

DRAFT**RESOLUTION 20xx-xxx**

RESOLUTION FINDING THE BOARD ACTION EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), INCLUDING, BUT NOT LIMITED TO, CEQA GUIDELINES SECTION 15306, AND AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE DISTRICT AND THE CITY OF SAN DIEGO, CITY OF OCEANSIDE, AND COUNTY OF ORANGE FROM JULY 1, 2023, THROUGH JUNE 30, 2028, TO WORK COLLABORATIVELY ON A REGIONAL HARBOR MONITORING PROGRAM TO EVALUATE THE STATUS AND TRENDS OF WATERS, SEDIMENT, AND AQUATIC LIFE IN THE REGION'S HARBORS PURSUANT TO §13225 OF THE CALIFORNIA WATER CODE. ALL FUNDS REQUIRED FOR FUTURE FISCAL YEARS WILL BE BUDGETED IN THE APPROPRIATE FISCAL YEAR, SUBJECT TO BOARD APPROVAL UPON ADOPTION OF EACH FISCAL YEAR'S BUDGET

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, in 2003, the Regional Board issued a California Water Code § 13225 directive to the District, Cities, and the County to coordinate and develop the Regional Harbor Monitoring Program (RHMP) as a comprehensive effort to determine ambient conditions and trends in the quality of water, sediments, and aquatic life in San Diego Bay, Mission Bay, Oceanside Harbor, and Dana Point Harbor; and

WHEREAS, the District has been working cooperatively with the other parties to develop and implement the RHMP; and

WHEREAS, a memorandum of understanding (MOU) was established in 2005 and reissued in 2008, 2013 and 2018 to formalize the parties' commitment to work together and share costs for RHMP program; and

WHEREAS, in April 2022, the consultant firm WSP USA Environment and Infrastructure Inc. (formerly Wood Environment and Infrastructure Solutions, Inc.) was selected to implement the upcoming RHMP through Board approved Agreement No. 27-2022JR (Document No. 73733); and

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WHEREAS, the next core monitoring effort is scheduled to occur this summer (July through September 2023), pending budget approval; and

WHEREAS, the current MOU is set to expire June 30, 2023; and

WHEREAS, a new MOU is needed to continue implementing the RHMP and assessing conditions in each harbor; and

WHEREAS, the proposed MOU herein will be for a five-year period from July 1, 2023, to June 30, 2028; and

WHEREAS, the MOU will reaffirm the District as the lead to oversee implementation of the RHMP to hold meetings, act as a liaison with the Regional Board, and administer a consultant contract(s) to perform RHMP-related services; and

WHEREAS, the cost share formula presented in the MOU is based on the same formula used in the previous MOUs, which accounts for the acreage and stratification of each harbor as well as fixed costs per agency; and

WHEREAS, the District's share of costs will amount to approximately 56 percent of the total cost as the District represents the largest harbor area and contains the most number of strata analyzed in the program; and

WHEREAS, the remaining 44 percent of costs will be reimbursed annually to the District from the Cities and County; and

WHEREAS, the Cities and County will annually provide the District with a 5 percent fee based on total costs of the consultant contract to account for administrative responsibilities, coordination efforts, and management of the consultant agreement; and

WHEREAS, the total cost of the present and any future consultant contracts to assist with RHMP services will not exceed \$1,611,000 for the five-year period; and

WHEREAS, all funds required for future fiscal years will be budgeted in the appropriate fiscal years and subject to Board approval upon adoption of each fiscal year's budget; and

WHEREAS, upon FY24 Board budget approval, the RHMP will conduct its core monitoring program during fiscal year 2023-2024, which is estimated not to exceed \$1,130,000; and

WHEREAS, the proposed Board action, including without limitation, authorizing an MOU between the District and the City of San Diego, City of

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Oceanside, and County of Orange to work collaboratively on an RHMP, is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15306 of the District's Guidelines for Compliance with CEQA because the project would consist of basic data collection/research/experimental management/resource evaluation activities, including providing data to evaluate the status and trends in water and sediments in San Diego Bay via measurements in chemistry, toxicity, benthic community analyses, and biodiversity, which would not result in a serious or major disturbance to an environmental resource; and

