

RESOLUTION 2013-157

RESOLUTION GRANTING INDEMNITY TO THE SAN DIEGO AIR POLLUTION CONTROL DISTRICT FOR PROCESSING AND/OR APPROVAL OF A PERMIT APPLICATION SUBMITTED BY THE SAN DIEGO UNIFIED PORT DISTRICT TO OPERATE A NEW, UPGRADED EMERGENCY GENERATOR AT THE SHELTER ISLAND HARBOR CONTROL BUILDING

WHEREAS, the San Diego Unified Port District (Port District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I, (Port Act); and

WHEREAS, on May 7, 2013, the Board of Port Commissioners (BPC) conducted a budget workshop for fiscal year 2013/2014 and at the workshop, the BPC approved the funding for major maintenance projects, including, but not limited to, the Shelter Island Harbor Control Building Generator Replacement project (Project); and

WHEREAS, the Project proposes replacing a 15- to 20-year old gasoline powered 7.5 kilowatt emergency generator with an upgraded diesel generator to provide emergency power to the Shelter Island Harbor Control building and accessory facilities, including the police docks, vessel maintenance building and divers' locker building; and

WHEREAS, the San Diego Air Resource Pollution Control District (Air Resource Pollution Control District) must issue a permit to operate the new upgraded diesel generator (Permit); and

WHEREAS, the application for the Permit requires that the Port District grant an indemnity to the Air Resource Pollution Control District as follows: "In accordance with [Air Resource Pollution Control] District Rule 40(d)(8)(vi), the [Port] applicant, to the extent the [Port] applicant is at fault in causing liability to the [Air Resource Pollution Control] District, shall indemnify the [Air Resource Pollution Control] District (including its agents, officers and employees) from any claim, action, liability, or proceeding to attack, set aside, void or annul the [Port] applicant's project or any of the proceedings, acts or determinations taken, done or made as a result of the [Air Resource Pollution Control] District's processing and/or approval of the project. The [Port] applicant's obligation to indemnify shall include, but not be limited to, payment of all court costs and attorney's fees, costs of any judgments or awards against the [Air Resource Pollution Control] District, damages, and/or settlement costs, which arise out of the District's processing

and/or approval of the [Port] applicant's project, except that an applicant shall only be responsible for indemnifying the [Air Resource Pollution Control] District according to the proportion of fault caused by the [Port] applicant, as determined by a court. By signing and submitting this application, an applicant agrees to such indemnification."; and

WHEREAS, staff has analyzed the potential risks of accepting the proposed indemnity and finds that the risk to the Port District is minimal and finds them acceptable especially in light of the benefits to be received by the Shelter Island Harbor Control Building Generator Replacement.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Executive Director or his designated representative is hereby authorized to grant indemnity on behalf of the San Diego Unified Port District to the Air Resource Pollution Control District in connection with the Air Resource Pollution Control District permit application for the Shelter Island Harbor Control Building Generator Replacement project as follows:

In accordance with [Air Resource Pollution Control] District Rule 40(d)(8)(vi), the [Port] applicant, to the extent the [Port] applicant is at fault in causing liability to the [Air Resource Pollution Control] District, shall indemnify the [Air Resource Pollution Control] District (including its agents, officers and employees) from any claim, action, liability, or proceeding to attack, set aside, void or annul the [Port] applicant's project or any of the proceedings, acts or determinations taken, done or made as a result of the [Air Resource Pollution Control] District's processing and/or approval of the project. The [Port] applicant's obligation to indemnify shall include, but not be limited to, payment of all court costs and attorney's fees, costs of any judgments or awards against the [Air Resource Pollution Control] District, damages, and/or settlement costs, which arise out of the District's processing and/or approval of the [Port] applicant's project, except that an applicant shall only be responsible for indemnifying the [Air Resource Pollution Control] District according to the proportion of fault caused by the [Port] applicant, as determined by a court. By signing and submitting this application, an applicant agrees to such indemnification.

APPROVED AS TO FORM AND LEGALITY:


PORT ATTORNEY

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September, 2013, by the following vote:

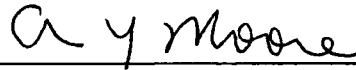
AYES: Castellanos, Malcolm, Merrifield, Moore, Nelson, Smith, Valderrama

NAYS: None.

EXCUSED: None.

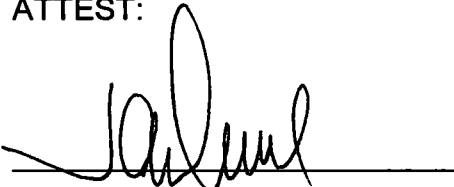
ABSENT: None.

ABSTAIN: None.



Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)