

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Cushman at 1:07 p.m., Tuesday, December 1, 2009, in the Board Room at 3165 Pacific Highway, San Diego, California.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Commissioner Appointee Lou Smith led the Pledge of Allegiance.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Bixler, Burdick, Cushman, Padilla, Peters, Spane, and Valderrama.

OFFICERS Bennett, Liner, Kirkpatrick, McEntee, and Wurster.

Absent: No Commissioners absent.

Excused: None.

APPROVAL OF MINUTES

Agenda Item 3. On motion of Commissioner Peters, seconded by Commissioner Valderrama, the Board approved in a single vote, the minutes submitted for the regular and special meetings of November 3, 2009 by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PUBLIC COMMUNICATIONS

Agenda Item 4. None.

CONSENT AGENDA

Chairman Cushman announced that the following Consent Agenda items would be continued to a future meeting:

Agenda Item 27. Resolution Selecting and Authorizing Agreement with PBS&J for environmental review consulting services for the Tenth Avenue Marine Terminal Building Demolition and Office Relocation Project for an amount not to exceed \$188,000 for a term of 13 months.

Agenda Item 28. Resolution Selecting and Authorizing Agreement with _____ for Environmental Review Consulting Services for the North Embarcadero Port Master Plan Amendment for an amount not to exceed \$_____.

Chairman Cushman announced that the following Consent Agenda items would be pulled from the Consent Agenda and heard as part of the Action Agenda:

Agenda Item 15. Resolution Authorizing Amendment No. 5 to Agreement with Bermello Ajamil and Partners, Inc. for additional professional services for the Broadway Pier Cruise Ship Terminal improvements and increasing the not to exceed amount by \$261,281 for a new not to exceed amount of \$3,423,788.

Agenda Item 18. Resolution Selecting and Authorizing a Three (3) Year Agreement with Aztec Landscaping, Incorporated for janitorial services at various District locations for an amount not to exceed \$1,185,897.21.

Agenda Item 6. Resolution Authorizing a Letter of Intent with Point Loma Marina, LLC., for an annual contribution towards a parking solution.

Chairman Cushman announced that Presentation/Action Agenda items 31 and 32 would be continued to a future Board Meeting:

Agenda Item 31. Presentation by staff regarding options for incremental improvements to the "B" Street Cruise Ship Terminal and Authorization to advertise a Request for Qualifications (RFQ) to seek an Architectural/Engineering Consultant to develop plans and specifications for the incremental improvements.

Agenda Item 32. Presentation of the District's Equal Opportunity Program Annual Report for Fiscal Year 2009.

CONSENT AGENDA

Commissioner Spane requested clarification regarding **Consent Agenda item 22**, Resolution Authorizing an Agreement with the City of San Diego for police, fire, and emergency medical services in an amount not to exceed \$2,282,278 for the period beginning July 1, 2009 and ending June 30, 2012 and **Consent Agenda item 25AB** regarding the A-8 Anchorage Marine Debris Removal.

Regarding Consent Agenda item 22, Commissioner Spane requested and received clarification from CFO/Treasurer Jeff McEntee regarding the increase in cost of services covered under the agreement with the City of San Diego for police, fire, and emergency medical services. Mr. McEntee stated that the increase to the cost of services was consistent with that of the other member cities, and the year-over-year increase was 3.87 percent.

Regarding Consent Agenda item 25AB, Commissioner Spane requested and received clarification from Environmental Services Assistant Director Eileen Maher as to whether there would be the need for any future allocation of additional funds for debris removal from the A-8 Anchorage. She explained that the request was for the removal of approximately 700 items of debris from the A-8 Anchorage and that it would very likely be the final request for such funds to address the matter.

On motion of Commissioner Burdick, seconded by Commissioner Padilla, the Board, with a single vote, adopted Consent Agenda items 5, 7, 8, 9, 10, 11, 12, 13A, 13B, 14, 16, 17, 19, 20, 21, 22, 23, 24, 25A, 25B, 26A, 26B, 26C, 41 and 42 (**Resolution 2009-205; Resolution 2009-207** through and including **Resolution 2009-208; Ordinance 2591; Resolution 2009-209** through and including **Resolution 2009-214; Resolution 2009-216** through and including **Resolution 2009-217; Resolution 2009-219** through and including **Resolution 2009-229; Resolution 2009-236** through and including **Resolution 2009-236**) by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 5. **Resolution 2009-205**, Approving Amended and Restated San Diego Unified Port District (SDUPD) Retirement Plan and Trust, was adopted as part of the consent agenda.

