

RESOLUTION 2013-162

RESOLUTION GRANTING INDEMNITY TO CHULA VISTA MARINA / RV PARK, LTD, AND ITS TENANTS AS SET FORTH IN THE LICENSE AGREEMENT AUTHORIZING THE SAN DIEGO UNIFIED PORT DISTRICT TO ENTER UPON THE CHULA VISTA MARINA LEASEHOLD 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, Section 37 of the Port Act requires that the California Public Contract Code (CPC) apply to public projects of the District; 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 Extension Project will encroach on the leasehold of Chula Vista Marina / RV Park, LTD (Chula Vista Marina) and therefore the District is required by Chula Vista Marina to enter into a License Agreement in order for the District and District contractors to enter onto the Chula Vista Marina leasehold; and

WHEREAS, the License Agreement requires that the District indemnify Chula Vista Marina and its tenants for damage arising out of the District's activities on the Chula Vista Marina leasehold.

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, hereby grants indemnity to Chula Vista Marina / RV Park, LTD and its tenants as set forth in the License Agreement with Chula Vista Marina / RV Park, LTD to enter onto the Chula Vista Marina Leasehold for the H Street Extension Project as follows:

Licensee shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Licensor and its officers, employees, and agents, and Licensor's tenants at the Chula Vista Marina (the "Indemnified Parties"), for any and all causes of action, liability, claims, judgments, or demands, plus expenses in connection therewith, except claims or litigation arising through the sole negligence or willful misconduct of Licensor or Licensor's tenants. Said expenses shall include without limitation costs of investigation and remediation of environmental conditions, counsel, consultant and/or expert fees and expenses, and penalties and interest as incurred, regardless of the cause thereof, if the cause of action, liability, claim, judgment, or demand arises out of or is the result of Licensee's (or its Contractors'): (i) accepting the Temporary License; or (ii) relates to any accident or occurrence in connection with the performance of the Work and/or the operation, use, condition, or possession of the License Area or any portion thereof during the term of the Construction Period (collectively, an "Indemnified Claim"). An Indemnified Claim includes: (i) any claim or action no matter when made or filed, 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 Licensee or Licensor in connection with activities undertaken by or on behalf of Licensee or its Contractors on the License Area or any portion thereof during the term of this Temporary License; (ii) any claim or action arising out of strict liability, negligence, gross negligence, willful or reckless conduct in connection with activities undertaken by or on behalf of Licensee or its Contractors on the License Area or any portion thereof during the term of this Temporary License; 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 or on behalf of Licensee or its Contractors hereunder during the term of this Temporary License, regardless of the extent, if any, to which such claim or action is based, in whole or in part, on the Work at the License Area .

It is the intent of this Paragraph that Licensee indemnify and hold harmless the Indemnified Parties for any actions related to the Work during the Construction Period by or on behalf of Licensee or its Contractors (except for those arising out of the sole negligence or willful misconduct of Licensor or Licensor's tenants), including

but not limited to claims based upon Licensee's (or its Contractors') alleged breach of any statutory duty or obligation, or Licensee's (or its Contractors') duty under contracts with third parties. Licensee and Licensor agree to promptly provide notice to each other of any claim or liability hereby indemnified against following the learning thereof by such party, but the failure to so notify shall not affect Licensee's indemnification obligation hereunder. Licensee shall not settle or compromise any claim pursuant to this Paragraph 9 without first obtaining Licensor's written consent. Notwithstanding the above, the timing to file a claim with Licensee, under the Tort Claims Act, shall not be tolled. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue Licensor for liabilities arising out of Licensee's (or its Contractor's) use, occupancy, or operation of the License Area or any portion thereof, or arising from any defect caused by the Work in any part of the License Area or any portion thereof.

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:

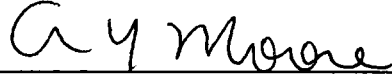
AYES: Castellanos, Malcolm, Merrifield, Moore, Nelson, Smith, Valderrama

NAYS: None.

EXCUSED: None.

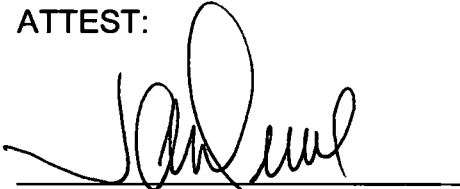
ABSENT: None.

ABSTAIN: None.



Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)