

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2838

**ORDINANCE GRANTING 12-YEAR, 13-DAY(S)
LEASE WITH ONE, 5-YEAR OPTION AND ONE, 4-
YEAR OPTION TO EXTEND EXPIRING ON
DECEMBER 31, 2036 TO SAN DIEGO
REFRIGERATED SERVICES, INC. FOR
REFRIGERATED AND WAREHOUSE SERVICES
AT THE TENTH AVENUE MARINE TERMINAL**

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, in July 2000, the Board of Port Commissioners (BPC) granted San Diego Refrigerated Services, Inc. (SDRS) a lease with the District to operate a cold storage facility at the Tenth Avenue Marine Terminal (TAMT), providing on-terminal cold storage service to the District's refrigerated cargo customers; and

WHEREAS, the current lease has been amended four times, including extending the original lease term, eliminating a requirement for additional capital investment, and reducing the Minimum Annual Guarantee (MAG); and

WHEREAS, the current lease term expires on June 30, 2025; and

WHEREAS, in 2007, SDRS had reductions in their break-bulk operations which reduced the throughput based on metric tonnage of goods imported through SDRS; and

WHEREAS, at the same time, SDRS began to handle more of the Dole container cargo in the refrigerated storage facility; and

WHEREAS, the District and SDRS disputed the applicability of Dole cargo as it relates to SDRS's MAG obligation under the lease; and

WHEREAS, this dispute in the MAG led to several years of litigation and eventual mediation between the District and SDRS; and

WHEREAS, settlement terms were reached and the parties executed a Stipulation for Settlement Agreement (Stipulation) approved by the BPC; and

WHEREAS, pursuant to the Stipulation, the District negotiated a new lease with SDRS including:

- Increased flat land rent starting in year two of \$475,000 annually with Consumer Price Index (CPI) adjustments every three years. CPI adjustments have no minimum and maximum; however, the rent shall never be less than \$475,000 annually. SDRS' flat land rent under its current lease is \$300,000 annually. This is an increase in revenue to the District of a minimum of \$175,000 annually.
- MAG requirement is removed, eliminating the ambiguity of throughput ownership.
- Maritime cargo 80/20 majority ratio requirement, guaranteeing that 80% of SDRS' cargo is by waterborne vessel.
- SDRS receives revenue sharing from the District (50/50) for all wharfage that the District collects on cargo that passes through SDRS' leasehold.
- The term of the proposed lease expires in 2027 with one, 5-year option and one, 4-year option through 2036.
- The District receives a new guaranty; and

WHEREAS, the new lease does not increase the leased premises and like the current amended leased premises, the premises will be for approximately 433,965 square feet of land area and the improvements thereon, including 317,802 square feet of refrigerated chill rooms, freezer rooms, and dry storage areas within Warehouse B on the TAMT; and

WHEREAS, consistent with the terms of the current amended lease and the existing conditions at on the premises, the new lease will allow SDRS to continue to use the premises for dry and refrigerated warehouse services for the handling, shipping, receiving, delivery, processing, and/or storage of chilled and/or frozen food commodities, perishable, and/or non-perishable general cargo and non-strategic military cargo, with a service provider agreement in place prior to and not subject to the National Shipping Authority Service Priority Orders (NSPO) (as defined under the U.S. Department of Transportation, Maritime Administration, National Shipping Authority Port Planning Order No. CASD18) delivered, imported, or exported by waterborne vessel at the District's TAMT and for no other purposes.

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

Section 1. The 12-year, 13-day(s) lease with one, 5-year option and one, 4-year option to extend expiring on December 31, 2036 to San Diego Refrigerated Services, Inc. for refrigerated and warehouse services at the Tenth Avenue Marine Terminal in San Diego, California is hereby granted.

Section 2. The Executive Director or her designated representative is hereby directed to execute said 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

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 17th day of November, 2015, by the following vote:


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

NAYS: None.

EXCUSED: None.

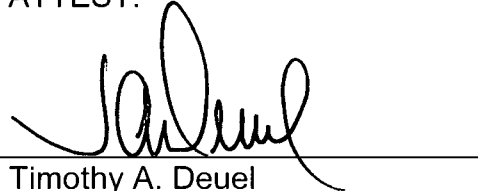
ABSENT: None.

ABSTAIN: None.



Dan Malcolm, Chairman
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)