Agenda Item 7. **Resolution 2009-207**, Consenting to Sublease from USS Midway Museum to Midway Partners, LLC dba Fantail Café, was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2009-208**, Consenting to Sublease from Fifth Avenue Landing, LLC to Star & Crescent Board Company dba San Diego Harbor Excursion, was adopted as part of the consent agenda.

Agenda Item 9. **Ordinance 2591**, Ordinance Granting Amendment No. 12 to Seaport Village Operating Co., LLC Option Agreement for Redevelopment of the Old Police Headquarters to extend the option term for six months through June 30, 2010, was adopted as part of the consent agenda.

Agenda Item 10. **Resolution 2009-209**, Establishing Rent for Anthony's Fish Grotto of La Mesa for the period February 1, 2010 to January 31, 2015, with conditions, was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2009-210**, Establishing Rent for California Yacht Marina - Chula Vista, LLC for the period from July 1, 2009 to June 30, 2014, was adopted as part of the consent agenda.

Agenda Item 12. **Resolution 2009-211**, Consenting to Assignment of ownership interests within Point Loma Marina, LLC, was adopted as part of the consent agenda.

Agenda Item 13A. **Resolution 2009-212**, Granting Concept Approval for the proposed Ruocco Park, was adopted as part of the consent agenda.

Agenda Item 13B. **Resolution 2009-213**, Authorizing Amendment No. 1 to professional services agreement with ONA, Inc. in the amount of \$76,370 for a new not to exceed amount of \$616,825, was adopted as part of the consent agenda.

Agenda Item 14. **Resolution 2009-214**, Rejecting the low bid of K.D. Stahl Construction Group, Inc. as non-responsive and Adopting Plans and Specifications and Awarding Contract No. 2009-05 to Coastal Air, Inc. for Administration Building third floor wellness facility in the amount of \$291,979, was adopted as part of the consent agenda.

Agenda Item 16. **Resolution 2009-216**, Granting Indemnity to San Diego Gas and Electric for net energy metering interconnection for the Broadway Pier Cruise Ship Terminal photovoltaic system, was adopted as part of the consent agenda.

Agenda Item 17. **Resolution 2009-217**, Authorizing a Special Conditions Agreement with San Diego Gas and Electric for 12KV primary electric service at B Street and Broadway Piers Shore Power Project in an amount not to exceed \$1,964,261 and indemnifying San Diego Gas and Electric, was adopted as part of the consent agenda.

Agenda Item 19. **Resolution 2009-219**, Authorizing Staff to Accept the \$1,000,000 award allocated to the San Diego Unified Port District by the Department of Homeland Security, Federal Emergency Management Agency in its Fiscal Year 2009 American Recovery and Reinvestment Act Port Security Grant Program, was adopted as part of the consent agenda.

Agenda Item 20. **Resolution 2009-220**, Authorizing Acceptance of Transportation Security Administration (TSA) Grant Award Modification 3 for the Harbor Police Department (HPD) Explosives Detection Canine Team Program per BPC Policy No. 109 in the amount of \$52,500, was adopted as part of the consent agenda.

Agenda Item 21. **Resolution 2009-221**, Authorizing a Three Year Agreement and Acceptance of indemnity language with the County of San Diego to receive grant funds in the amount of \$277,034 for "Operation Stonegarden," was adopted as part of the consent agenda.

Agenda Item 22. **Resolution 2009-222**, Authorizing an Agreement with the City of San Diego for police, fire, and emergency medical services in an amount not to exceed \$2,282,278 for the period beginning July 1, 2009 and ending June 30, 2012, was adopted as part of the consent agenda.

Agenda Item 23. **Resolution 2009-223**, Authorizing Agreement and Granting Indemnity to San Diego Gas and Electric for San Diego Unified Port District participation in the Energy Efficiency Partnership Program, was adopted as part of the consent agenda.

Agenda Item 24. **Resolution 2009-224**, Waiving BPC Policy No. 110 and Authorizing an Agreement with Robert Patton to manage endangered species and other critical habitat at the D Street Fill for a total amount not to exceed \$162,000 for five years, was adopted as part of the consent agenda.

Agenda Item 25A. **Resolution 2009-225**, Selecting and Authorizing Agreement with Pacific Tugboat Services for the removal of marine debris in the A-8 Anchorage in an amount not to exceed \$248,464, was adopted as part of the consent agenda.

Agenda Item 25B. **Resolution 2009-226**, Authorizing Acceptance of \$200,000 from the State Water Resources Control Board for debris removal in the A-8 Anchorage, was adopted as part of the consent agenda.

Agenda Item 26A. **Resolution 2009-227**, Considering the Mitigated Negative Declaration and Environmental Assessment/Initial Study prepared by the California Coastal Conservancy and United States Fish and Wildlife Service and authorize staff to file the Notice of Determination, was adopted as part of the consent agenda.

Agenda Item 26B. **Resolution 2009-228**, Authorizing the Issuance of a Non-Appealable Coastal Development Permit, was adopted as part of the consent agenda.

Agenda Item 26C. **Resolution 2009-229**, Authorizing Acceptance of \$294,641 in grant funding from the California Coastal Conservancy and granting indemnity to the Coastal Conservancy, was adopted as part of the consent agenda.

Agenda Item 27. **Item Continued.**

Agenda Item 28. **Item Continued.**

Agenda Item 41. **Resolution 2009-235**, Authorizing Amendment to Agreement with CB Urban Development for the provision of consulting services relative to the development of the Chula Vista Bayfront by increasing the amount of funding by \$132,850 for a total of \$290,000, was adopted as part of the consent agenda.

Agenda Item 42. **Resolution 2009-236**, Amending the San Diego Unified Port District Directory of Classifications for FY 2009 - 2010 to modify A1700-UE05 - Director, Maritime Operations job description, was adopted as part of the consent agenda.

CONSENT AGENDA (continued)

RESOLUTION AUTHORIZING AMENDMENT NO. 5 TO AGREEMENT WITH BERMELLO AJAMIL AND PARTNERS, INC. FOR ADDITIONAL PROFESSIONAL SERVICES FOR THE BROADWAY PIER CRUISE SHIP TERMINAL IMPROVEMENTS AND INCREASING THE NOT TO EXCEED AMOUNT BY \$261,281 FOR A NEW NOT TO EXCEED AMOUNT OF \$3,423,788

Agenda Item 15. Chief Engineer Steve Kirkpatrick addressed the Board and explained that upon preparation of the current amendment a typographical error was discovered in the December 2008 resolution authorizing Amendment No. 4 to the agreement under consideration. Mr. Kirkpatrick requested that the Board consider the item be adopted with a corrected total of \$271,281.

On motion of Commissioner Valderrama, seconded by Commissioner Peters, the Board adopted **Resolution 2009-215**, Authorizing Amendment No. 5 to Agreement with Bermello Ajamil and Partners, Inc. for additional professional services for the Broadway Pier Cruise Ship Terminal improvements and increasing the not to exceed amount by \$271,281 for a new not to exceed amount of \$3,423,788, by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Following the vote, Commissioner Padilla made a statement for the record regarding the previous amendments that had been made to the consulting agreement for the Broadway Pier Cruise Ship Terminal improvements. He stated that it was always his preference, and in the event that the Board anticipated a capital need in the future, that the nature of such a facility be comprehensively and strategically planned in advance, and that such a project not be addressed in a piece-meal fashion. He further stated that he was certain that having the cruise ship terminal project evolve as it had probably cost the District more than it otherwise might have.

PRESENTATION/ACTION AGENDA

PRESENTATION OF PROCLAMATION TO BMW ORACLE RACING RECOGNIZING THEIR POSITIVE IMPACT ON TENANT AND LOCAL BUSINESSES AND WISHING THEM SUCCESS IN THE 2010 AMERICA'S CUP

Agenda Item 30. Chairman Cushman introduced Councilmember Kevin Faulconer from the City of San Diego. Councilmember Faulconer addressed the Board and acknowledged the positive economic impact the BMW ORACLE Racing Team had made to the local businesses. He presented a proclamation to Stephen Barclay, Peter Rusch and Troy Sears of the BMW ORACLE Racing Team from the City of San Diego Mayor Jerry Sanders and the City of San Diego proclaiming that December 1, 2009 was BMW ORACLE Racing Day in San Diego. He also expressed his gratitude to the Commissioners and the District for the efforts to move forward with the North Embarcadero Visionary Plan implementation and restated the City of San Diego's commitment to opening up the waterfront and installing the public improvements for waterfront access.

On behalf of the District, Director of Communications and Community Services Ron Powell and Chairman Cushman presented Mr. Barclay and Mr. Sears with a proclamation expressing appreciation of and respect to the BMW ORACLE Racing Team.

Port Tenant Association members Ray Carpenter and Tom Driscoll addressed the Board and acknowledged the positive impacts of the BMW ORACLE Racing Team. Mr. Carpenter and Mr. Driscoll, respectively, presented Mr. Barclay, Mr. Rusch and Mr. Sears with commemorative photographs of the vessel while in port in San Diego Bay.

PRESENTATION AGENDA (TIME CERTAIN: 1:30 P.M.)

PRESENTATION FROM THE SAN DIEGO CONVENTION CENTER CORPORATION ON THEIR PROPOSED HOTEL PROJECT AND PHASE III EXPANSION OF THE SAN DIEGO CONVENTION CENTER

Agenda Item 28.1. At 1:30 p.m., Chairman Cushman announced the Board would hear the presentation from the San Diego Convention Center team regarding the proposed hotel project and Phase III expansion.

San Diego Convention Center Corporation Chairman Chris Cramer addressed the Board with a formal presentation regarding a proposed hotel project and Phase III expansion of the San Diego Convention Center. Mr. Cramer introduced Dealy

Development, Inc. President/CEO Perry Dealy. Mr. Dealy presented the illustrated plans and diagrams for the proposed convention center expansion and the proposed new hotel at the site. (A copy of the San Diego Convention Center presentation is on file in the Office of the District Clerk.)

Commissioner Valderrama left the dais at 1:39 p.m. and returned at 1:40 p.m.

Kip Howard, Allegis Development Services, representing One Park Boulevard, LLC, the owners of the Hilton Bayfront Hotel, addressed the Board in support of an expansion to the convention center. He continued his remarks stating his concern regarding the construction of a proposed 500-room hotel that would be owned by the San Diego Convention Center facility. He concluded his remarks urging the Board to adhere to the Port Master Plan that allocated development of a 250-room property.

Commissioner discussion ensued. Commissioner Bixler requested clarification regarding the projected occupancy levels of a proposed expansion. Mr. Cramer explained that the load-in and load-out of events is considered when reporting potential occupancy, and following the opening of the proposed expansion, the goal for the projected occupancy level would be on par with the industry standard of approximately 60 percent.

Commissioner Peters thanked Mr. Cramer for his presentation and stated that he appreciated the data regarding the benefits of the proposed expansion to the District. He also acknowledged the value of the success of the Convention Center to the region and the District. He stated that he hoped the District could be partners going forward to continue such successes.

As there were no additional Commissioner comments, Chairman Cushman thanked Mr. Cramer and Mr. Dealy for their presentation.

CONSENT AGENDA (continued)

RESOLUTION SELECTING AND AUTHORIZING A THREE (3) YEAR AGREEMENT WITH AZTEC LANDSCAPING, INCORPORATED FOR JANITORIAL SERVICES AT VARIOUS DISTRICT LOCATIONS FOR AN AMOUNT NOT TO EXCEED \$1,185,897.21

Agenda Item 18. General Services Department Business Manager Sharyn Williams was present to answer Commissioners' questions.

Commissioner discussion ensued. Commissioner Valderrama requested and received clarification from Ms. Williams regarding the level of employer-paid healthcare coverage provided by the responsive bidders, and the decision analysis matrix used to select the staff recommended vendor. He confirmed with Ms. Williams that the top five candidates, including the one that had submitted the lowest responsive bid, were indeed qualified to perform the services outlined in the agreement. He expressed concern regarding the staff recommendation of not selecting the lowest responsive bidder.

Chairman Cushman received no response following his query as to whether any representatives from the top two responsive bidders were present.

Commissioner Peters requested and received confirmation from Ms. Williams that staff had followed the Board's previous direction regarding the awarding of janitorial contracts, and during the decision analysis process those service providers who provide healthcare benefits to their unskilled laborers received bonus points. Commissioner Peters expressed his concern regarding any direction, by the Board, to change a staff process during the Board discussion, and he preferred that those changes be implemented before action was to be taken on an item.

Magic Brite Janitorial Representative Robert Gomez addressed the Board with a number of concerns regarding the contract. His comments addressed the following topics: the scope of work as outlined in the request for proposal, cleaning service requirements at the Harbor Police and the General Services facilities, the cost of janitorial supplies, a reasonable fee required to achieve the performance level expectations, worker healthcare, minimum wage, and the Transportation Worker Identification Credential (TWIC).

Chairman Cushman requested and received confirmation from Ms. Williams that at that time staff had no specific comments related to Mr. Gomez' statement regarding the janitorial services at the Harbor Police offices.

Commissioner Valderrama made a motion to reject the staff recommendation and award the agreement to the lowest responsive bidder, Nova Commercial Company, Incorporated (Nova). Commissioner Padilla seconded the motion.

