

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2949

**ORDINANCE GRANTING A 15-YEAR LEASE WITH
THREE 10-YEAR OPTIONS AND ONE 5-YEAR
OPTION TO EXTEND THE TERM OF THE LEASE
FOR A TOTAL OF UP TO 50 YEARS TO THE SAN
DIEGO SYMPHONY ORCHESTRA ASSOCIATION
FOR THE BAYSIDE PERFORMANCE PARK
LOCATED IN EMBARCADERO MARINA PARK
SOUTH IN SAN DIEGO**

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, in 2015, The San Diego Symphony Orchestra Association, a California nonprofit public benefit corporation (Symphony) submitted a proposal to the District to construct permanent improvements on Embarcadero Marina Park South (EMPS) located in the City of San Diego (City) with enhanced public park amenities and a permanent performance stage and acoustic shell that could accommodate a full-sized orchestra year-round and up to 10,000 seats; and

WHEREAS, in January 2018, the Board of Port Commissioners (BPC) authorized a Binding Letter of Intent (LOI) containing the key economic terms for a lease; and

WHEREAS, the proposed project consists of two main components: (a) for the 3.68-acre Bayside Performance Park (Premises), a permanent performance and event venue and other public park enhancements (Premises Improvements) located within the northwestern portion of EMPS where the temporary seasonal stage is currently located; and (b) significant public park enhancements to the remainder of the 7.13-acres of EMPS (EMPS Enhancements) located within the central and southeastern portions of EMPS; and

WHEREAS, the Premises Improvements and EMPS Enhancements are collectively referred to as, the “Project”; and

WHEREAS, on December 11, 2018, the BPC authorized the issuance of a non-appealable Coastal Development Permit (CDP) for the Bayside Performance Park Enhancement Project (Resolution No. 2018-180), which is expressly conditioned upon the BPC granting a lease to the Symphony and the District and the Symphony executing the lease; and

WHEREAS, the lease is for an initial term of 15 years with three 10-year options and one 5-year option to extend the term of the lease for a total of up to 50 years (Lease); and

WHEREAS, the Premises Improvements include: (1) replacement of the existing seasonal use of a temporary performance stage and other temporary amenities with a 13,015 square-foot (0.29-acre), permanent, outdoor performance stage, acoustic shell, and back-of-house facilities for year-round use by the Symphony and other artists and events, such as rental events and community events; (2) construction of concrete steps and viewing deck encompassing 5,445 square feet at the back of the performance stage to be kept open to the general public as a bay viewing deck during non-event hours; (3) construction of a synthetic turf (sand-based) lawn to be used in the main seating area and pre-event space during event hours where seating would be temporary, and no permanent seating would be installed; (4) two pavilions for food, retail, and/or other event services within a 15,242-square-foot (0.35 acre) area comprised of permeable pavers, removable furniture, lighting, and a small stage, that may be open and available to the public during and outside of events; (5) construction of a subgrade restroom with 68 stalls beneath the sloped lawn; (6) widening of the existing 8-foot-wide public promenade around the perimeter of the Bayside Performance Park with a 12-foot-wide promenade with benches to remain open to the public at all times; and (7) installation of a visual public art element illuminated with light-emitting diode (LED) lighting on the exterior acoustic shell; and

WHEREAS, the EMPS Enhancements include: (1) reconfiguration of the existing parking lot to add four parking spaces and landscaped medians for a total of 132 parking spaces; (2) replacement of the four existing basketball courts (two full-sized courts that are divided into four half-sized courts) with new basketball court materials and equipment (e.g., court surface, hoops, etc.); (3) relocation of the existing fitness equipment to a location near the gazebo and basketball courts; (4) refurbishment of the existing public outdoor gazebo with similar materials as existing materials; and (5) refurbishment of the existing public restrooms with new facilities (number of stalls shall be maintained) and new materials; and

WHEREAS, the Symphony is expecting to invest more than \$45 Million Dollars to complete the Project, which includes approximately \$2.9 Million Dollars for the EMPS Enhancements; and

WHEREAS, the Lease permits the Symphony to take a rent credit in a total amount of \$2.9 Million Dollars in exchange for the Symphony's contribution of public improvements to EMPS; and

WHEREAS, construction of the proposed Project is anticipated to occur over an approximately ten-month timeframe and would be entirely funded by the Symphony through a combination of donations and/or debt financing; and

WHEREAS, the Symphony will have the right to use portions of the Premises exclusively during the term of the Lease and the remainder of the Premises for fifteen percent of the time, or 110 half-day or 55 full days (15% Cap) for paid admission and rental events; and

WHEREAS, the District may use the Premises for District sponsored events on 5 of the full days or 10 half days of the 15% Cap; and

WHEREAS, as part of the consideration for the Lease, and because the Symphony will be exclusively in control of many of the improvements to be constructed on the Premises and solely responsible for the maintenance and security of the Premises, the Lease also gives the Symphony the right to participate in a pilot program to issue Special Event Permits (SEPs) to members of the public for use of the Premises; and

WHEREAS, the initial term of the pilot program is for one (1) year with four (4) conditional one (1) year extensions for a total term of five (5) years; and

WHEREAS, the Executive Director of the District has the discretion to start a new pilot program after the initial pilot program expires and if the Executive Director elects to start a new pilot program, the term of such pilot program will be for five (5) years with conditional options to extend of five (5) years each; and

WHEREAS, the Symphony will be responsible for preparing an operations plan that will be approved by the District prior to implementation and describe in reasonable detail the day to day operations of the Symphony on the Premises (Operations Plan); and

WHEREAS, the Operations Plan must, at a minimum, address the implementation of (i) each of the operational requirements set forth in the CDP; and (ii) the security plan, maintenance and landscaping plan, traffic and parking management plan, programming schedule, and plan for the SEPs; and

WHEREAS, the paid admission and rental events would include Symphony concerts (Bayside Summer Nights and other Symphony performances), partnership performances (non-Symphony musical performances) and local external rentals such as civic events, corporate events, convention center events, and festivals; and

WHEREAS, public events held at the Premises would include free events open to the public; and

WHEREAS, as part of the Project, the Symphony would expand its current Education and Public Engagement Program by offering free public concerts and performances as well as education and public engagement performances that are not included in the 15% Cap; and

WHEREAS, the Premises Improvements, as proposed, could hold a maximum of 10,000 seats, but 8,000 to 10,000-seat events would be limited to no more than six per year; and

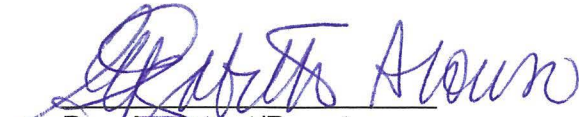
WHEREAS, the terms of the Lease are mostly consistent with the LOI; and

WHEREAS, staff recommends that the BPC grant the Symphony the Lease for the Project.

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

1. The 15-year lease with three 10-year options and one 5-year option to extend the term of the lease for a total of up to 50 years between The San Diego Symphony Orchestra Association, a California nonprofit public benefit corporation (Symphony) and the San Diego Unified Port District (District) for the development of (i) a permanent performance and event venue and other public park enhancements on Bayside Performance Park, consisting of 3.68 acres of the Embarcadero Marina Park South (EMPS); and (ii) significant public park enhancements to the remainder of the 7.13-acres of EMPS (Ground Lease) is hereby approved.
2. The Executive Director or her designated representative is hereby authorized to execute the Ground Lease.
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 24th day of July 2019, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Valderrama, and Zucchet

NAYS: None.

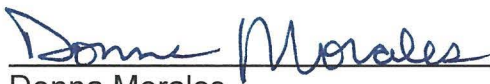
EXCUSED: None.

ABSENT: None.

ABSTAIN: None.


Garry J. Bonelli, Chairman
Board of Port Commissioners

ATTEST:


Donna Morales
District Clerk

(Seal)