



Legislation Text

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DATE: December 28, 2020

SUBJECT:

MUNICIPAL SERVICES AGREEMENTS:

- (A) RESOLUTION AUTHORIZING A 10-YEAR MUNICIPAL SERVICES AGREEMENT WITH THE CITY OF IMPERIAL BEACH FOR LAW ENFORCEMENT, FIRE, EMERGENCY MEDICAL, LIFEGUARD, ANIMAL CONTROL, AND MAINTENANCE SERVICES ON NON-AD VALOREM DISTRICT PROPERTY LOCATED IN THE CITY OF IMPERIAL BEACH**
- (B) RESOLUTION AUTHORIZING A 10-YEAR MUNICIPAL SERVICES AGREEMENT WITH THE CITY OF CHULA VISTA FOR POLICE, FIRE, AND EMERGENCY SERVICES ON NON-AD VALOREM DISTRICT PROPERTY LOCATED IN THE CITY OF CHULA VISTA**
- (C) DIRECT STAFF TO NEGOTIATE MUNICIPAL SERVICES AGREEMENTS WITH SAN DIEGO, NATIONAL CITY, AND CORONADO AND PROVIDE OTHER DIRECTION TO STAFF AS NEEDED**

EXECUTIVE SUMMARY:

The District reimburses its five Member Cities for certain services provided on non-taxpaying Tidelands. These agreements are referred to as Municipal Services Agreements (MSAs). The District previously executed two MSAs with the City of Imperial Beach - one for the provision of police, fire, emergency medical, lifeguard, and animal control services, and the other, for tidelands maintenance services. The District also executed an MSA with the City of Chula Vista for the provision of police, fire, and emergency medical services. Three other MSAs exist with the member cities of San Diego, National City, and Coronado for the provision of law enforcement, fire, and emergency services on tidelands. These agreements all expire June 30, 2021.

At the December 8, 2020 Board meeting, the Board considered two proposed MSAs - one with Imperial Beach for the combined services of law enforcement, fire, emergency medical, lifeguard, animal control services, and tidelands maintenance services and the other with Chula Vista for law enforcement, fire, and emergency medical. At the direction of the Board, the Imperial Beach and Chula Vista MSAs were continued to the December 28 Board meeting to allow staff to obtain additional information, confer with Imperial Beach and Chula Vista, and reach out to the Cities of San Diego, National City, and Coronado.

Comments made at the Board meeting as well as items considered by staff since the Board meeting included the proposed length of the term, the ability to decrease payments during a baseline reset,

the establishment of metrics on a uniform basis throughout the member cities, the frequency of baseline resets, the consideration of all MSAs at the same time, and the ability to terminate. Based on these Board comments, further staff research, and discussion with the member cities, staff is now recommending revisions to the proposed MSAs to reduce the terms to 10 years, to provide that baseline resets must be approved by the Board and will allow for payments to be increased or reduced, to enhance audit provisions, and in the case of Chula Vista, to limit termination to mutual agreement for the first three years only. The Imperial Beach MSA would also add a five year baseline reset. In both agreements, and except for baseline resets, amounts payable would continue to automatically increase by 3% annually as proposed on December 8.

Additionally, per Board direction, staff reached out to the cities of San Diego, National City, and Coronado to commence discussions and establish a meeting schedule to negotiate new MSAs. Staff has met with National City and San Diego once each and will meet again in early 2021. Staff also reached out to Coronado but has not yet heard back regarding a proposed meeting date or process to re-evaluate the applicable MSAs.

As discussed below, staff recommends the Board approve the Imperial Beach and Chula Vista MSAs as revised in substantially the form attached as Attachments A and B. Staff further recommends the Board direct staff to continue discussions with San Diego, National City, and Coronado to lead to negotiations for new MSAs. Staff also recommends that the agreements should be based generally on the framework established by the Imperial Beach and Chula Vista MSAs. Lastly, staff recommends the Board provide any other direction to staff on the MSAs.

