

## **RESOLUTION 2013-161**

### **RESOLUTION GRANTING INDEMNITY TO ROHR, INC., A UNITED TECHNOLOGIES AEROSPACE SYSTEMS COMPANY (UTAS) AS SET FORTH IN THE LICENSE AGREEMENT AUTHORIZING THE SAN DIEGO UNIFIED PORT DISTRICT TO ENTER UPON UTAS PROPERTY FOR THE H STREET EXTENSION PROJECT**

**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 1, (Port Act); and

**WHEREAS**, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 incorporating the provisions of the Accounting Act to govern the processing and administration of public projects; and

**WHEREAS**, pursuant to the Relocation Agreement between the District, City of Chula Vista, the Redevelopment Agency of the City of Chula Vista, and Rohr, Inc., a United Technologies Aerospace Systems Company (UTAS), the District is responsible for the construction of the H Street Extension Project which will improve the roadway, sidewalk, landscape, and associated utilities from Bay Boulevard to Marina Parkway in Chula Vista; and

**WHEREAS**, the H Street Extension Project is located within the Chula Vista Bayfront Master Plan area and will extend H Street westerly from Bay Boulevard to Marina Parkway, and Marina Parkway southerly from H Street to Sandpiper Way; and

**WHEREAS**, proposed improvements include the construction of a four-lane roadway with a striped center turn lane, sidewalk, drainage system, water lines, landscaping, street lights, traffic signal modification, and a 12-foot-wide Class 1 bikeway on the south side of H Street; and

**WHEREAS**, construction activities related to the H Street project will encroach on the property of UTAS and therefore the District is required by UTAS to enter into a License Agreement in order for the District and District contractors to enter the UTAS property; and

**WHEREAS**, the License Agreement requires that the District indemnify UTAS for damage arising out of the District's activities on the UTAS property.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Port Commissioners of the San Diego Unified Port District, hereby grants indemnity to Rohr, Inc., a United Technologies Aerospace Company (UTAS) as set forth in the License Agreement with UTAS to enter onto the UTAS property for construction activities related to the H Street Extension Project as follows:

District shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Rohr and its officers, employees, and agents from any and all causes of action, liability, claims, liens, encumbrances, judgments, or demands, plus expenses in connection therewith (including attorneys' fees and expert witness fees), arising from District's activities pursuant to this Agreement except claims or litigation arising through the sole negligence or willful misconduct of Rohr (collectively, an "Indemnified Claim"). An Indemnified Claim includes: (i) any claim or action arising from or relating to damage to any person or property, or injury to or death to any person, including without limitation any claim or action alleging latent and other defects, whether or not discoverable by District or Rohr in connection with activities undertaken by District on the License Area or any portion thereof during the term of this Agreement; (ii) any claim or action arising out of strict liability, negligence, gross negligence, willful or reckless conduct in connection with activities undertaken by District on the License Area or any portion thereof during the term of this Agreement; and (iii) any claim or action based on any federal, state, or local environmental law or regulation arising out of the use of the License Area by the District hereunder during the term of this Agreement, regardless of the extent, if any, to which such claim or action is based, in whole or in part, on preexisting conditions at the License Area. It is the intent of this Paragraph 12 that District indemnify and hold harmless Rohr for any actions of District or Rohr, except for those arising out of the sole negligence or willful misconduct of Rohr, including but not limited to District's duty under contracts with third parties. District and Rohr agree to promptly provide notice to each other of any claim or liability hereby indemnified against following the learning thereof by such party. District shall not settle or compromise any claim pursuant to this Paragraph 12 without first obtaining Rohr's written consent. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue Rohr for liabilities arising out of District's use, occupancy, or operation of the License Area, or arising from any defect in any part of the License Area.

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:

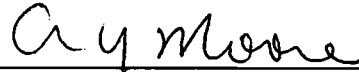
AYES: Castellanos, Malcolm, Merrifield, Moore, Nelson, Smith, Valderrama

NAYS: None.

EXCUSED: None.

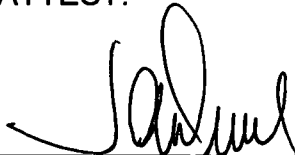
ABSENT: None.

ABSTAIN: None.



Ann Y. Moore, Chair  
Board of Port Commissioners

ATTEST:



Timothy A. Deuel  
District Clerk



(Seal)