

## **RESOLUTION 2013-44**

### **RESOLUTION CONDITIONALLY CONSENTING TO ASSIGNMENT AND ASSUMPTION OF THE SAN DIEGO UNIFIED PORT DISTRICT'S LEASE WITH KNIGHT AND CARVER YACHTCENTER, INC. TO MARINE GROUP BOAT WORKS, LLC AND CONDITIONALLY CONSENTING TO FRASER'S BOILER SERVICE, INC.'S SUBLEASE WITH MARINE GROUP BOAT WORKS, LLC**

**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**, Knight and Carver Yachtcenter, Inc. (K&C), a California corporation has a 30-year Lease with the District which commenced March 26, 1997 and expires March 31, 2027 to operate a boatyard for recreational and small commercial/military vessel repair and construction on file in the Office of the District Clerk as Document No. 35663 along with subsequent Amendments Nos. 1, 2, 3, and 4 with corresponding District Document Nos. 36605, 45596, 52822, and 57071; and

**WHEREAS**, on March 12, 2012, K&C filed for bankruptcy, under Chapter 11 of Title 11 of the United States Code (Bankruptcy Code); and

**WHEREAS**, following the filing of its bankruptcy, K&C continued to manage and operate the boatyard as a debtor-in-possession and paid the District rent due under the Lease on a weekly basis; and

**WHEREAS**, supervised by the United States Bankruptcy Court (Court) and pursuant to Bankruptcy Code, K&C is in the process of selling substantially all of its assets through a process that included a public auction; and

**WHEREAS**, two prospective purchasers through the Court; San Diego San Diego Dry Dock, LLC (SDDD) and Marine Group Boat Works, LLC (MGBW) participated in the auction and made offers; and

**WHEREAS**, on December 6, 2012, SDDD withdrew its offer for K&C's assets and the Court approved the sale of K&C's assets to MGBW subject to the District's consent to the assignment and assumption of the Lease; and

**WHEREAS**, MGBW has requested the District's consent to the existing Sublease with Fraser's Boiler Service, Inc. (Fraser); and

**WHEREAS**, the District informed MGBW that its consent to the assignment and assumption of the Lease to MGBW would be conditioned on the following:

- 1) All existing defaults under the Lease are cured or adequate assurances of prompt cure are provided and all necessary documents are executed by MGBW.
- 2) MGBW will be responsible for all obligations under the Lease including past environmental contamination.
- 3) MGBW's principals and owners will provide adequate assurances that it can perform its obligations and will guaranty the performance of the Lease and all of its obligations.
- 4) MGBW provides evidence to satisfy the District that MGBW has the financial wherewithal to pay all obligations under the Lease, and its current Lease which covers its operation in Chula Vista including relocation and restoration obligations.

**WHEREAS**, the District will conditionally consent to the assignment and assumption of the Lease if the Executive Director/CEO, Wayne Darbeau, Port Attorney, Thomas Russell and the Chair of the Board of Port Commissioners, Ann Moore, agree the above conditions have been met.

**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 on behalf of the District to consent to the assignment and assumption of the District's Lease with Knight and Carver YachtCenter, Inc., a California corporation to Marine Group Boat Works, LLC, a California limited liability company, and to consent to a Sublease between Fraser's Boiler Service, Inc. and Marine Group Boat Works, LLC, provided the following conditions have been met to the satisfaction of the Executive Director/CEO, Wayne Darbeau, Port Attorney, Thomas Russell and Chair of the Board of Commissioners, Ann Moore:

- 1) All existing defaults under the Lease are cured or adequate assurances of prompt cure are provided and all necessary documents are executed by MGBW.

- 2) MGBW shall be responsible for all obligations under the Lease including past environmental contamination.
- 3) MGBW's principals and owners shall guaranty the performance of the Lease and all of its obligations.
- 4) MGBW shall provide evidence to satisfy the District that MGBW has the financial ability to pay all obligations under the Lease, as well as its current Lease which covers its operation in the City of Chula Vista including relocation and restoration obligations.

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.

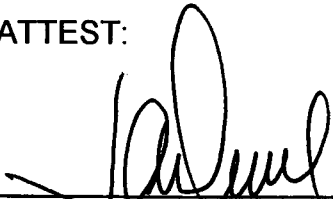
EXCUSED: None.

ABSENT: None.

ABSTAIN: None.

  
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Ann Y. Moore, Chair  
Board of Port Commissioners

ATTEST:

  
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Timothy A. Deuel  
District Clerk



(Seal)