

## **RESOLUTION 2015-73**

### **RESOLUTION AUTHORIZING AMENDMENT NO. 1 TO AGREEMENT WITH TETRA TECH, INC. FOR LITIGATION ENVIRONMENTAL SUPPORT SERVICES RELATED TO THE CHULA VISTA BAYFRONT INCREASING THE MAXIMUM AMOUNT PAYABLE OF \$576,000 BY AN ADDITIONAL \$350,000 FOR A NEW AMOUNT PAYABLE UNDER THE AGREEMENT OF \$926,000**

**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 to establish a policy governing the processing and administration of public projects, consulting and service agreements, the purchasing of supplies, materials, and equipment, and grants; and

**WHEREAS**, in 1999, the District entered into a Relocation Agreement with Rohr Industries, Inc. formerly BF Goodrich Aerostructures Group, a United Technologies Aerospace Systems Company (Rohr), the City of Chula Vista (City), and the Redevelopment Agency of the City of Chula Vista; and

**WHEREAS**, the Relocation Agreement provided for a series of land transactions that included the transfer of uplands portion of Rohr's industrial campus located south of H Street (referred to as the South Campus) from Rohr to the District, in exchange for the District's tidelands portion of Rohr's campus north of H Street; and

**WHEREAS**, the South Campus contained sixty-three industrial buildings with approximately 870,000 square feet in gross building area; and

**WHEREAS**, the South Campus was previously used by Rohr for aviation and aerospace industrial manufacturing; and

**WHEREAS**, Rohr is responsible for remediating conditions that occurred as a result of Rohr's activities; and

**WHEREAS**, in 1999, the District acquired the South Bay Power Plant (SBPP) in order to facilitate its removal from the tidelands located on the Chula Vista Bayfront; and

**WHEREAS**, the District entered into a lease agreement with Duke Energy South Bay, LLC (Duke) and thereafter consented to the assignment of the SBPP lease and associated agreements to Dynegy South Bay, LLC (Dynegy); and

**WHEREAS**, pursuant to the Asset Sale Agreement entered into between the District and SDG&E on December 11, 1999, the District agreed to assume certain liabilities which include decommissioning the SBPP and associated remediation, because the SBPP was still in operation at the time the District acquired the site and the SBPP; and

**WHEREAS**, thereafter, the District assigned certain liabilities under the Asset Sale Agreement to the SBPP operators, beginning with Duke in 1999, as set forth in various agreements such as the Environmental Remediation Agreement and thereafter assigned to Dynegy; and

**WHEREAS**, the decommissioning activities include certain environmental remediation activities related to soil contamination; and

**WHEREAS**, as a result, an environmental consultant is required to advise the District on the activities being undertaken by Dynegy related to environmental contaminants on the SBPP site in order to ensure that the obligations assigned to Dynegy by the District are performed correctly and that the site is appropriately remediated; and

**WHEREAS**, SDG&E has also been conducting remediation activities at the SBPP site pursuant to the Asset Sale Agreement and a consent agreement with the Department of Toxic Substances Control (DTSC); and

**WHEREAS**, as tidelands trustee, the District is obligated to ensure that parties responsible for causing contamination to its lands remediate them in accordance with applicable law and direction by the RWQCB; and

**WHEREAS**, the District requires an environmental expert to assist the District to ensure that the Chula Vista Bayfront is appropriately remediated by Rohr, Dynegy and SDG&E so that liability for the contamination does not fall to the District in the future; and

**WHEREAS**, since 2011, Tetra Tech, Inc. has been the District's primary environmental consultant for issues related to contamination and remediation at the SBPP and South Campus Sites; and

**WHEREAS**, on December 13, 2011, the Board adopted Resolution 2011-174 authorizing an agreement with Tetra Tech, Inc. to provide environmental services to the District regarding discovery of contaminants in the soil and bay sediments at the SBPP Site; and

**WHEREAS**, on September 10, 2013, the Board adopted Resolution 2013-147 authorizing an agreement with Tetra Tech, Inc. to provide litigation support services to the Office of the General Counsel regarding the remediation of the Chula Vista Bayfront; and

**WHEREAS**, in October 2013, the City in its capacity as the Successor Agency to the Chula Vista Redevelopment Agency, initiated litigation in state court against Rohr seeking injunctive relief, cost recovery, and declaratory relief pursuant to its authority under California Health & Safety Code Section 33459 *et seq.*, otherwise known as the Polanco Redevelopment Act; and

