

RESOLUTION 2018-021

RESOLUTION AUTHORIZING A BINDING LETTER OF INTENT WITH SAN DIEGO SYMPHONY ORCHESTRA ASSOCIATION FOR A BAYSIDE PERFORMANCE PARK ENHANCEMENT PROJECT WITHIN THE EMBARCADERO MARINA PARK SOUTH

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 1, (Port Act); and

WHEREAS, Section 21 of the Port Act authorizes the Board of Port Commissioners ("Board") to pass all necessary ordinances and resolutions for the regulation of the District; and

WHEREAS, San Diego Symphony Orchestra Association ("Symphony"), as the project applicant and proponent, proposes public amenity enhancements throughout Embarcadero Marina Park South ("EMPS") and the installation of a permanent performance stage and event venue within a portion of EMPS, as well as an amendment of the text of the Centre City Embarcadero Precise Plan within the Marina Zone subarea of Planning District 3 of the Port Master Plan ("PMP") (collectively, "Proposed Project"); and

WHEREAS, the property which is subject to the Proposed Project encompasses the 10.8-acre EMPS, which is located at 200 and 206 Marina Park Way in downtown San Diego, bayward of the San Diego Convention Center in the Marina Zone subarea of Planning District 3 (Centre City Embarcadero) of the PMP, and is designated for Park/Plaza uses; and

WHEREAS, historically the Symphony has entered into a Tidelands Use and Occupancy Permit to hold the Bayside Summer Nights concert series at EMPS during four months of the summer; and

WHEREAS, in January 2016, the Board directed staff to initiate the California Environmental Quality Act process and commence negotiations with the Symphony for the Proposed Project; and

WHEREAS, consistent with the Board direction, District staff and the Symphony negotiated basic terms for the ultimate agreement that may be entered into by the parties;

WHEREAS, the basic negotiated terms have been memorialized in a binding Letter of Intent ("LOI") attached the corresponding agenda sheet and include the following essential and material terms:

Category	Essential Terms
Premises	3.68 acres of the 10.8 acre Embarcadero Marina Park South located at 200 Marina Park Way in San Diego, California
Ground Lease Term	15 years with three 10 year options and one 5 year option for a total of 50 years. Such Options are held by the Symphony. Only 15,090 square feet (0.35 acres) of the acreage being subject to exclusive use by the Symphony for the performance stage, back-of-house facilities, box office, and food pavilions and the remaining 3.33 acres being subject to non-exclusive use and publically accessible throughout each lease year except when there is an admission-based or rental event (would be capped at 15% of each lease year).*
Improvements	Permanent venue with a maximum seating capacity of 10,000 seats and maximum programming of 55 full-day or 110-half day events (15% of the year).* Improvements to include public improvements, including without limitation, improvements to the waterfront promenade. Symphony shall pay at its sole cost and expense for the design, development, and construction of the improvements in an amount of at least \$45 million. Symphony reserves the right to request a contribution from the District should the costs exceed \$45 million; provided, however, any such contribution shall be granted or denied by the Board in its sole and absolute discretion. Symphony shall pay at its sole cost and expense for the maintenance and operation of the improvements subject to negotiation of specific terms. All improvements to comply with all federal, state, and local laws, rules, and regulations, including without limitation, any policies of the District. The District to approve all plans and specifications prior to construction. Improvements to provide for year-round cultural uses and park-activating uses that are ancillary to the public uses.*
Audit on Improvements	First 10 year option extension subject to condition and maintenance audit. Additional condition and maintenance audits to occur every 5 years thereafter and any required work

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	under the audit (s) must be completed by the Symphony to the satisfaction of the District prior to exercising a subsequent option. Symphony to pay for all audits and required work at its sole cost and expense. The establishment of a maintenance fund may be required,
Construction Period	Up to 2 years.
Percentage Rent for Gross Ticket Sales (based upon prior year Gross Ticket Sales in the indicated amounts)	<p>During Construction Period: \$0</p> <p>\$0 to \$18MM: 1.00%</p> <p>\$18MM to \$30MM: 2.50%</p> <p>>\$30MM to \$40MM: 5.00%</p> <p>>\$40MM to \$50MM: 7.00%</p> <p>>\$50MM +: 8.00%</p> <p>Percentage rental rates will be adjusted annually based on gross ticket sales for the prior year; provided, however, once gross ticket sales reach \$30MM and the percentage rent is adjusted to 5.00%, through the remaining term and option periods the percentage rent shall not be less than 5.00%, even if gross ticket sales are less than \$30MM in any given year.</p>
Percentage Rent for Gross Food & Beverage Sales	5.00%
Percentage Rent for Gross Merchandise Sales	5.00%
Parking and Parking Rent	<p>Symphony shall have exclusive use of 56 parking spaces in EMPS during rehearsals, concerts and events.*</p> <p>\$20.00 per parking space per day for all parking spaces reserved for rehearsals, concerts and events, with market adjustments annually; and</p> <p>15.00% of the net income from the sale of parking services or the rental of parking spaces after third party costs</p>
Minimum Annual Rent (MAR)	75% of the average of the last 5 accounting years based on use through prior Tideland Use

Category	Essential Terms
	and Occupancy Permits.
Title to Improvements at Expiration/Early Termination	District to receive title.

* These terms may change subject to California Coastal Act approvals; and

WHEREAS, the intent of the LOI is to memorialize binding terms and guide the negotiations between the District and Symphony, with the ultimate goal to enter into a binding real estate agreement for the Proposed Project site.

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

That the Executive Director or her designated representative is hereby authorized on behalf of the San Diego Unified Port District to enter into the binding Letter of Intent for a Bayside Performance Park Enhancement Project within The Embarcadero Marina Park South, attached to the corresponding agenda sheet and as specified herein, with San Diego Symphony Orchestra Association.

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 January 2018, by the following vote:

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

NAYS: None.

EXCUSED: Zucchet

ABSENT: None.

ABSTAIN: None.



Rafael Castellanos, Chairman
Board of Port Commissioners

ATTEST:



Donna Morales
District Clerk

(Seal)