WHEREAS, the District has determined none of the six exceptions to the use of a categorical exemption apply to this Project (CEQA Guidelines Section 15300.2); and

WHEREAS, the proposed Board action complies with Section 87.(a)(7) of the Port Act, which allows the District to undertake the establishment and maintenance of those lands for open space, ecological preservation, and habitat restoration, for public trust purposes; and

WHEREAS, the proposed BPC action is consistent with the Port Act and accordingly, the Public Trust Doctrine; and

WHEREAS, the proposed Board action is considered excluded development pursuant to Section 8.e. of the District's Coastal Development Permit Regulations because the project would consist of working collaboratively on the RHMP and would not result in a serious or major significant disturbance to an environmental resource; and

WHEREAS, pending Board approval, District staff would notify California Coastal Commission (CCC) staff in accordance with Coastal Act Section 30717; and

WHEREAS, the approval would become effective after the 10th working day after notification to CCC staff, unless an appeal is filed with the CCC within that time frame; and

WHEREAS, District Staff recommends that the Board adopt a resolution authorizing a Memorandum of Understanding between the District and the City of San Diego, City of Oceanside and County of Orange from July 1, 2023 through June 30, 2028 to work collaboratively on a Regional Harbor Monitoring Program to evaluate the status and trends of waters, sediment, and aquatic life in the region's harbors pursuant to §13225 of the California Water Code. All funds required for future fiscal years will be budgeted in the appropriate fiscal year, subject to board approval upon adoption of each fiscal year's budget.

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

1. The BPC finds the facts recited above are true and further finds that this BPC has jurisdiction to consider, approve and adopt the subject of this Resolution.

2. Based on the entire record available to the BPC and the findings set forth in this Resolution, the BPC finds that the Project, including without limitation, a resolution authorizing a Memorandum of Understanding between the District and the City of San Diego, City of Oceanside and County of Orange from July 1, 2023 through June 30, 2028 to work collaboratively on a Regional Harbor Monitoring Program to evaluate the status and trends of waters, sediment, and aquatic life in the region's harbors pursuant to §13225 of the California Water Code, are categorically exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15306 of the District's Guidelines for Compliance with CEQA because the project would consist of basic data collection/research/experimental management/resource evaluation activities, including providing data to evaluate the status and trends in water and sediments in San Diego Bay via measurements in chemistry, toxicity, benthic community analyses, and biodiversity, which would not result in a serious or major disturbance to an environmental resource; and

2. The BPC finds that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

3. The Project was previously determined to be exempt from CEQA by District staff.

4. The BPC finds that the action complies with Section 87 of the Port Act, which allows for the construction, reconstruction, repair, maintenance, and operation of public buildings, public assembly and meeting places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including, but not limited to, public golf courses, and for all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses.

5. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed BPC action is consistent with the Public Trust Doctrine.

6. The proposed Board action is considered excluded development pursuant to Section 8.e. of the District's Coastal Development Permit Regulations because the project would consist of working collaboratively on the RHMP and would not result in a serious or major significant disturbance to an environmental resource.

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7. A categorical determination of exclusion and notice of approval will be issued for this Project and will be effective 10 working days after notification to California Coastal Commission staff, provided no appeals are received.

8. Based on the entire record available to the BPC and the findings set forth in this Resolution, the Executive Director or his designated representative is hereby authorized and directed to enter into a Memorandum of Understanding between the District and the City of San Diego, City of Oceanside and County of Orange from July 1, 2023 through June 30, 2028 to work collaboratively on a Regional Harbor Monitoring Program to evaluate the status and trends of waters, sediment, and aquatic life in the region's harbors pursuant to §13225 of the California Water Code. All funds required for future fiscal years will be budgeted in the appropriate fiscal year, subject to board approval upon adoption of each fiscal year's budget.

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 9th day of May 2023, by the following vote: