

RESOLUTION 2013-38

RESOLUTION GRANTING INDEMNITY TO THE STATE WATER RESOURCES CONTROL BOARD AND STATE OF CALIFORNIA FOR DEBRIS REMOVAL FROM THE A-8 ANCHORAGE AND SURROUNDS

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, on September 2, 2008, pursuant to Ordinance 2522, the Board of Port Commissioners (BPC) amended Unified Port District (UPD) Code §4.36 to prohibit free and long-term anchoring in the A-8 and A-9 Disabled Anchorages effective October 1, 2008; and

WHEREAS, the BPC's decision to eliminate free and long-term anchoring in the A-8 Anchorage was in part due to derelict and abandoned vessels sinking, causing environmental concerns and marine debris; and

WHEREAS, since the elimination of free and long-term anchoring in the A-8 Anchorage, the District has successfully removed over 315 tons of debris including over 75 sunken vessels, 50 and 25 ton barges, batteries, engines, generators, fuel and other storage tanks, bicycles, various electronics and a bathtub; and

WHEREAS, the cost to conduct these debris removal operations has been augmented with over \$340,000 in grant funding provided by National Oceanic Atmospheric Administration (NOAA), the State Water Resources Control Board Clean-up and Abatement Account and the District's Environmental Fund; and

WHEREAS, during the tri-annual eelgrass survey of the Bay in June 2011, the side-scan sonar survey of the A-8 Anchorage and 350 acre surrounds identified 945 items of debris including an estimated 536 items of debris smaller than one meter, 309 items ranging between one and three meters (11 being vessels); and

WHEREAS, based upon this survey, staff applied for and the District was awarded \$120,000 in grant funding from NOAA for the Community-Based Marine Debris Prevention and Removal Project Grant, and was awarded \$99,500 from the State Board's Clean-Up and Abatement Account; and

WHEREAS, as a condition of receiving the grant funds, the State Board requires that the District grant indemnity to it as follows: “[t]o the extent permitted by law, the Grantee (District) agrees to indemnify, defend and hold harmless the State Water Board and the State against any loss or liability arising out of any claim or action brought against the State Water Board and/or the State from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Project or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation or construction, of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and California Water Code §13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Grantee for use in any disclosure document utilized in connection with any of the transaction contemplated by this Agreement... [t]o the fullest extent permitted by law, the Grantee (District) agrees to pay and discharge any judgment or award entered or made against the State Water Board and/or the State with respect to any such claim or action, and any settlement, compromise or other voluntary resolution.”; and

WHEREAS, staff has analyzed the potential risks of accepting the proposed indemnity and finds that the risk to the District is minimal and finds them acceptable especially in light of the funding to be received which will rid the Bay of potential hazards to navigation.

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 to the State Water Resources Control Board and State of California for debris removal from the A-8 Anchorage and surrounds.

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 5th day of March, 2013, by the following vote:

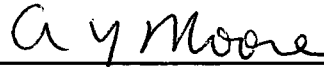
AYES: Malcolm, Moore, Nelson, Smith, Valderrama

NAYS: None.

EXCUSED: None.

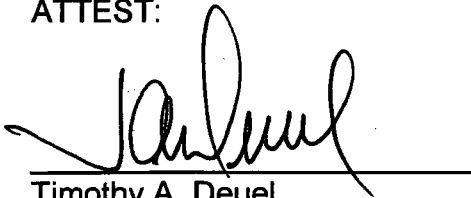
ABSENT: None.

ABSTAIN: None.



Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)