Regarding the remarks offered by Mr. Gomez, as the current contractor, Commissioner Bixler queried whether it would have been prudent to delay award of the agreement, allow additional time to review the bidding parameters, and ensure that the project and scope of work was properly framed.

Ms. Williams acknowledged Mr. Gomez's experience as the current contractor. Addressing Commissioner Bixler's remarks, she explained that staff had revised the scope of the new agreement with specific regard to an increase to the number of hours required to service the Harbor Police and the General Services facilities. She further clarified that staff had confirmed with the Transportation Security Administration office staff that the TWIC card requirement would take approximately 21 days to process and that any successfully-screened employee should be able to begin work in 30 days.

Commissioner Padilla stated that he was in support of Commissioner Valderrama's motion of selecting the low bidder for the following reasons: they met or exceeded the parameters required to execute the contract appropriately; they were superior in the decision analysis category of employer-funded healthcare coverage; and, they were a local entity.

Commissioner Spane acknowledged Ms. Williams' responses to Mr. Gomez's remarks and Commissioner Bixler's subsequent concerns. Commissioner Spane requested and received clarification from Ms. Williams regarding the staff recommendation to select Aztec Landscaping, Inc. (Aztec). Ms. Williams explained that a diverse panel of six District staff members found that Aztec, as a previous District contractor, demonstrated a stronger understanding of the District's needs, had a higher state of readiness to begin work, understood the TWIC program, and had a good approach and capacity. She further stated that Aztec demonstrated a strong level of understanding to address concerns regarding the current level of service to the public restrooms provided by the current contractor. Regarding the staff recommendation to select Aztec, Ms. Williams confirmed Commissioner Spane's statement that staff had worked within their realm of function, and utilized best-value criteria, not low-bid criteria. Commissioner Spane stated that, in light of the small cost difference between the two responders, he was in support of the staff recommendation to award the agreement to Aztec.

Chairman Cushman stated that based upon the employer portion of healthcare insurance coverage offered by Nova, there was no demonstration that Aztec was a significantly better service provider than Nova, and Nova was the lowest responding bidder, he was compelled to support Commissioner Valderrama's motion.

Commissioner Valderrama made a motion, seconded by Commissioner Padilla, to reject the staff recommendation and award the agreement to the lowest responsive bidder, Nova Commercial Company, Incorporated. The motion failed for lack of majority, by the following vote: Yeas-Cushman, Padilla, Valderrama; Nays-Bixler, Burdick, Peters, Spane; Excused-None; Absent-None; Abstained-None.

On motion of Commissioner Spane, seconded by Commissioner Bixler, the Board adopted **Resolution 2009-218**, Selecting and Authorizing a Three (3) Year Agreement with Aztec Landscaping, Incorporated for janitorial services at various District locations for an amount not to exceed \$1,185,897.21, by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Spane; Nays-Valderrama; Excused-None; Absent-None; Abstained-None.

Commissioner Peters left the dais at 2:09 p.m. and returned at 2:11 p.m.

ACTION AGENDA

POINT LOMA MARINA

Agenda Item 38AB and Agenda Item 6. Real Estate Asset Manager Kelly Falk addressed the Board with a staff report regarding a 10-year sublease from Point Loma Marina, LLC to JFAT, LLC dba Jimmy's Famous American Tavern, and requested consideration of approval of the proposed restaurant tenant improvement project. Mr. Falk introduced Restaurant Operator and General Partner, David Wilhelm who presented the restaurant's concept, construction plans and menu. (A copy of the presentation and staff report is on file in the Office of the District Clerk.)

John Grimstad, Managing Partner, JFAT, LLC and Point Loma Marina, LLC addressed the Board requesting an unconditional approval of the proposed sublease and restaurant project, which he characterized as an independent project. He requested that the action under consideration in agenda item 38AB not be contingent upon approval of a parking solution letter of intent discussed in agenda item 6. Mr. Grimstad stated that staff had determined that there was adequate parking for the restaurant project.

Mr. Grimstad read the following statement into the record, "Approval of Jimmy's Famous American Tavern is an independent issue, and should not be contingent upon approval of the parking solution or the letter of intent which we have been working on with quite a bit of diligence with the Port and my team. Port staff agrees that Point Loma Marina has adequate parking for Jimmy's now and, therefore, any linkage to the parking solution through a letter of intent is inappropriate, and it is an unfair bargaining position." He explained that the optimum time to open a restaurant was in April and May, and urged the Board's unconditional approval of items 38AB, to avoid any delay to opening Jimmy's on schedule.

Sharon Cloward addressed the Board regarding the North Harbor Drive realignment. She requested that the Board continue to include the realignment project as part of the District's current Capital Development Program. She explained that approval by the City of San Diego City Council for the street vacation was pulled from their hearing in October 2009, and Councilmember Kevin Faulconer suggested that more community outreach was needed in order to bring the issue back to the City Council. She expressed concern that due to delay in action the area had become blighted with oversize vehicles. She stated that the Port Tenants Association would take the lead to host a community workshop in January 2010 and had already approached the contractor who was awarded the bid. Ms. Cloward concluded her remarks stating that while there would always be some vocal minority who oppose change to the Point Loma area, it was the feeling of the Port Tenants Association that there was overwhelming community support for the project.

Chairman Cushman thanked Ms. Cloward; stated he was well aware of the oversize vehicle problem and had ascertained from the District's Harbor Police that the matter rested with the City of San Diego. He stated that he had talked to Councilmember Faulconer and his Chief of Staff regarding the issue and they are working with the San Diego Police Department. He assured Ms. Cloward that the Councilmember's office was working diligently, but it would take time to move the matter forward.

Commissioner discussion ensued. Commissioner Valderrama stated that the Board's original decision to lease this site to Point Loma Marina was based, in large part, on Point Loma Marina's proposal to add parking capacity. He acknowledged Mr. Grimstad's request regarding Board approval of the recommendation. He continued that it was his understanding that staff and Point Loma Marina had proposed terms for Point Loma Marina to assist with funding a parking solution by contributing \$2.2 million over thirty years. He stated that the terms were outlined in and presented to the Board as a letter of intent which in-and-of-itself was not binding. He requested that Mr. Grimstad, as the Point Loma Marina representative, state on the record that it was indeed the fact that Point Loma Marina intended to enter into a legally binding agreement obligating it to make annual payments totaling \$2.2 million to the District for funding a parking solution.

Mr. Grimstad affirmed the Commissioner's request and stated that, within the hour he had signed and agreed to pay \$2.2 million over the appropriate period in time. He continued his remarks stating that he believed that all of the details that were relevant to the Port had been met. He stated he was in the process of working out a lease amendment, and he believed that the District's requests had been satisfied.

Chairman Cushman acknowledged Mr. Grimstad's statement and reaffirmed the Board was trying to honor his request to move forward on all of the related items.

Mr. Grimstad acknowledged that the staff had worked extremely long and hard, as had representatives of Point Loma Marina, and he thanked everyone.

Commissioner Burdick requested clarification regarding the types of green building or sustainable energy practices that the design team had planned to incorporate into the proposed project. Todd Hatch, Hatch Design Group, explained that they intended to incorporate green building materials in the fixtures, furnishings, and lighting. He further explained that had used a Leadership in Energy and Environmental Design (LEED) certified approach to the selection of the elements under consideration. Mr. Grimstad further explained that the building design had incorporated a number of LEED certification principles. He explained that the restaurant design was a tenant improvement and the designer intended to incorporate green design principles in the fixtures and furnishings.

Commissioner Peters stated that based upon Mr. Grimstad's earlier statement, for the record, regarding the parking solution letter of intent, he was in support of moving forward with the staff recommendation regarding the restaurant. He also addressed Ms. Cloward's comment regarding the North Harbor Drive realignment by stating that the District was committed to the project, and he urged her to address the matter directly with the City of San Diego City Council.

Commissioner Spane expressed his concern regarding the unresolved parking solution challenges. He requested confirmation from Mr. Grimstad that his intent was indeed to contribute \$2.2 million toward the parking solution and that his earlier statement was a binding statement. Mr. Grimstad stated that the project was approved based upon Point Loma Marina's option to build or not build a parking structure, and during the four years of negotiation he had invested \$500,000.00, and in his opinion his organization had not reneged on anything.

Chairman Cushman commended Mr. Grimstad for his development and acknowledged the LEED certification elements incorporated into the project, as well as the water-conserving plantings. He stated that he was in support of the staff recommendation to move forward with the restaurant and encouraged an opening by the summer of 2010. Chairman Cushman stated that he was confident that Mr. Grimstad would follow through to build the restaurant, sign an agreement committing to the \$2.2 million and that the District would do its share and move forward to build the parking structure.