RECOMMENDATION:

- (A) Resolution Authorizing a 10-Year Municipal Services Agreement with the City of Imperial Beach for Law Enforcement, Fire, Emergency Medical, Lifeguard, Animal Control, and Maintenance Services on Non-Ad Valorem District Property Located in the City of Imperial Beach.
- (B) Resolution Authorizing a 10-Year Municipal Services Agreement with the City of Chula Vista for Police, Fire, and Emergency Medical Services on Non-Ad Valorem District Property Located in the City of Chula Vista
- (C) Direct Staff to Negotiate Municipal Services Agreements with San Diego, National City, and Coronado and Provide Other Direction to Staff as Needed

FISCAL IMPACT:

Funds are budgeted in the current FY 20/21 budget. Funds required for future fiscal years will be budgeted for in the appropriate year subject to Board approval upon adoption of each fiscal year's budget. The proposed Imperial Beach MSA is valued at the currently-budgeted rate of \$5,125,320 for FY 20/21 escalating by approximately 5.7% to \$5,415,888 in FY 21/22. The proposed Chula Vista MSA is valued at the currently-budgeted rate of \$1,103,646 which escalates to \$1,136,755 in FY 21/22.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A Port with a healthy and sustainable bay and its environment.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

The District reimburses its five member cities for certain services provided on non-taxpaying Tidelands. These agreements are referred to as Municipal Services Agreements (MSAs). At the December 8, 2020 Board meeting, staff presented two agenda items regarding Municipal Services Agreements (MSAs) which were continued to the December 28, 2020 Board meeting. The District previously entered into two MSAs with the City of Imperial Beach - one for the provision of police, fire, emergency medical, lifeguard, and animal control services, and the other, for tidelands maintenance services as well as one MSA with the City of Chula Vista for the provision of police, fire, and emergency medical services. These agreements are set to expire June 30, 2021. Three other MSAs with San Diego, National City, and Coronado are also set to expire on June 30, 2021 and are not before the Board for its consideration.

At the direction of the Board, the Imperial Beach and Chula Vista MSAs were continued to the December 28 Board meeting to allow staff to obtain additional information, to confer with Imperial Beach and Chula Vista, and to reach out to the cities of San Diego, National City, and Coronado. Comments made at the Board meeting as well as items considered by staff since the Board meeting included the proposed length of the term, the ability to decrease payments during a baseline reset, the frequency of baseline resets and the methodology of the baseline proposals, the consideration of all MSAs at the same time, and the ability to terminate. Based on these Board comments, further staff research, and discussion with the member cities, staff is now recommending revisions to the proposed MSAs as outlined below. Additionally, per Board direction, staff reached out to the cities of San Diego, National City, and Coronado to commence discussions and establish a meeting schedule to negotiate new MSAs. Staff has met with National City and San Diego once each and will meet again in early 2021. Staff also reached out to Coronado but has not yet heard back regarding a proposed meeting date or process to re-evaluate the MSAs.

Each member city in the District has unique and specific circumstances which may make the application of one metric across jurisdictions difficult and potentially misleading. Imperial Beach, for example, is the only area of the District that contains an oceanfront environment with significantly different service needs than the remaining inner bay locations. Additionally, the San Diego Harbor Police provide varying levels of service throughout tidelands with the most significant presence in the City of San Diego and no presence in Imperial Beach. Chula Vista will be experiencing significant growth in the next decade with the first phase of the Chula Vista Bayfront Master Plan moving toward implementation, including an expected doubling in park acreage over the next five years as well as a significant expansion of the bayfront beach area. National City is also anticipating redevelopment with the implementation of the National City Balanced Plan which also includes additional park acreage. In contrast, future planning for Coronado currently anticipates virtually no additional density on tidelands and no major redevelopment.

These variations coupled with the unique budgeting factors and policies of each member city may

make the establishment of universal metrics across member cities challenging. Staff recommends proceeding with the Imperial Beach and Chula Vista MSAs currently and negotiating either extensions or new agreements with San Diego, National City, and Coronado. Additionally, staff recommends that the Office of the Port Auditor conduct at least one performance audit and services study during the initial years of each MSA to benchmark, qualify, and to the greatest extent possible, quantify the appropriate elements of the baseline rate to ensure fairness in each member city even if the amounts, services, and metrics are not the same across all member cities. Staff further recommends that all baseline proposals must be approved by the Board to ensure that to the extent there are variations among member cities in service levels and metrics, those variations have been reviewed and approved by the Board.

Following is an outline of the main elements of this agenda sheet:

- I. Proposed Imperial Beach MSA
 - A. Overview of Baseline Proposal
 - B. Law Enforcement
 - C. Fire Rescue and Emergency Services
 - D. Animal Control
 - E. Marine Safety and Maintenance
- II. Proposed Chula Vista MSA
 - A. Overview of Baseline Proposal
 - B. Relationship of MSA to Chula Vista Bayfront Financing
 - C. Timing and Frequency of Baseline Resets
 - D. Preliminary Law Enforcement, Fire, and Emergency Services Data
- III. Proposed Terms of the Imperial Beach and Chula Vista MSAs
 - A. Term and Termination
 - B. Baseline Proposals and Reset Dates
 - C. Annual Escalation Provision
 - D. Additional Audit Provisions
- IV. Conclusion and Recommendation
 - A. Approval of the Imperial Beach and Chula Vista MSAs
 - B. Direction to Negotiate with San Diego, National City, and Coronado and Provide Other Direction to Staff as Needed

As more fully discussed below, staff recommends the Board authorize and direct staff to enter into the proposed Imperial Beach and Chula Vista MSAs in substantial conformance to Attachments A and B. Additionally, staff recommends the Board direct staff to negotiate MSAs with the cities of San Diego, National City, and Coronado and return to the Board for approval of those agreements in addition to any other direction the Board may wish to provide.