**WHEREAS**, on November 11, 2013, the Board authorized litigation against Rohr to recover costs incurred by the District as a result of Rohr's contamination, and to ensure that the contamination is appropriately remediated; and

**WHEREAS**, on January 29, 2014, the District accepted service of Rohr's cross-complaint and on February 6, 2014, the District filed its cross-complaint against Rohr; and

**WHEREAS**, both the South Campus Site and the South Bay Power Plant Site (Sites) contain contamination resulting from the previous operations at the Sites and are in the process of being remediated by third parties; and

**WHEREAS**, in addition to the SBPP and South Campus Sites, the H-3 and Sweetwater parcels are also impacted by contamination and may require additional environmental analysis; and

**WHEREAS**, as a result, the District requires a litigation expert environmental consultant to provide litigation support services to the Office of the General Counsel, including the provision of peer-review services and oversight related to environmental, investigatory, demolition, and remediation activities regarding contamination on the Chula Vista Bayfront; and

**WHEREAS**, On March 26, 2014, the District advertised Request for Qualifications (RFQ) 14-12 "Environmental Consultant for Litigation Services"; and

**WHEREAS**, on May 1, 2014, the District received nine responses and based on the responses to the RFQ, five firms were chosen for interviews: Rincon Consultants, Inc.; E2 Manage Tech; Project Navigator, LTD.; Tetra Tech, Inc.; and Ninyo & Moore; and

**WHEREAS**, a panel consisting of Adam Meyer, Real Estate; Paul Brown, Environmental and Land Use; Linda Scott, Engineering; and William McMinn, Office of the General Counsel, interviewed the firms; and

**WHEREAS**, the panel focused on the experience of the firm's staff, approach to the project, capability to perform, the firm's relevant experience, and cost to perform; and

**WHEREAS**, the panel found Tetra Tech, Inc. to be the most qualified environmental consultant to provide litigation support services to the Office of the General Counsel regarding the Chula Vista Bayfront; and

**WHEREAS**, on June 10, 2014, the Board authorized a three (3) year agreement with Tetra Tech based on the estimated period of time litigation and environmental support services will be required; and

**WHEREAS**, the costs of such services are difficult to predict past the upcoming fiscal year given the uncertainties of litigation and extent of environmental investigation and remediation required; and

**WHEREAS**, to best manage these costs, the agreement included the costs to perform the first year of services, which were estimated by Tetra Tech, working with District staff, to be \$576,000; and

**WHEREAS**, the Office of the General Counsel returns to the Board each year if additional funding is required; and

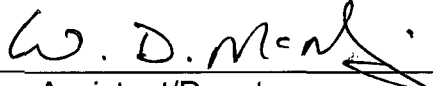
**WHEREAS**, litigation and environmental remediation is ongoing and as a result litigation environmental support services are required on the Bayfront for fiscal year (FY) 2015/2016; and

**WHEREAS**, in consultation with District staff, Tetra Tech estimates that the amount of services required for litigation environmental services for FY 2015/2016 to be \$350,000; and

**WHEREAS**, pursuant to BPC Policy 110, Board authorization is required to amend the Agreement to increase the maximum amount payable under the Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners of the San Diego Unified Port District that the General Counsel is hereby authorized on behalf of the San Diego Unified Port District to enter into Amendment No. 1, to the Agreement with Tetra Tech, Inc. for litigation environmental support services related to the Chula Vista Bayfront increasing the maximum amount payable of \$576,000 by an additional \$350,000 for a new amount payable under the Agreement of \$926,000.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

  
By: ~~Assistant~~/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 11<sup>th</sup> day of June, 2015, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Nelson, and Valderrama.

NAYS: None.

EXCUSED: None.

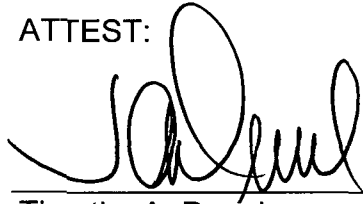
ABSENT: None.

ABSTAIN: None.



Dan Malcolm, Chairman  
Board of Port Commissioners

ATTEST:



Timothy A. Deuel  
District Clerk