Agenda Item 6. On motion of Commissioner Peters, seconded by Commissioner Valderrama, the Board adopted, **Resolution 2009-206**, Authorizing a Letter of Intent with Point Loma Marina, LLC, for an annual contribution towards a parking solution, by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 38AB. On motion of Commissioner Peters, seconded by Commissioner Valderrama, the Board adopted, with a single vote, **Resolution 2009-232**, Consenting to 10 Year Sublease from Point Loma Marina, LLC to JFAT, LLC dba Jimmy's Famous American Tavern, with two 5 year options to extend; and **Resolution 2009-233**, Granting Approval to Point Loma Marina, LLC for Proposed Restaurant Tenant Improvement Project, by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PRESENTATION/ACTION AGENDA

PRESENTATION OF DISTRICT EMPLOYEE OF THE THIRD (3RD) QUARTER 2009

Agenda Item 29. Charlie Wurster, Executive Director, and Chairman Cushman announced that Anthony Gordon, Senior Asset Manager, Real Estate Department, was chosen as the District's Employee of the Quarter for the third quarter of 2009. Mr. Gordon was recognized by his peers for his commitment demonstrating the District's core values of courage, diversity, fairness, fun and teamwork.

The following nominees were also recognized by Mr. Wurster: Seema Anantha, Business Systems Center; Barbara Moreno, Communications & Governmental Affairs; Chester Walmsley, General Services; Jessica Drewnowski, Maritime Operations; and Liza Anderson, Office of the District Clerk.

PRESENTATION BY STAFF REGARDING OPTIONS FOR INCREMENTAL IMPROVEMENTS TO THE "B" STREET CRUISE SHIP TERMINAL AND AUTHORIZATION TO ADVERTISE A REQUEST FOR QUALIFICATIONS (RFQ) TO SEEK AN ARCHITECTURAL/ENGINEERING CONSULTANT TO DEVELOP PLANS AND SPECIFICATIONS FOR THE INCREMENTAL IMPROVEMENTS

Agenda Item 31. Item continued.

PRESENTATION OF THE DISTRICT'S EQUAL OPPORTUNITY PROGRAM ANNUAL REPORT FOR FISCAL YEAR 2009

Agenda Item 32. Item continued.

NON-COPPER BASED ANTIFOULING PAINTS

Senior Environmental Specialist Karen Holman addressed the Board with a report regarding the progress to date of the efforts to further the development of new non-copper based antifouling paints. She also reviewed, for the record, the specific recommendation of staff regarding the adoption of a resolution declaring the District's commitment to take actions to reduce copper concentrations in San Diego Bay. (Copies of the staff report and presentations are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Chairman Cushman requested and received confirmation from Ms. Holman that she was not aware of any apron-type device to slip under the vessel during cleaning to catch the debris.

San Diego Coastkeeper Legal Director Gabriel Solmer addressed the Board and acknowledged the efforts of the District to address the issue proactively, and stated that her organization looked forward to collaborating to address the matter. She referenced a letter from the San Diego Coastkeeper that had included specific recommendations to address the issue and implement solutions. (A copy of the letter is on file in the Office of the District Clerk.) She urged the Board to support the staff recommendation and adopt a resolution to reduce copper concentrations in San Diego Bay.

Commissioner discussion continued. Commissioner Peters thanked the Chairman for his efforts in support of the development of new non-copper based antifouling paints. He also acknowledged the leadership of Commissioner Spane and his commitment to the development of the Environmental Committee. He stated that the District's Environmental Services staff was a role model in their field and urged the employment of communication efforts to share their work practices with other public agencies. Commissioner Peters briefly reviewed the projects addressed by the Environmental Committee throughout the year. He made a motion to approve the resolution, and acknowledged Ms. Solmer's comments, which would provide guidance as a specific implementation plan is developed. Commissioner Valderrama seconded the motion.

Commissioner Valderrama stated that he had selected Commissioner Peters to continue as the chair of the Environmental Committee.

Commissioner Burdick concurred with Commissioner Peter's assessment regarding the good works of the Environmental Committee, District staff, and Commissioner Spane's leadership. She also acknowledged the efforts of the port tenants to address the matter of copper bottom-hull paint, their work with staff to implement solutions, and voluntarily reduce the levels of copper at the marinas. Commissioner Burdick stated that while the voluntary efforts may reduce the marina copper levels by 10-percent, she acknowledged that some sort of regulatory framework or Board action would likely be needed to meet the 76-percent marina copper level reduction requirement. She expressed concern regarding the law of unintended consequences as it related to the draft resolution language stated in item number two, "The District is committed to taking all necessary steps to achieve copper reductions in San Diego Bay," and recommended the language be removed. (A copy of the draft resolution is on file in the Office of the District Clerk.) She urged the Board to consider developing the framework for regulations in a committee setting, and acknowledged the letter from the San Diego Coastkeeper as a foundation from which to begin the regulatory considerations.