I. Proposed Imperial Beach MSA

A. Overview of Baseline Proposal

In 2012, the Board of Port Commissioners (Board) authorized the executive director to negotiate

MSAs with the City of Imperial Beach for nine (9) year terms expiring June 30, 2021. The total original value of the two MSAs was approximately \$4.4 million which amount has been escalated per the provisions of the MSAs to \$5,125,320 in the current FY 20/21 budget.

In late 2019, Imperial Beach requested that District staff begin negotiations on a new MSA for police, fire, emergency medical, lifeguard, and animal control, and tidelands maintenance services. Reimbursement for these services is currently embodied in the two separate MSAs, which Imperial Beach also requested that the District consolidate into one. The rate at which Imperial Beach is reimbursed is called the Baseline Rate. The City is proposing an approximately 5.7% increase to the Baseline Rate in FY 21/22 to \$5,415,888 due to the addition of more law enforcement in certain beach areas.

B. Law Enforcement

Imperial Beach contracts with the San Diego County Sheriff's Department for law enforcement services. The costs for service are uniform across the nine cities in the County that contract for these services though the services selected may vary. From a menu of services, Imperial Beach must request the number of officers needed. In accordance with the contract for service between the Imperial Beach and the San Diego County Sheriff's Department, 5.5 deputies (2,210 annual hours per person) are required to provide a deputy 24 hours per day, 365 days per year. Therefore, 16,000 hours equates to 7.2 deputies ($2,210 \times 7.2 = 15,912$) or about $1\frac{1}{2}$ officers for the beachfront, the pier, Pier Plaza, Dunes Park, parking and traffic enforcement, border support and the other law enforcement activities on the District tidelands in Imperial Beach. This equates to one officer at all times and two for the half of the day when the tidelands are busy. Often, the Sheriff spends extra time patrolling these areas because of tips and information, but a call is not necessarily generated. Nonetheless, these regular patrols are needed to maintain the safety of the tidelands.

The unique challenges in providing law enforcement services to the Imperial Beach portion of the District tidelands may not occur in other District cities. Most of the tidelands/beach related law enforcement issues in Imperial Beach occur on the tidelands or in the first couple of blocks (the area west of 3rd Street) directly east of the tidelands. This area includes about 12.5% of the total land mass of the developed portion (non-estuary) of Imperial Beach. In consultation with the Commander of the Imperial Beach substation of the San Diego County Sheriff, Imperial Beach has reported that a large majority of the calls in this area include beach activities, situations on the pier, parking issues, homelessness and improper camping, disturbing the peace and other visitor related items. Although some of the calls in this area are not specifically beach related, there are calls east of this area that are associated with visitors to the tidelands. Based on this information, Imperial Beach suggests that for the purposes of establishing a service area associated with the tidelands, the area west of 3rd Street would be the most appropriate and fair boundary.

Attached as Attachment F is a chart that provides both calls for service (CFS) and Deputy initiated actions (DIA) for Imperial Beach. The chart separates the CFS and the DIA for Imperial Beach and the portion of the community located west of 3rd Street which Imperial Beach has determined represent an area associated with tidelands activity. In summary, a total of 20,395 CFS and DIA were recorded in 2019. Of the total CFS and DIA recorded, 1,855 or 18.4% of the CFS originated in this area, 2,941 or 28.5% of the DIA occurred west of 3rd Street. This illustrates that calls for service alone may not be the best indicator of law enforcement activities in Imperial Beach and further indicates that a significant percentage of the calls are initiated by Deputies patrolling the tidelands area. In

relation to law enforcement actions directly on the tidelands, there are a significant number of service calls that occur west of Seacoast Drive. From June 1, 2020 through December 1, 2020 (six month period), 621 calls for service were responded to by the Sheriff's Department west of Seacoast Drive, or more than 100 per month. The need to maintain a presence along the beach areas may not be fully reflected in the number of calls for service.

Mutual Aid

Mutual aid agreements exist between Imperial Beach and the cities of San Diego and Coronado. Based on discussions with Imperial Beach, mutual aid, however, would not reduce Imperial Beach's dependence on the San Diego Sheriff's Department to provide daily law enforcement services on the Imperial Beach tidelands like might be experienced in the City of San Diego portion of the District. Unlike the geographic relationship between the District and the City of San Diego, the tidelands in Imperial Beach are physically separated from any other law enforcement agency that would provide mutual aid. To the south is the international border and Imperial Beach has no mutual aid agreements with the City of Tijuana or the State of Baja. The eastern border of Imperial Beach is shared with the City of San Diego and while there are some mutual aid calls from both Imperial Beach and the City of San Diego along Imperial Beach's boundaries, the City of San Diego rarely, if ever, provides any mutual aid as far west as tidelands (Seacoast Drive). Similarly, Imperial Beach shares a border with the City of Coronado on the north, but as communicated to District staff, the City of Coronado rarely, if ever, provides mutual aid to District property in Imperial Beach. As reported to District staff, none of the Imperial Beach management team or current law enforcement team in Imperial Beach are aware of a single instance when the City of San Diego or the City of Coronado have responded to a call on the tidelands in Imperial Beach.

Imperial Beach Pier

The Imperial Beach Pier is a unique District property. Calls for service along may not reflect the true measure of activity on the pier, as the Sheriff's station commander has indicated that the foot patrols conducted on the pier for safety often do not result in a call for service unless a ticket is issued or an arrest is conducted. It is much longer than the other pier facilities owned and maintained by the District and has features and uses not found on the other piers. In the past, the District has provided security guards to address these issues; however, neither District staff nor Imperial Beach recommend this going forward.

The Imperial Beach Pier is registered as a "Fishing Pier" and no fishing license is required to fish on the pier. This status draws significant amounts of anglers to the pier and it is not uncommon for anglers to be standing shoulder to shoulder along the entire length of the pier. Additionally, the restaurant at the west end of the pier has been granted an Alcohol Beverage Control license to serve alcoholic beverages but drinking outside the restaurant area is not allowed on the pier. Essentially any enforcement officer is isolated with limited escape routes. Law enforcement on the pier should be conducted by experienced and properly trained law enforcement officers.

These factors require law enforcement presence on the pier that has not been available in the past few years. For this purpose, the proposed MSA reflects a slight increase in the anticipated number of law enforcement hours from 15,310 to 16,000 hours.

Tourism and Visitation

Imperial Beach has grown in popularity as a tourist and visitor destination. It is estimated that approximately 2.5 million people visited the beach last year. On a summer day and especially on holidays, the number of visitors on the tidelands can exceed the number of full-time residents in Imperial Beach. With no large retail shopping centers, amusement parks, or other visitor amenities, almost the entirety of the visitors spend their time on the tidelands. Law enforcement presence is critical to reducing and preventing crime. While the patrol time does not always result in a call for service, it is important in a beach environment to maintain a constant display of security.

An additional cost to Imperial Beach is summer season quad patrol. Most of the contacts from the quad patrol are educational and corrective, and only on rare occasions are citations issued and service calls recorded. This is another example of why the cost of law enforcement cannot be simply calculated by the number of service calls. However, the quad patrol is very effective in preventing service calls and conditions that could escalate into more serious public safety situations.

Imperial Beach has stated that a majority of parking citations issued in Imperial Beach are near the beach. Parking citations in the first 4-5 blocks east of the beach are predominantly related to tidelands activities. Many visitors park in a manner than blocks driveways, in red curb areas and similar situation that are not common for permanent residents. This is another example, according to Imperial Beach, as to why calls for service west of Seacoast Drive is less than a complete picture of the law enforcement impact of the tidelands.

Events and Tidelands Activation

Imperial Beach holds events and tidelands activations in areas specifically constructed to accommodate large crowds such as Pier Plaza. The Annual Sun and Sea Festival, the Big Bay Boom, the Symphony by the Sea, the annual Ironman Contest, classic car shows, and numerous surf contests are just some of the larger events with weddings, over the line tournaments, and smaller events filling in other dates on the tidelands. The larger events result in an added expense, in addition to the contract amount, from the Sheriff's Department. While Imperial Beach attempts to have the events cover the law enforcement costs, it is very challenging because many of these events are non-ticketed. For instance, the largest crowd of the year is the Big Bay Boom and Imperial Beach receives about \$25,000 per year from the District for the event. That contribution does not cover the expense of the fireworks. The extra law enforcement necessary for safety and traffic control are an added expense to Imperial Beach. Additionally, Pier Plaza is the most visible location in Imperial Beach and many unexpected gatherings happen in that location. In the recent past there have been both protests and impromptu gatherings at Pier Plaza, both of which are unanticipated but impactful to law enforcement activities on tidelands.

Ocean Related Training and Preparation

The Imperial Beach Sheriff Station Commander has indicated that Imperial Beach officers must undergo specific participation and training in tsunami and coastal flooding situations, watercraft identification and rescue and other beach specific training that consumes officer time and availability. Additionally, officers are educated on providing information to visitors about riptides, sting rays, and similar preventative measures to improve the visitor experience on the tidelands.

Homelessness and Camping

Not unlike other beach communities, homelessness is another area that impacts District property in Imperial Beach. Addressing these concerns may not necessarily result in a call for service, but it is an impact on law enforcement services. Specific to Imperial Beach, the narrow beach presents a danger to persons sleeping or camping in the tidelands. During high tides, especially King Tides, Imperial Beach routinely experiences over-topping of the revetments and seawalls constructed in the tidelands. People can become trapped between the revetment and the water with nowhere to go. Therefore, law enforcement must watch diligently for homeless and campers, but rarely is that activity registered as a call for service.

C. Fire Rescue and Emergency Services

Much like law enforcement, the impacts of providing service to the tidelands to the Imperial Beach Fire Department cannot be measured solely by the number of service calls. In Imperial Beach, the Fire Department is not only responsible for all fire and medical calls, but the department also accountable for all emergency preparation and response services. Many of their duties do not generate calls for service. For reference, the Fire Department has provided information that indicates that in 2019, there were 2,610 total calls for service in Imperial Beach. 217 of the total calls, or 8.3% were calls on or west of Seacoast Drive and associated with the tidelands. The proposed baseline rate for Fire Rescue is 8.6% percent of the Fire Budget. The contents of this section indicate why there are costs in addition to the calls for service. The Fire Chief estimates that 15-20% of the work hours in the Fire Department are attributable to the tidelands to address the elements below. The proposed MSA reflects only 750 hours per year from in the Fire Rescue portion. Given the Fire Department operates in a four-person crew, only 187.5 hours for each crew member are allocated from the Fire Department to tidelands in a calendar year.

Emergency Preparedness and Response

Imperial Beach experiences significant flooding on a regular basis. If there is any level of surf coupled with high tides - particularly during King Tides - there is substantial coastal flooding on District property. The Fire Department, which also serves as the Emergency Services Department in Imperial Beach, is responsible for the preparation for potential flooding and the response to tidal flooding, storm surge, and over-topping in Imperial Beach. This entails everything from obtaining sand and sandbags, filling them and distributing them to flood prone areas, to pumping water out of flooded area, to clearing clogged drainage facilities.

Planning and Preparation for Events, Pier Fires, and Rescues

The events that happen on the tidelands are the largest gatherings in Imperial Beach. The Big Bay Boom on the 4th of July can bring 50-60,000 people to the beach. There is time required for preparation and response which takes many hours to perfect. The Fire Department organizes and practices table-top exercises for emergency situations, including the potential of a tsunami, earthquake, and water rescue for activities that happen in the Imperial Beach portion of the District tidelands.

The pier is a significant challenge for the Fire Department, and Imperial Beach has experienced pier fires in the past. Access to the pier for fire apparatus is very challenging and Imperial Beach does not have boat launching or fire boats available for pier fires. Therefore, specialized training and practice

is needed to ensure the pier is safe. Likewise, medical calls on the pier present unique challenges. On a busy day with anglers and pedestrians, it is difficult to navigate the relatively long pier. Special training and practice are needed to be prepared to medical emergencies on the pier which is not reflected in the calls for service.

Fire inspections are also conducted by Imperial Beach's Fire Marshal for each special event, business license and other necessary inspections do not generate a call for service, but they are critical elements in proper fire safety and emergency preparedness. These inspections are completed on District property by the Imperial Beach Fire Department.

D. Animal Control Services

Imperial Beach contracts with the Humane Society of San Diego for Animal Control Services. Imperial Beach allocates approximately 10% of the contract cost to the tidelands. According to Imperial Beach, much of the cost of providing the service cannot be attributed to calls for service. The Humane Society conducts pet/owner reconciliation, spay and neutering services, community education and other services which are important to the community, but not reflected in the number of calls.

E. Marine Safety (Lifeguards) and Maintenance

The entire cost of the Marine Safety Department (lifeguards) and the Tidelands Maintenance Department are covered by the existing and proposed MSAs with the District. This is because their activities take place on the tidelands and there is no distinction between Imperial Beach generally and tidelands activity. The staffing levels have been established over more than a decade. Staff from the District's Harbor Police and General Services Departments have reviewed these service levels and believe they are satisfactory and reasonable given the history of the existing MSAs.

II. Proposed Chula Vista MSA

A. Overview of Baseline Proposal

Unlike the proposed MSA with Imperial Beach, the Chula Vista MSA does not contain a new baseline proposal. Instead, Chula Vista is requesting to reset the framework for the MSA and to submit new service level proposals and negotiate new baseline rates in 2022 and 2025. As such, Chula Vista is proposing to continue the same level of service as in the current MSA which, as a practical matter, amounts to an additional one year of existing services at the current service level. The only difference between the existing and proposed MSA with respect to compensation is the annual escalation, which in the current agreement could vary between 4% and -4%. For the first year, staff recommends continuing at the budgeted rate of \$1,103,646 escalating by 3% to \$1,136,755 in FY 22.

To identify the MSA reimbursement to be sought from the District, Chula Vista estimates its General Fund cost of providing Police Services and Fire & Emergency Medical Services. For Police Services, this includes time spent responding to calls for service (estimated using a three-year average, including time from dispatch through report), proactive patrol time (1 hour per day) and reserve capacity in the four patrol beats that overlap with the non-ad valorem tidelands. These demand factors are then combined to estimate the full-time equivalent beat officer staffing reasonably attributable to the non-ad valorem tidelands. For the reserve capacity calculation, Chula Vista

calculates the percentage of each patrol beat that falls within the non-ad valorem tidelands. For Fire & Emergency Medical Services, Chula Vista estimates the cost of one fire engine located at Fire Station 1, and then allocates the costs associated with that single fire engine company based on the total service area for Fire Station 1 and the percentage of that service area that falls within the non-ad valorem tidelands. Additional information can be found on Attachment G provided by the City of Chula Vista.

B. Relationship of MSA to Chula Vista Bayfront Financing

The proposed financing plan for the Chula Vista Bayfront includes the commitment of several general fund and project-generated revenues to support debt service on public bonds intended to be issued by a Joint Exercise of Powers Authority. One of the proposed sources is the MSA payments made by the District to Chula Vista. Since 2018, Chula Vista has been setting aside amounts payable from the District under the MSA escalating at a rate of 3% per year. Chula Vista intends to contribute these amounts as they are escalated each year until the bonds are repaid which is estimated at 38 years from issuance.

Initially, Chula Vista was seeking a longer term of the MSA with a 10-year, mutual termination provision. The purpose of the longer term, which initially staff negotiated at 40 years to align with the proposed term of the bonds, was to provide some certainty to Chula Vista that the revenue streams associated with the MSA would continue along with the services Chula Vista agreed to provide to the Chula Vista Bayfront. Having some certainty around the initial 10 years of financing is important since project-generated revenues associated with financing are the most unstable and unproven in early years.

After discussions with Chula Vista staff, Chula Vista has agreed to a shorter overall term of 10 years and a shorter period of mutual termination at 3 years, after which either party could terminate on 6 months' notice.

C. Timing and Frequency of Baseline Resets

Chula Vista has conducted some preliminary research into establishing a new baseline rate proposal for the District; however, in light of the focused and extensive work effort to complete the documents necessary for the Chula Vista Bayfront project, Chula Vista is requesting to defer its baseline negotiations to 2022. Additionally, Chula Vista is requesting a baseline reset negotiation in 2025. Staff believes there is justification for two baseline rate negotiations over the next five years.

There is significant development planned for the Chula Vista Bayfront over the next decade, particularly in the next five years. By the end of this calendar year, the Sweetwater Bike Path and Promenade should be largely complete. This project alone will not necessarily result in additional service demands. Other projects, however, will follow. By March 2021, the construction on the new Costa Vista RV Park should be complete. Essentially, the new RV Park relocates the existing RV Park and as such, there should be no significant impact to demand during these activities. No projects are planned for completion in 2022.

These projects, however, lay the foundation for future development including the resort hotel and convention center and substantial public infrastructure development which will likely have an impact on the demand for services. Assuming the resort hotel and convention center commences

construction in mid-2021, then by 2024, total park area will be increasing from about 30 total acres now to a total of about 65 acres. Based on the experience of Harbor Police, parks are likely to have the biggest impact on demand for law enforcement and emergency services. As such, District staff and Chula Vista agree that 2025 is an appropriate date for a baseline reset to revisit the overall level of service provided on the bayfront. Moreover, even if the proposed development were not to occur, scheduling baseline resets midway through the proposed term of 10 years would allow both parties to audit and to revisit costs and services.

D. Preliminary Law Enforcement, Fire, and Emergency Services Data

An adjustment to the baseline services is not proposed initially as part of the proposed Chula Vista MSA. Chula Vista has provided additional information to staff, attached as Attachment G, to further explain the methodology and costs associated with the MSA. The attachment includes preliminary estimated costs which will be more fully analyzed and presented to the Board as part of the proposed 2022 baseline reset process. Staff will work with the Office of the Port Auditor to conduct a performance audit prior to the establishment of the 2022 baseline which should help to inform those negotiations.

III. Proposed Terms of Revised Imperial Beach and Chula Vista MSAs

As more fully discussed below, District staff and the cities of Imperial Beach and Chula Vista have restructured the proposed MSAs to better address comments made during the December 8 Board meeting while continuing to preserve the overall framework and product of the negotiations. Attached as Attachment C is a side by side analysis of the key changes from the existing MSAs, to the MSAs proposed at the December 8 Board Meeting, to the changes now before the Board for its consideration. Attachments D and E are the agenda sheets proposed at the December 8 Board meeting.

A. Term and Termination

In response to Commissioner comments and based on further discussion, the cities of Chula Vista and Imperial Beach have agreed to a shorter MSA term. As proposed, the MSAs would have a term of 10 years. To assist Chula Vista with its request for certainty on the Chula Vista Bayfront financing, Chula Vista has agreed that during the first three years only, the six months' termination provision would require mutual agreement and that from and after the fourth year, either party could terminate. Under the Imperial Beach MSA, either party could terminate on six months' notice at any time during the term.

B. Baseline Proposals and Reset Dates

With a shorter overall term, the proposed baseline reset dates are proposed to be adjusted. Staff proposes that the Board accept the proposed baseline rate and service level proposal from Imperial Beach based on the information provided in this agenda sheet as well as included in the service proposal attached to the Imperial Beach MSA. With respect to Chula Vista, for the reasons discussed above, staff believes baseline resets are appropriate in 2022 and 2025. With respect to Imperial Beach, and to allow for enough time for the Office of the Port Auditor to complete a performance audit, staff recommend a baseline reset for 2025. Board approval will be required for any baseline rate reset and service level proposals. If the Board does not approve a baseline rate within 12

months of commencing baseline rate reset discussions, then either party may exercise their termination rights. In the case of Chula Vista, this termination right would apply notwithstanding the requirement that the parties otherwise must mutually agree to terminate within the first three years. Additionally, in the case of Chula Vista, and due to the requirement of mutual agreement to terminate within the first three years, Chula Vista may terminate by providing six months' notice should the Board approve a baseline rate that Chula Vista finds unacceptable, so long as the termination notice is sent within 60 days of the Board's approval.

Under the proposed MSAs, the baseline rate and service levels can be adjusted up or down as part of baseline rate reset discussions. As more fully discussed below, baseline rate reset proposals would be timed to be submitted following receipt of performance audit results and include details on services to be provided, staffing levels, budget, expenditures, facilities and materials to be used. Metrics established during performance audit could be one of several considerations staff and the Board evaluate prior to the Board's review of the proposal.

C. Annual Escalation Provision

Both Imperial Beach and Chula Vista have stated that the formula for adjusting the annual compensation is insufficient to cover their annual cost increases for providing services under the MSAs. The existing annual escalator formula is completely unrelated to expenses; rather, it is based solely on the consumer price index which over the last nine years has had little relationship to cost increases experienced at Imperial Beach, Chula Vista, and the District.

According to the Bureau of Labor Statistics, the CPI is, at best, a conditional metric for determining cost of living:

“A cost-of-living index would measure changes over time in the amount that consumers need to spend to reach a certain utility level or standard of living. Both the CPI and a cost-of-living index would reflect changes in the prices of goods and services, such as food and clothing that are directly purchased in the marketplace; but a complete cost-of-living index would go beyond this role to also take into account changes in other governmental or environmental factors that affect consumers' well-being. It is very difficult to determine the proper treatment of public goods, such as safety and education, and other broad concerns, such as health, water quality, and crime, that would constitute a complete cost-of-living framework.” (See https://www.bls.gov/cpi/questions-and-answers.htm#Question_9)

Over the term of the existing MSAs, the annual compensation has a compound annual growth rate of approximately 2% based on the CPI. In contrast, both Imperial Beach and Chula Vista have experienced actual annual increases in excess of 3% for most of the term of the existing MSAs.

Staff continues to recommend that the baseline rate, whether adjusted upward or downward during a baseline reset, should thereafter continue to escalate from the newly-established baseline at an annual rate of 3%. This escalation will provide certainty for all parties without exposing the District to significant increases due to one-time adjustments.

D. Additional Audit Provisions

The existing and proposed MSAs include audit provisions. Staff evaluated whether annual audits or periodic audits would be appropriate in this case. In discussions with the Office of the Port Auditor and staff, annual audits would be too time intensive and expensive to conduct and would significantly impact the annual audit plan which could constrain the District's ability to carry out other important audits.

Section 4.c of the MSAs proposed on December 8 would have permitted the District to "audit financial or other records . . . which city or anyone associated with the work has prepared or which relate to the work which city is performing for District pursuant to this Agreement regardless of whether such records have been previously provided to District." In consultation with the Office of the Port Auditor, staff is recommending an increase to the records retention requirement in the MSA to require certain records be maintained as part of MSA (reports, timecards, time notes, time entries, invoices, receipts, expenses, and materials, and any other documentation related to the Services).

Staff recommends that the Office of the Port Auditor build into its schedule at least one required performance audit/service study of each member city staggered over the first five years of the new MSA terms. Based on its initial research, discussions with Chula Vista and Imperial Beach, and its own experience, staff does not believe one universal metric alone will likely produce a fair result across all member cities. That does not mean that universal metrics will not be helpful in supporting a service proposal and the associated compensation. Rather, specific metrics and approach to each member city could evolve over time based on research and consultation with the member cities, and could be revisited with every baseline proposal.

Performance audits will likely be time-intensive and expensive, and auditing more than one city per year is not a feasible undertaking. Therefore, staff recommends beginning with Chula Vista next fiscal year to assist with establishing a new baseline rate in 2022. The performance audits can help to establish benchmarks and refine a set of acceptable standards over time moving forward which would be appropriate for each city in order to measure performance and costs in future years. As such, completed performance audits would constitute one part of the baseline proposal discussions with the cities in addition to any other information they may provide including their actual cost increases, approaches to law enforcement and emergency services, and the scope and extent of services provided given the nature of the tidelands within each city.

At this time, a true-up following the first performance audit is not feasible or recommended since the primary purpose of the audit will be to provide additional information and benchmarking to support future baseline proposals. Any adjustments in compensation that may be mutually agreed-upon could be addressed in a baseline rate reset and proposal which, as discussed above, would in all cases be subject to Board review and approval.

IV. Conclusion and Recommendation

A. Approval of the Imperial Beach and Chula Vista MSAs

For the reasons discussed above, staff recommends the Board approve the Imperial Beach and Chula Vista MSAs as revised and presented to the Board at the December 28 Board meeting in substantially the form attached as Attachments A and B.

B. Direction to Negotiate with San Diego, National City, and Coronado and Provide Other Direction to Staff as Needed

Staff further recommends the Board direct staff to continue discussions with San Diego, National City, and Coronado to lead to negotiations for new MSAs. Staff also recommends that the agreements should be generally based on the framework established by the Imperial Beach and Chula Vista MSAs. Lastly, staff recommends the Board provide any other direction to staff on the MSAs.

General Counsel's Comments:

The Office of the General Counsel has reviewed and approved this agenda and the proposed resolutions, as presented, as to form and legality.

Environmental Review:

The proposed Board actions, including without limitation, resolutions authorizing 10-year municipal services agreements with the Cities of Imperial Beach and Chula Vista and direction to staff to negotiate municipal services agreements with District member cities, do not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the proposed Board actions that require the District or the Board's discretionary approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The proposed Board actions in no way limit the exercise of this discretion. Therefore, no further CEQA review is required.

The proposed Board actions comply with Sections 21, 31, 35, and 81 of the Port Act, which allow the Board to pass resolutions; contract with cities for services; to do all acts necessary and convenient for the exercise of its powers; and to use funds for expenses of conducting the District. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

The proposed Board actions do not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because they will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The proposed Board actions in no way limit the exercise of the District's discretion under the District's CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

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Attachment(s):

Attachment A: Proposed 10-Year Imperial Beach Municipal Services Agreement
Attachment B: Proposed 10-Year Chula Vista Municipal Services Agreement
Attachment C: Matrix Comparing Existing Municipal Services Agreements (MSAs), December 8
MSAs, and Proposed 10-Year MSAs
Attachment D: December 8, 2020 Agenda Sheet for Imperial Beach MSA
Attachment E: December 8, 2020 Agenda Sheet for Chula Vista MSA
Attachment F: 2019 Imperial Beach Calls for Service - Sheriff's Data
Attachment G: Memo from the City of Chula Vista RE: Request for Additional Information
dated December 22, 2020 and Attachments