

## **TOLLING AGREEMENT**

The San Diego Unified Port District (“San Diego Port District”) and San Diego Local Agency Formation Commission (“LAFCO”) (collectively “Parties”), enter into this Tolling Agreement (“Agreement”) to facilitate settlement negotiations between the Parties within the time period provided by this Agreement without thereby altering the claims or defenses available to any Party hereto, except as specifically provided herein.

### **RECITALS**

A. WHEREAS, on March 4, 2024, LAFCO’s legislative body (hereinafter the “Commission”) took action to determine that it had oversight authority over the San Diego Unified Port District, and related actions (the “LAFCO Determination”). The LAFCO Determination was not adopted by resolution; and

B. WHEREAS, on April 3, 2024 the San Diego Port District submitted a reconsideration request (“Reconsideration Request”) of the LAFCO Determination to LAFCO pursuant to Article III, Section 3.4(2) of LAFCO’s Rules, which applies to reconsideration of a Commission determination for which a resolution was not adopted; and

C. WHEREAS, the Reconsideration Request was submitted not more than 30 days from the date of the Commission’s action on the LAFCO Determination as required by Article III, Section 3.4(2) of LAFCO’s Rules; and

D. WHEREAS, pursuant to Article III, Section 3.4(2) of LAFCO’s Rules, a submitted reconsideration request shall be included on the next LAFCO Commission meeting “agenda for which notice can be given in the same manner as was given for the item that is the subject of the reconsideration request”; and

E. WHEREAS on April 5, 2024, by email to a San Diego Port District Deputy General Counsel, LAFCO’s Executive Officer stated that the Reconsideration Request “does not qualify for reconsideration by the Commission since the Port does not qualify as an ‘affected agency’ under the applicable definition . . .” (the “Denial of Reconsideration”); and

F. WHEREAS, the San Diego Port District disagrees with the LAFCO Determination and the basis for the Denial of Reconsideration; and

G. WHEREAS, in order to avoid cost of pursuing legal remedies including initiation of litigation over the LAFCO Determination, the Reconsideration Request and/or the Denial of Reconsideration (together the “Dispute”), the Parties agree that it is in their best interests to defer LAFCO’s consideration of the Reconsideration Request and defer initiating litigation over any aspect of the Dispute while the Parties consider and evaluate the avoidance of the threatened claims and/or initiation of litigation; and

H. WHEREAS, the Parties, therefore, desire to toll the running of any statute of limitations, and any other time-related defense with respect to any rights, claims, causes of

action, counterclaims, cross-claims, and defenses that either Party may assert against the other Party, whether statutory, contractual, or otherwise, in law or in equity, arising out of the Dispute (collectively "Claims"), and agree that litigation, if any, of such Claims be held in abeyance and without prejudice to the rights of the Parties during the pendency of this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, the Parties agree as follows:

1. Effective Date. This Agreement shall be binding and deemed effective upon execution as of the date it is last signed ("Effective Date").

2. Tolling of Claims. Notwithstanding any other provision of this Agreement, the period commencing on May 6, 2024 and ending on September 30, 2024, inclusive (the "Tolling Period"), shall not be included in computing the running of any statute of limitations, claim of laches or any other limitations period, whether statutory, contractual, or otherwise, concerning any existing cause of action or claim however asserted, in law or in equity, hereafter brought against each other arising from or related to Claims and/or Dispute. During the Tolling Period, the Parties shall not file or initiate any litigation against each other for any existing claims arising from or related to the Claims and/or Dispute.

a. The Parties shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Claims and/or Dispute.

b. The Commission shall not hear any item in open session on the Reconsideration Request during the Tolling Period.

3. No Admission. This Tolling Agreement does not constitute any admission or acknowledgment of any fact, conclusion of law, or liability by the Parties. Nor does this Agreement constitute any admission or acknowledgment that any statute of limitations, or similar defense concerning the timeliness of commencing a civil action, is applicable to the Claims and/or Dispute. The Parties reserve the right to assert that no statute of limitations applies to any of the Claims and/or Dispute and that no other defense based upon the timeliness of commencing a civil action is applicable.

4. Tolling Period Negotiations. The Parties agree that during the Tolling Period it is anticipated that the Parties may consider a mutually agreeable resolution to the Claims and/or Dispute which may include settlement discussions or negotiations. The Parties agree that any deliberations, discussions, negotiations, or considerations during the Tolling Period related to the Claims and/or Dispute will not be used against the other Party or raised as inappropriate or in violation of law or equity in any action brought on this Claim and/or

Dispute. The Parties shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense on any grounds related to the deliberations, discussions, negotiations and/or considerations of the Parties during the Tolling Period in any action brought on the Claims and/or Dispute. Nothing in this Agreement is intended to avoid compliance with the applicable provisions of the Ralph M. Brown Act (Gov. Code §§ 54950 *et. seq.*).

5. Termination. Any Party may terminate this Agreement by providing the other Parties with written notice of its election to terminate the Agreement. Such written notice shall be electronically served on legal counsel for the other Parties and shall be effective fourteen (14) calendar days after service of the written notice on the other Parties.

6. Amendments and Modifications. This Agreement may be modified, extended, or amended, but only by a writing signed by the Parties.

7. Counterparts. This Agreement may be signed in counterparts, and any facsimile, e-mail or other copies of this Agreement or any counterparts, shall be deemed an original.

8. Entire Agreement. This Agreement contains the complete, entire, and exclusive agreement of the Parties, and no statement, promise, or inducement made by any Party to this Agreement that is not set forth in this Agreement shall be valid or binding, nor shall it be used in construing the terms of this Agreement as set forth herein.

9. Authority. The undersigned representative of each of the Parties certifies that they are fully authorized to enter into the terms and conditions of this Agreement and to legally bind such party to all terms and conditions of this document.

10. Parties Covered. This Agreement shall bind and inure to the benefit of the Parties hereto and their respective governing bodies and individual members of their legislative bodies, heirs, executors, administrators, legal representatives, successors, and assigns. No other party may rely upon this Agreement or assert rights or benefits hereunder and this Agreement is not intended to affect any claims by or against third parties.

11. Severability. The Parties acknowledge that their intention is for this Agreement to be fully enforceable according to its terms. If any portion of this Agreement is declared invalid, illegal, or unenforceable by a court of competent jurisdiction, then said offending provision or provisions shall be stricken, and such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement.


12. Interpretation. No provision of this Agreement shall be construed against any of the Parties based upon any of the Parties drafting any portion of this Agreement.

13. Limitation. The Parties recognize that under limited circumstances certain statute of limitations enacted for the benefit of the public cannot be waived by agreement. The Parties to this Agreement agree that no such circumstances apply to the Claims and/or

the Dispute. This Agreement does not limit in any way the nature or scope of any claims that could be brought by the Parties or the date on which a Party may file such an action, except as expressly stated herein.

14. Governing Law. This Agreement shall be deemed to have been entered into in the State of California, and governed and interpreted by the laws of the State of California.

Dated: May 6, 2024      SAN DIEGO LOCAL AGENCY FORMATION COMMISSION

By:   
[NAME] \_\_\_\_\_, [TITLE] \_\_\_\_\_  
SIMONDS                      UTFD ED

Dated: May 2, 2024      OFFICE OF THE GENERAL COUNSEL OF THE SAN DIEGO  
UNIFIED PORT DISTRICT

By:   
THOMAS RUSSELL, GENERAL COUNSEL