

DRAFT**RESOLUTION 20xx-xxx**

RESOLUTION AUTHORIZING AN AGREEMENT AMONG THE SAN DIEGO UNIFIED PORT DISTRICT, THE CITY OF SAN DIEGO AND FIFTH AVENUE LANDING THAT THE CITY CLERK CERTIFIED THAT THE CITIZENS INITIATIVE “FOR A BETTER SAN DIEGO” QUALIFIED AS A BALLOT MEASURE FOR VOTER APPROVAL AND THAT CORRESPONDING CONDITIONS PRECEDENT IN SECTIONS 6.1.1 AND 7.2.1 OF THE JUNE 21, 2018 PURCHASE AND SALE AGREEMENT HAVE BEEN SATISFIED

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, over the past decade, there have been extensive planning, design, and financing efforts towards the completion of a Phase III Expansion of the San Diego Convention Center (Convention Center); and

WHEREAS, the Phase III Expansion site is located on District tidelands bayward of Convention Way and is also located on land currently leased by Fifth Avenue Landing, LLC (FAL), often referred to as the “Arc Lease Premises” and the “Marina Landside Area” (collectively, FAL Premises); and

WHEREAS, on June 21, 2018, the District, the City of San Diego (City) and FAL, (collectively, Parties) entered into a Purchase and Sale Agreement (PSA) in anticipation of a citizen’s initiative titled “For a Better San Diego” (Initiative), which proposes a special tax measure to increase the City’s transient occupancy tax and dedicate the resulting revenues for specified public benefits, including the financing and construction of the Phase III Expansion of the Convention Center; and

WHEREAS, subject to various conditions precedent, the PSA provides that the City will control of the FAL Premises, which makes up a majority of the Phase III Expansion site; and

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WHEREAS, Sections 6.1.1 and 7.2.1 of the PSA include conditions precedent that the Initiative qualifies as a ballot measure and that the City give FAL and the District notice of the qualification by August 20, 2018 (collectively, Ballot Qualification Condition); and

WHEREAS, prior to Ballot Qualification Condition's August deadline, a sample of signatures for the Initiative was counted by the San Diego County Registrar of Voters (ROV), but the count fell between 95% and 100%, which triggers the need for a full count of signatures; and

WHEREAS the Parties agreed to extend the deadlines for certain deliverables under the PSA to September 25, 2018, including the deadline for the Ballot Qualification Condition to allow for the full ballot count to occur; and

WHEREAS, on September 20, 2018, the City notified the District and FAL that, based on signatures verifications completed by the ROV, the City Clerk certified that the initiative qualified as a Ballot Measure to be submitted to the local voters no later than November 2020; and

WHEREAS, the Parties entered into a second extension of the deadlines to October 25, 2018 and a third extension of the deadlines to November 5, 2018 to allow FAL and the District to decide whether the Ballot Qualification Condition has been satisfied; and

WHEREAS, staff is recommending that the Board of Port Commissioners (BPC) find that the Ballot Qualification Condition has been met and authorize entering into an agreement that the Ballot Qualification Condition (sections 6.1.1 and 7.2.1 of the PSA) have been satisfied; and

WHEREAS, the proposed actions were previously analyzed in the Final Environmental Impact Report that was certified by the Board on September 12, 2012 (SCH #2010121004, UPD-83356-EIR-855; District Document No. 59378, filed on September 28, 2012), were considered in the adopted Findings of Fact and a Statement of Overriding Considerations and a Mitigation Monitoring Reporting Program adopted by the Board on September 12, 2012, as well as Addendum to Final Environmental Impact Report (District Document No. 61745 filed on April 25, 2014) adopted by the Board on March 4, 2014 (collectively, FEIR); and

WHEREAS, the proposed actions are not a separate "project" for California Environmental Quality Act (CEQA) purposes but simply an additional governmental approval required to implement a previously approved project and accordingly, the District has determined that actions are merely a step-in furtherance of the original project for which environmental review was previously performed, and no further environmental review is required; and

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WHEREAS, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the FEIR, the proposed approvals do not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light; and

WHEREAS, the proposed BPC 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; and

WHEREAS, the Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine and consequently, the proposed BPC action is consistent with the Public Trust Doctrine; and

WHEREAS, the proposed actions do not allow for “development,” as defined in Section 30106 of the Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses.

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 authorize the subject of this Resolution.

2. The BPC finds that the proposed actions are not a separate “project” for CEQA purposes but simply an additional governmental approval required to implement a previously approved project and therefore the proposed actions are merely a step-in furtherance of the original project for which environmental review was performed, and no further environmental review is required. Pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the FEIR, the BPC finds and recommends that the proposed action does not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in severity

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of previously identified significant effects; and 2) no new information of substantial importance has come to light that (a) shows the project will have one or more significant effects not discussed in the FEIR, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and (d) requires changes to mitigation measures or alternatives. Pursuant to CEQA Guidelines §15162(b), the BPC finds and recommends that the proposed actions are within the scope of the FEIR and no further analysis or environmental documentation is necessary.

3. The BPC finds that the proposed action is consistent with the Public Trust Doctrine because the proposed action complies with Section 87 of the Port Act which was enacted by the California Legislature.

4. The BPC finds that proposed actions do not allow for “development,” as defined in Section 30106 of the Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses and therefore issuance of a CDP or exclusion is not required.

5. The BPC finds that the Ballot Qualification Conditions as set forth in Sections 6.1.1 and 7.2.1 have been satisfied. The Executive Director or her designated representative is hereby authorized to enter into an agreement with the City of San Diego and Fifth Avenue Landing, as attached to the corresponding agenda sheet, agreeing that Sections 6.1.1 and 7.2.1 of the PSA have been satisfied.

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 1st day of November 2018, by the following vote: