

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2804

ORDINANCE GRANTING AMENDMENT NO. 3 TO LEASE WITH ANTHONY'S FISH GROTTO OF LA MESA, LOCATED AT 1360 NORTH HARBOR DRIVE, ESTABLISHING MINIMUM ANNUAL RENT OF \$373,050 FOR THE PERIOD OF FEBRUARY 1, 2015 THROUGH JANUARY 31, 2017; INCORPORATING ADDITIONAL PERMITTED LEASE AREAS; AND UPDATING LANGUAGE TO CURRENT DISTRICT STANDARDS INCLUDING CLARIFYING END OF LEASE TERM REQUIREMENTS

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 lease 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, Anthony's Fish Grotto of La Mesa (Anthony's) has a 52-year lease with the District, expiring January 31, 2017 (Lease); and

WHEREAS, the leasehold consists of a 1,080 square foot water easement for a subsurface waterline and 31,608 square foot building divided into three operations: (1) a 75-seat quick serve Fishette, (2) a full service 336-seat Anthony's Fish Grotto, and (3) a 105-seat event center at the Star of the Sea Room, which formerly was for fine dining but is no longer operated; and

WHEREAS, the Lease requires a rent adjustment for the final two year period from February 1, 2015 through January 31, 2017; and

WHEREAS, the Minimum Annual Rent (MAR) for the remaining two years of the Lease is established at \$373,050, which is an upward adjustment from the current MAR of \$331,800; and

WHEREAS, in addition to its Lease with the District, Anthony's has three separate Tidelands Use and Occupancy Permits (TUOPs) associated with the operation of its leasehold which include, 72 square feet of area used for advertising signage, 162 square feet of area used for a canopy and additional

signage, and 500 square feet of area used for the Fishette's sidewalk dining area; and

WHEREAS, the District receives revenue of approximately \$2,000 per year from these three TUOPs. During the final two years of the Lease term, staff proposes incorporating all three TUOPs into the proposed Amendment No. 3 with Anthony's to facilitate administration of the leasehold; and

WHEREAS, Anthony's Lease includes outdated language dating back to the commencement of the agreement; and

WHEREAS, Amendment No. 3 would update the Lease language including updated indemnity, prevailing wage and sustainable leasing language; and

WHEREAS, the Lease will expire on January 31, 2017, triggering end of term requirements, which are not consistent with current District practices; and

WHEREAS, Amendment No. 3 would update Lease language concerning the end of term requirements to be consistent with District practices.

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

Section 1. Amendment No. 3 to Lease with Anthony's Fish Grotto of La Mesa, located at 1360 North Harbor Drive, establishing minimum annual rent of \$373,050 for the period of February 1, 2015 through January 31, 2017; incorporating additional permitted Lease areas; and updating language to current District standards including clarifying end of Lease term requirements is hereby granted.

Section 2. The Assistant Executive Director or his designated representative is hereby directed to execute said Amendment No. 3 to the Lease.

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

APPROVED AS TO FORM AND LEGALITY:

GENERAL COUNSEL



By: Assistant/Deputy

2804

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 14th day of April, 2015, by the following vote:

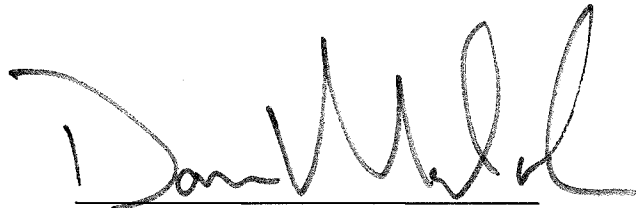
AYES: Bonelli, Castellanos, Malcolm, Merrifield, Nelson, and Valderrama.

NAYS: None.

EXCUSED: Moore.

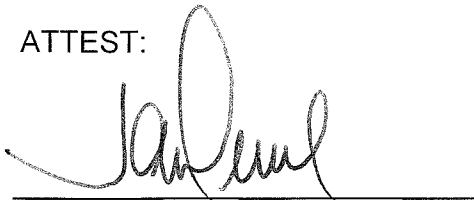
ABSENT: None.

ABSTAIN: None.



Dan Malcolm, Chairman
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)