

RESOLUTION 20xx-xxx

**RESOLUTION AUTHORIZING AMENDED AND RESTATED
EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE
SAN DIEGO UNIFIED PORT DISTRICT AND 1HWY1, LLC**

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; and

WHEREAS, on February 22, 2016, District staff issued a Request for Proposals 16-04ME (RFP) for 70 acres of land and water located within the District's Central Embarcadero, as further delineated on Attachment A to the agenda sheet to which this Resolution relates; and

WHEREAS, following an extensive solicitation and due diligence process, the Board of Port Commissioner's (Board), at the November 8, 2016 Board meeting, selected Gafcon, Inc. (on behalf of a to be formed entity that is now 1HWY1, LLC) as the successful proposer; and

WHEREAS, after the Board's selection, District and 1HWY1, LLC (as successor-in-interest to Protea Waterfront Development, LLC, a former Gafcon affiliate) ("**1HWY1**") entered into an Exclusive Negotiating Agreement dated October 17, 2017 on file in the Office of the District Clerk as Document No. 67343, which Exclusive Negotiating Agreement was later amended by Amendment No. 1 dated January 5, 2021 on file in the Office of the District Clerk as Document No. 72137 (as amended, the "**Original ENA**"); and

WHEREAS, the Original ENA obligates the parties to negotiate, in good faith, the terms of a binding agreement for 1HWY1's proposed project ("**Proposed Development**"), subject to completing the requisite environmental review and obtaining all necessary approvals, including from the Board, in the Board's sole and absolute discretion; and

WHEREAS, the Original ENA's term is currently scheduled to expire on October 1, 2024; provided District may extend the Original ENA's term through October 1, 2025 for a to-be determined fee; and

WHEREAS, since the Original ENA's execution on October 1, 2017, 1HWY1 has been refining the Proposed Development via, among other tasks, undertaking feasibility studies, iterations to project descriptions, pro-formas, phasing plans, and financing strategies, and at various times and with District staff, updating the Board, and the public, on the current Proposed Development's project description and receiving Board and stakeholder feedback on the same; and

WHEREAS, in light of the progress made since the Original ENA's execution, on November 8, 2022, the Board adopted Resolution No. 2022-134 authorizing staff to commence environmental review for the Proposed Development; and

WHEREAS, following Board authorization to commence environmental review, District, 1HWY1, and HDR, Inc. thereafter entered into an agreement for environmental consulting services, including preparation of an Environmental Impact Report ("**EIR**"), to be paid for solely by 1HWY1; and

WHEREAS, 1HWY1 has submitted extensive designs, plans, and other detailed information necessary for the environmental analyses required for the EIR and other District evaluation of the Proposed Development; and

WHEREAS, District issued a Notice of Preparation of a Draft EIR on September 14, 2023 ("**NOP**"), notifying the public and responsible and interested agencies that District is conducting an environmental assessment and preparing an EIR for the Proposed Development; and

WHEREAS, the Draft EIR for the Proposed Development is expected to be completed by 3rd Quarter of 2025; and

WHEREAS, since the RFP was issued in 2016, the District has allocated significant resources to advance the redevelopment of the Redevelopment Site, which resources include staff and attorney time across multiple District departments, the Office of the General Counsel, as well as District paid third party consultants; and

WHEREAS, staff from Real Estate, Development Services, Planning, and the Office of the General Counsel have regularly met and corresponded with the 1HWY1 team since the Original ENA's execution to discuss the Proposed Development, navigate the entitlement phase, and work towards a transaction framework that could be presented to the Board for consideration, which meetings have taken place on a weekly basis for over two years; and

WHEREAS, District staff from Real Estate and Planning, attorneys from the Office of the General Counsel, and, as necessary, staff from other District departments, also meet internally every week to discuss the District's next steps with respect to the Proposed Development; and

WHEREAS, the District has expended approximately \$320,000 on third party consultants to date to support efforts related to the Proposed Development, and the District has utilized creative deal structures to attract and maintain tenants at Seaport Village while limiting the amount of lease term in order to preserve flexibility for potential future redevelopment; and

WHEREAS, 1HWY1 requested that the Original ENA's term be extended to October 1, 2027 in order to provide additional time to negotiate a proposed business deal for Board consideration while the Proposed Development goes through environmental review and to reduce uncertainty for investors given the significant capital requirements associated with advancing the EIR and other components of the Proposed Development; and

WHEREAS, given the scale and complexity of the Proposed Development, the expected timeframe to complete a draft environmental impact report, 1HWY1's significant past and future expenses associated with the entitlement and design phase, the required investor capital to advance entitlements and design, the need for additional time to further negotiate a proposed business deal for Board consideration, District staff and 1HWY1 have negotiated a proposed Amended and Restate Exclusive Negotiating Agreement in the form attached as Attachment B to the agenda sheet to which this Resolution relates ("**A&R ENA**"); and

WHEREAS, as compared with the Original ENA, a summary of terms contained in the A&R ENA are as follows:

- no cost term extension to October 1, 2027;
- revised 1HWY1 submittal requirements to a request-based format based on District needs in order to reduce the administrative burden associated with a pre-established list of required submittals and that entitles District to request broad Proposed Development related submittals as needed for purposes included, but not limited to, feasibility analysis, all proposed financing mechanisms, environmental review, entitlements, construction and phasing plans, transportation and circulation designs, benefits to California residents, Public Trust Doctrine compliance, District's financial interests, and/or provisions to be included in any binding agreement for Board consideration;
- updated termination mechanics that continues to allow either party to terminate in the event of an uncured default or if a party determines, in its sole and absolute discretion, that the Proposed Development is not feasible, with any District decision to terminate requiring Board approval in open session;
- so long as Protea Waterfront Development, LLC remains 1HWY1's managing member with power to direct major as well as day to day decisions, and to facilitate investor capital investment, preapproves ownership transfers among 1HWY1's existing members or admission of new minority members into 1HWY1 so long as any new members are reputable and meet other specified criteria;
- affords District and the Board sole and absolute discretion to ultimately approve of any environmental impact report and any proposed binding documents as well as broad indemnity and waiver protections in connection with District decisions; and

- aids in the implementation of the District's Seaport Village leasing strategy by only requiring notice of new occupancy agreements with a term extending beyond October 1, 2029;

WHEREAS, the proposed A&R ENA provides an improved framework for the District and 1HWY1 to share information, work through entitlements, and negotiate, in good faith, a proposed binding agreement for Board consideration; and

WHEREAS, the proposed A&R ENA is beneficial to the District by materially reducing administrative burden, signaling support for Seaport Village lease renewals, providing District with legal protections, and maintaining broad District and Board discretion on whether or not to move forward with the Proposed Development; and

WHEREAS, the proposed A&R ENA supports 1HWY1's efforts to raise the significant investor capital necessary to continue moving the Proposed Development through the entitlement and environmental review phase; and

WHEREAS, in light of the foregoing, District staff recommends that the Board authorize the execution of the Amended and Restated Exclusive Negotiating Agreement in substantial form as that attached as Attachment B to the agenda sheet to which this Resolution relates.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, that the District's Executive Director or their designee is hereby authorized to enter into the Amended and Restated Exclusive Negotiating Agreement between District and 1HWY1, LLC in substantial form as that attached as Attachment B to the agenda sheet to which this Resolution relates.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy General Counsel

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 13th day of August 2024, by the following vote: