego including the Old Town Trolley and SEAL Tours; and

WHEREAS, in March 2020, OTT reached out to staff to request a structural rent reset of the OTT Leases due to the economic impacts of the COVID-19 pandemic on their businesses; and

WHEREAS, with both businesses closed from mid-March until July 23rd of this year and much of their business dependent on tourism and third-party operators, the impact to their businesses has been severe; and

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WHEREAS, since reopening in July, ticket sales for the Old Town Trolley and the SEAL tours have been down substantially compared to the same time last year; and

WHEREAS, OTT's business is very seasonal and relies on the busy tourism months during the summer for the majority of their annual revenue; and

WHEREAS, now that the summer season has passed, OTT is unlikely to generate sufficient revenue to remain operational for the remainder of Fiscal Year 20/21 without some assistance from the District; and

WHEREAS, as a concession and fixed rent-paying tenant, staff invited OTT to participate in the different rent deferral programs adopted by the Board of Port Commissioners (BPC); and

WHEREAS, in May 2020, OTT submitted a rent deferral request for its locations, but informed staff that the deferral would not be sufficient to keep them afloat; and

WHEREAS, as the pandemic worsened, staff in consultation with OTT, determined that a deferral of rent would not enable OTT to remain operational through the coming year; and

WHEREAS, staff has analyzed OTT's financial information and sales history and determined that a structural rent reset of the OTT Lease for the VIC, rather than a rent deferral, is necessary for OTT to remain economically viable through the end of the year and beyond; and

WHEREAS, the OTT Lease for the VIC is for the operation of the Visitor Information Center along the promenade in the Embarcadero that sells tickets for the Old Town Trolley and SEAL tours along with other third-party attractions; and

WHEREAS, the VIC provides an important service for visitors to the waterfront with an information desk stocked with brochures and concierge services available; and

WHEREAS, the VIC also provides a benefit to District tenants and other San Diego attractions by informing the public of their locations and services offered; and

WHEREAS, despite the public value these services offer, they generate little to no revenue for OTT; and

WHEREAS, the impact of the COVID-19 pandemic on the VIC has been substantial with ticket sales for the Old Town Trolley and the SEAL tours at about 30% of the sales from the same time last year; and

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WHEREAS, even prior to COVID-19, the fixed amount of the improvement rent (IR) (which reimburses the District over the term of the lease for the costs the District incurred in initially constructing the VIC), in addition to percentage rent due under the lease, made it difficult for OTT to operate profitably even under normal economic conditions; and

WHEREAS, based on discussions with OTT, staff recommends a proposed amendment to the OTT Lease for the VIC with the goal of reducing immediate expenses for OTT thereby allowing them to remain in business; and

WHEREAS, under the proposed amendment, the current minimum annual rent (MAR) of \$87,457, would be reduced by 75% retroactively from April 1, 2020 until November 30, 2021; and

WHEREAS, this would allow OTT to continue operating through the COVID-19 pandemic and continue to provide visitor services; and

WHEREAS, the District would continue to receive some rent and allow a very visible Embarcadero building to remain occupied by a business that provides valuable service to the District and the public; and

WHEREAS, under the proposed terms, the MAR would reset on December 1, 2021 to 75% of the average total rent paid in the previous six months (i.e. June 1, 2021 - November 20, 2021); and

WHEREAS, the percentage rental rates would remain the same so if the market does bounce back prior to December 2021, the District would receive concession rent (which is higher than MAR); similar to how the current OTT Lease for the VIC is structured; and

WHEREAS, the VIC lease also includes IR that reimburses the District for the costs the District incurred in originally constructing the buildings, which would be reduced by 75% retroactively from April 1, 2020 through November 30, 2021, would increase to a 50% reduction on December 1, 2021, and increase to a 25% reduction on December 1, 2024; and

WHEREAS, the adjustment to IR is necessary to allow OTT to operate the VIC while tourism is still rebounding, with gradual increases over the years so OTT can recover while allowing the District to still receive some reimbursement; and

WHEREAS, under the proposed amendment to the OTT Lease for the VIC, the five-year option would be modified to give the District the right to approve or reject the option in its sole and absolute discretion; and

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WHEREAS, this change will give the District flexibility with regard to the future of the space; and

WHEREAS, if OTT exercises the option to extend the lease for five years and it is approved by the District, the proposed amendment would extend the payment of the IR into the option period at a rate of 75% of the original IR amount; and

WHEREAS, if the option is exercised and approved, the net present value of the adjusted IR would be slightly higher than the original IR and would allow the District to receive reimbursement in the full amount contemplated by the current OTT Lease for the VIC; and

WHEREAS, if OTT does not exercise the option or the District does not consent to the extension, the District could still potentially receive the full amount of the reimbursement by leasing the improvements to a new tenant and charging IR; and

WHEREAS, under the proposed amendment to the OTT Lease for the VIC, certain scrivener's errors would be corrected, and related clarifying changes would be made, to certain provisions; and

WHEREAS, OTT has agreed to pay the District outstanding rent of \$23,143 for the period of December 2019 through March 31, 2020, prior to execution of any amendment to the OTT Leases with the proposed modifications to the MAR, IR and option; and

WHEREAS, OTT paid the outstanding rent to the District prior to the October 6, 2020 BPC Meeting.

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

1. The Agreement for Amendment of Lease Amendment No. 2 to the lease with Old Town Trolley Tours of San Diego (Amendment No. 2) located at 996-B North Harbor Drive in the City of San Diego, to reduce the Minimum Annual Rent (MAR) by 75% retroactively to April 1, 2020 until November 30, 2021; reset the MAR on December 1, 2021 to 75% of the average total rent paid in the past six months (i.e. June 1, 2021 – November 30, 2021); reduce improvement rent (IR) by 75% retroactively to April 1, 2020 through November 30, 2021; increase IR to a 50% reduction on December 1, 2021; increase IR to a 25% reduction on December 1, 2024 (if option is exercised and approved); modify the five-year option to give the District the right to approve or reject the option in its sole and absolute discretion; and fix certain scrivener's errors, and make related clarifying changes, in certain provisions of the original lease, is hereby approved.

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2. The Executive Director or her designated representative is hereby authorized to execute said Amendment No. 2.

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 6th day of October 2020, by the following vote: