

DRAFT**SAN DIEGO UNIFIED PORT DISTRICT****ORDINANCE xxxx****ORDINANCE GRANTING LEASE AMENDMENT NO.
1 TO OLD TOWN TROLLEY TOURS OF SAN DIEGO
LOCATED AT 1004-A 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 Kiosk, 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 Kiosk is for the operation of the kiosk booth on the Embarcadero which sells tickets for the Old Town Trolley, the SEAL tours and other third-party attraction tickets in San Diego; and

WHEREAS, sales are down considerably with ticket sales at approximately 20% of the same time last year; and

WHEREAS, the OTT Lease for the Kiosk typically performs much better than the VIC due to its proximity to a nearby trolley stop and reduced staffing needs compared to the VIC, allowing OTT to keep expenses down; and

WHEREAS, under the proposed amendment to the OTT Lease for the Kiosk, the MAR would be reduced by 75% retroactive to April 1, 2020 until November 30, 2021 and reset to 75% of the average rent paid in the past six months (i.e. June 1, 2021-November 30, 2021) on December 1, 2021; and

WHEREAS, the Improvement Rent (IR) and the percentage rental rates would remain the same; and

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WHEREAS, under the proposed amendment to the OTT Lease for the Kiosk, the option would be modified to give the District the ability to approve or reject the option in its sole and absolute discretion; and

WHEREAS, under the proposed amendment to the OTT Lease for the Kiosk, certain scrivener 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. 1 to the lease with Old Town Trolley Tours of San Diego (Amendment No. 1) at 1004-A 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); 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.
2. The Executive Director or her designated representative is hereby authorized to execute said Amendment No. 1.
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: