

DRAFT

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE xxxx

ORDINANCE (1) GRANTING AN EASEMENT IN SUBSTANTIAL FORM TO PASHA AUTOMOTIVE SERVICES FOR INSTALLATION AND OPERATION OF SOLAR IMPROVEMENTS AT THE NATIONAL CITY MARINE TERMINAL WAREHOUSE 24-B IN NATIONAL CITY AND (2) CONSENTING TO THE SUB-EASEMENT FROM PASHA AUTOMOTIVE SERVICES TO CATALYZE NATIONAL CITY TERMINAL AVENUE MICROGRID, LLC IN SUBSTANTIAL FORM FOR THE INSTALLATION AND OPERATION OF SOLAR IMPROVEMENTS AT THE NATIONAL CITY MARINE TERMINAL WAREHOUSE 24-B IN NATIONAL CITY

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 grant leases or franchises on and privileges in 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, Pasha Automotive Services (Pasha) operates the District's National City Marine Terminal (NCMT) under a Terminal Operator Agreement (TOA) for the import, export, handling and storage of vehicles and other cargo, which commenced January 1, 2011 and includes an initial 10-year term with four, five-year options to extend, with a termination date of December 31, 2040 if all options are exercised; and

WHEREAS, the TOA grants Pasha the use of approximately 115 acres of land including three warehouses: Warehouse 24-1, Warehouse 24-A, and Warehouse 24-B. Warehouse 24-B, the subject of this Board action, is approximately 194,216 square feet in size (Attachment A – Location Map); and

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WHEREAS, Pasha has proposed to install, maintain, and operate solar panels, electrical conduit, and related equipment (Solar Improvements) on the roof of Warehouse 24-B to satisfy Pasha's "2030 Reduction Requirement" from Mitigation Measure MM-GHG-6 of the Final EIR for the "National City Marine Terminal Tank Farm Paving and Street Closures Project & Port Master Plan Amendment" certified by the Board in September 2016 (Tank Farm EIR); and

WHEREAS, staff has negotiated a new easement with Pasha in the form attached as Attachment B to the Agenda Sheet to which this Ordinance relates to grant Pasha the necessary rights to install and operate the Solar Improvements on the roof of Warehouse 24-B (Easement) that would be coterminous with the TOA; and

WHEREAS, as authorized under the Easement, Pasha would execute a sub-easement (Sub-Easement) with the solar provider, Catalyze National City Terminal Avenue Microgrid, LLC (Catalyze), who would be responsible for the financing, installation, and operation of the Solar Improvements, and Pasha would purchase the power produced by the Solar Improvements through Power Purchase Agreement with Catalyze; and

WHEREAS, the proposed arrangement would create a new renewable energy source for NCMT, help the District achieve its climate goals, and transfer maintenance obligations of the roof of Warehouse 24-B to Pasha (which would reduce District expenses), and therefore staff recommends the Board adopt an ordinance granting the Easement to Pasha and consenting to the Sub-Easement between Pasha and Catalyze in substantially the form attached as Attachment C to the Agenda sheet to which this Ordinance relates; and

WHEREAS, the proposed actions, including without limitation granting the Easement to Pasha for installation and operation of the Solar Improvements and consenting to the Sub-Easement from Pasha to Catalyze, were adequately analyzed in the Final Environmental Impact Report (FEIR) for the National City Marine Terminal Tank Farm Paving and Street Closures Project & Port Master Plan Amendment (UPD #EIR-2014-188; SCH #2014121046, Clerk Document No. 65738) prepared and certified by the District on September 8, 2016 (Resolution No. 2016-140); and

WHEREAS, the proposed project is not a separate project for California Environmental Quality Act (CEQA) purposes but is a subsequent discretionary approval related to a previously approved project, and pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the FEIR, the proposed actions do not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the previous FEIR due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new

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information of substantial importance has come to light that (a) shows the project will have one or more significant effects not discussed in the previous FEIR, (b) identifies significant impacts more severe than those analyzed in the previous FEIR, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, or (d) shows mitigation measures or alternatives which are considerably different from those analyzed in the previous FEIR would substantially reduce one or more significant effects on the environment; and

WHEREAS, the proposed actions comply with Section 87 of the Port Act which allows for all visitor-serving commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities, and are consistent with the Public Trust Doctrine; and

WHEREAS, the proposed Board actions are considered excluded development pursuant to Sections 8.a (Existing Facilities) and 8.c (New Construction or Conversion of Small Structures) of the District's Coastal Development Permit Regulations because the project would consist of the implementation and installation of MM-GHG-6 of the FEIR, which would involve negligible expansion of use beyond that previously existing and negligible change of existing use of the property; and

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

1. The Board finds that the facts recited above are true and further finds that the Board has jurisdiction to consider, approve, and adopt the subject of this Ordinance.

2. Based on the entire record available to the Board and the findings set forth in this Ordinance, the Executive Director or their designated representative is hereby authorized to administratively approve and execute the Easement to Pasha for the Solar Improvements in substantially the form attached as Attachment B to the Agenda Sheet to which this Ordinance relates, and consents to the Sub-Easement between Pasha and Catalyze in substantially the form attached as Attachment C to the Agenda Sheet to which this Ordinance relates, and the Executive Director or their designated representative is hereby authorized to administratively approve and execute the Sub-Easement for purposes of consenting to the Sub-Easement on behalf of the District.

3. This Ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

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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 11th day of February 2025, by the following vote: