

**FILE NUMBER: 2025-175**

**DATE:** Tuesday, July 15, 2025

**SUBJECT: Amendment of Option to Lease Agreement with HIW Associates, LP located at 2040 Harbor Island Drive**

**DESCRIPTION: Adopt an Ordinance Granting Amendment No. 1 to an Option to Lease Agreement with HIW Associates, LP, for a 40-year Amended and Restated Lease with one 10-year option to extend for the operation of Harbor Island West Marina, extending the term of the Option to Lease Agreement**

**EXECUTIVE SUMMARY:**

Harbor Island West Marina (Marina), operated by HIW Associates, L.P., a California limited partnership (HIW), is an existing landside and waterside marina facility located at 2040 Harbor Island Drive on Harbor Island in San Diego (Attachment A - Location Map) that provides services and amenities to the boating community along with waterfront access opportunities to the public. HIW's Current Lease<sup>1</sup> commenced August 31, 1981, and expired March 30, 2023; since expiration HIW has continued to occupy the leased premises under the Current Lease's holdover provisions. HIW's planned redevelopment of the Marina (Project) would completely redevelop the landside and waterside marina facilities at an estimated total cost of \$67.6 million. Landside improvements include demolishing and replacing existing buildings, parking, and landscaping. The waterside improvements include replacing existing aged dock structures and reconfiguring slips to accommodate a wider range of recreational vessel sizes and create more slip opportunities for a greater diversity of boaters. Collectively, the redevelopment is expected to significantly modernize the marina and ensure its long-term viability.

On January 8, 2024, HIW entered into an Option to Lease Agreement<sup>2</sup> (see Attachment B – Option to Lease Agreement) (Option) with the San Diego Unified Port District (District) for redevelopment of the Marina. The Option includes an attachment of a 40-year Amended and Restated Lease with one 10-year option to extend (A&R Lease), which HIW may execute following (1) HIW's timely satisfaction of all conditions precedent specified in the Option and (2) HIW's exercise of the Option. The Option had a term of eighteen months, which expired on June 14, 2025 and contains various conditions precedent necessary to ensure HIW is ready to commence construction once the A&R Lease is executed. The conditions of the Option include deliverables related to pre-construction activities, such as the procurement of applicable permits, securing of financing, and execution of construction contracts.

HIW has successfully satisfied the majority of the conditions; however, one condition was delayed, and one condition requires revisions. The condition requiring all requisite

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<sup>1</sup> Lease dated August 10, 1981 on file in the Office of the District Clerk as Document No. 14085, as amended by that certain First Amendment to Lease dated September 8, 1994 on filed in the Office of the District Clerk as Document No. 31805 (the "Current Lease").

<sup>2</sup> Option to Lease Agreement dated January 10, 2024, on file in the Office of the District Clerk as Document No. 76277 (the "Option").

construction and development permits necessary for the Project was delayed, as the final required permits were issued by the City of San Diego on July 3, 2025. The proposed First Amendment to Option to Lease Agreement (see Attachment C – First Amendment to Option to Lease Agreement) (Amendment) will extend the deadline by which the City building permits are required to be issued to satisfy the Option's conditions.

The condition requiring revisions is a requirement to furnish payment and performance bonds related to Project construction. HIW's surety companies set to issue these bonds require project financing to close prior to bond issuance. Financing will close concurrently with execution of the A&R Lease, as is typical practice. The proposed Amendment would allow HIW to provide evidence to District's reasonable satisfaction that bonds have been procured and will be issued upon execution of the A&R Lease.

Since January 2024, HIW has diligently pursued the timely satisfaction of all Option preconditions and is nearly ready to break ground on this exciting Project. Given HIW's diligent and good faith efforts to date, the issuance of final building permits by the City of San Diego, and the nature and status of the Option precondition that remains outstanding, staff recommends the Board adopt an ordinance approving the Amendment to extend the Option term by three months to allow for the delay in procurement of final building permits and to revise the mechanics of the payment and performance bond precondition to allow HIW to provide evidence to the District's satisfaction that bonds satisfying the criteria in the Option will be issued concurrently and upon the effectiveness of the A&R Lease and closing of HIW's construction financing.

#### **RECOMMENDATION:**

Adopt an Ordinance granting a First Amendment to Option to Lease Agreement with HIW extending the term of the Option to Lease Agreement and revising the mechanics of the payment and performance bond precondition.

#### **FISCAL IMPACT:**

The Board's actions will have no immediate fiscal impact to the District. If HIW exercises the Option, enters into the A&R Lease, and successfully completes the Project, the Marina is estimated to generate a net present value of approximately \$29.3 million in rent to the District over the A&R Lease's 50 year term (assuming the 10-year option to extend is exercised).

#### **COMPASS STRATEGIC GOALS:**

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

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.
- A Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

## **DISCUSSION:**

### **Background**

Harbor Island West Marina is an existing marina facility located at 2040 Harbor Island Drive on Harbor Island West in San Diego. The Current Lease commenced August 31, 1981, and expired March 30, 2023, and HIW currently occupies the leased premises under the Current Lease's holdover provisions. HIW's \$67.6 million Project would completely redevelop the landside and waterside marina facilities. Landside improvements include demolishing and replacing existing buildings, parking, and landscaping, and waterside improvements include replacing existing aged dock structures and reconfiguring slips to accommodate a wider range of recreational vessel sizes and create more slip opportunities for a greater diversity of boaters. Collectively, the redevelopment is expected to significantly upgrade and modernize the Marina as well as ensure its long-term viability. Construction of the Project is expected to begin immediately following HIW's exercise of the Option and execution of the A&R Lease and take approximately two years. HIW is planning a phased construction schedule so portions of the Marina always remain open in order to minimize boater displacement.

### **Option to Lease Agreement and Amended and Restated Lease**

On November 14, 2023, the Board approved the Option with the A&R Lease attached thereto as Exhibit 1. The Option includes conditions precedent that HIW must meet to ensure the Project is construction-ready before HIW elects to exercise the Option and execute the A&R Lease.

The Option had a term of 18 months, and includes the following conditions precedent that HIW is required to meet prior to exercising the Option and executing the A&R Lease:

- Engage with District staff to prepare the Tenant Percent for Art Allocation for the Project;
- Develop the Project plans from conceptual drawings to working drawings;
- Provide evidence of equity and debt commitments sufficient to complete the Project, including a source of funds for expenses related to Project construction;
- Obtain all required construction and development permits necessary for the Project;
- Provide a Performance Bond and Payment Bond in form and substance as required by the A&R Lease;
- Submit executed construction contract(s) with competent contractors; and
- Remain in compliance under the Current Lease.

HIW satisfied all but two of the conditions prior to the June 14, 2025 expiration of the Option, and is requesting an extension of the Option to allow for the delayed procurement of their final building permits, which have now been issued, and a sequencing change to payment and performance bond issuance.

## Construction and Development Permits

HIW has diligently pursued completion of the condition to obtain all required approvals necessary to construct the Project<sup>3</sup>. In addition, HIW has secured the following construction and development permits:

- Letter of Permission, Department of the Army, U.S. Army Corps of Engineers;
- Grant of Certification, San Diego Regional Water Quality Control Board;
- District Approval of Precise Grading Plan;
- District Approval of Working Drawings;
- District Conditional Project Approval;
- Authority to Construct, San Diego County Air Pollution Control District;
- Permit for Underground Storage Tank Construction, County of San Diego, Department of Environmental Health;
- Repipe of Aboveground & Under Ground Storage Tanks, San Diego Fire & Rescue Department/Technical Services;
- Building Permits for Waterside Improvements, City of San Diego; and
- Building Permits for Landside Improvements, City of San Diego (issued on July 3, 2025).

## First Amendment to the Option

Staff is recommending the proposed Amendment to extend the Option's term for an additional three months to September 14, 2025 so that the July 3, 2025 issuance of final building permits complies with the Option deadlines as well as to allow for additional time for Project financing to close. Additionally, staff is recommending updated terms to permit HIW to provide the District with evidence, acceptable to the District in its reasonable discretion, that the requisite payment and performance bonds will be issued concurrently with the effectiveness of the A&R Lease and closing of HIW's construction financing, instead of the current Option requirement that the payment and performance bonds be issued in advance of HIW exercising the Option and executing the A&R Lease.

## Recommendation

In order for HIW to continue its diligent efforts to move forward with this exciting Project, staff recommends the Board adopt an Ordinance granting the First Amendment to an Option to Lease Agreement in substantial form as attached to this agenda sheet as Attachment C.

## **General Counsel's Comments:**

The Office of the General Counsel has reviewed this agenda sheet and the attachments as presented to it and approves the same as to form and legality.

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<sup>3</sup> On November 14, 2023, by Resolution Nos. 2023-104, 2023-105, and 2023-106, the Board adopted a Mitigated Negative Declaration, granted concept approval, and authorized an appealable Coastal Development Permit for the Project.

## Environmental Review:

The proposed Board action, including without limitation, an amendment to the Option to Lease Agreement with HIW was adequately analyzed in the Mitigated Negative Declaration (MND) for the Harbor Island West Marina Redevelopment Project (UPD# MND-2013-80; SCH# 2019129019, Clerk Document No. 76101) prepared and adopted by the District on November 14, 2023 (Resolution No. 2023-104). The proposed project is not a separate project for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the MND, the District finds and recommends that the proposed Board action does 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 MND due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new 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 MND, (b) identifies significant impacts more severe than those analyzed in the previous MND, (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 MND would substantially reduce one or more significant effects on the environment. Because none of these factors have been triggered, pursuant to CEQA Guidelines section 15162(b), the District has determined no further analysis or environmental documentation is necessary. Accordingly, the proposed Board action is merely a step in the furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

The proposed Board action complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action was covered in the Coastal Development Permit (CDP) for Harbor Island West Marina Redevelopment (CDP-2023-04; Clerk Document No. 76232) approved for issuance by the District on November 14, 2023 (Resolution No. 2023-106). The proposed Board action is consistent with the CDP. No additional action under the California Coastal Act is required at this time.

**Diversity, Equity, and Inclusion Program:**

Not applicable.

**PREPARED BY:**

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Attachment(s):

Attachment A: Location Map

Attachment B: Option to Lease Agreement

Attachment C: First Amendment to Option to Lease Agreement