Chairman Cushman stated that Commissioner Peters amended his motion, by accepting the modification recommended by Commissioner Burdick, to remove item number two from the draft resolution. Chairman Cushman concurred with Commissioner Burdick's recommendation that the District exercise caution and not rush to address the copper concerns with an alternative solution that may, unintentionally, cause unforeseen environmental issues in the future. Commissioner Valderrama seconded the amended motion.

Commissioner Bixler expressed concern regarding the need to move forward in a more expedient way with actionable steps. He requested clarification from Ms. Holman regarding the projected timeline for concluding the paint test trials and providing recommendations to boaters. Ms. Holman stated that, in light of the ever-changing and evolving nature of alternative paints, she recommended that testing continue. Copper paint generally lasts two years, and she stated that staff intends to take each top-performing paint through a two-year evaluation process. She explained that staff would release a list of recommended paints that "make the grade," and as the study data is evaluated, the list would be revised over time. Commissioner Bixler stated that he would like the motion to include sharing the data with the public while clarifying that the information was not a sponsorship but the result of findings. His second point was a recommendation to enlarge the pool of boaters that would be willing to test alternative

paints, while addressing any concerns that may arise regarding what may be construed as a gift of public funds. His third point was that the development of an incentive or prize program be continued.

Regarding Commissioner Bixler's comments, Commissioner Cushman explained that the intent of the incentive program was to allocate funds to encourage the development and testing of new products; it was not to award a prize. While acknowledging Commissioner Bixler's concern to move a solution forward quickly, Chairman Cushman stated that he felt it was premature to report out findings or recommendations, and that he would not support the proposed amendment to the motion. Chairman Cushman requested and received confirmation from Ms. Holman that it would be premature to release data or recommendations.

Before releasing any recommendations, Ms. Holman stated that staff had planned to complete the hull testing in December 2010, in conjunction with the conclusion of the Environmental Protection Agency (EPA) grant. Ms. Holman addressed the matter of the prize and reviewed the solicitation process that would be utilized by staff in the coming year to identify three submittals that would encourage the development of emerging technologies.

Commissioner Bixler requested that the communications staff be directed to prepare press releases for publication as a means to educate the public regarding the efforts of the District to address alternatives to copper bottom paint.

Commissioner Peters stated that the comments submitted by Commissioner Bixler would be some of the exact points that the committee would discuss regarding implementation. He also acknowledged the Hornblower for testing non-copper bottom paints and their participation in the studies.

Agenda Item 33-34. On motion of Commissioner Peters, seconded by Commissioner Valderrama, adopted **Resolution 2009-230**, Declaring District's Commitment to take actions to reduce Copper Concentrations in San Diego Bay, by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Bixler left the dais at 3:12 p.m. and returned to the dais at 3:16 p.m. Commissioner Burdick left the dais at 3:13 p.m. and returned to the dais at 3:16 p.m.

ACTION AGENDA

PROPOSED RELOCATION AND REDEVELOPMENT PROJECT FOR STAR & CRESCENT BOAT COMPANY DBA SAN DIEGO HARBOR EXCURSION

PROPOSED RELOCATION AND DEVELOPMENT PROJECT FOR HORNBLOWER YACHTS, INC. DBA HORNBLOWER CRUISES AND EVENTS

Agenda Item 35AB and Agenda Item 36AB. Real Estate Department Asset Manager Penny Maus addressed the Board with a combined presentation for items 35AB and 36AB. She discussed the proposed redevelopment project for the Star & Crescent Boat company dba San Diego Harbor Excursion, and Hornblower Yachts, Inc. dba Hornblower Cruises and Events.

Commissioner discussion ensued. Commissioner Bixler requested that staff take note of any opportunities that may arise during the North Embarcadero Visionary Plan development to offer cable communication infrastructure and/or connections to vessels and visitor serving attractions. He requested that staff make the necessary advance plans to facilitate such improvements. Ms. Maus indicated that staff had made note of the Commissioner's request.

On motion of Commissioner Peters, seconded by Commissioner Valderrama, the Board adopted, **Ordinance 2592**, granting Star & Crescent Boat company dba San Diego Harbor Excursion an Option Agreement for a 20 year lease, with two options to extend of five years each, by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

On motion of Commissioner Peters, seconded by Commissioner Padilla, the Board adopted **Ordinance 2593**, Granting Hornblower Yachts, Inc. dba Hornblower Cruises and Events an Option Agreement for a 20 years lease, by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION AUTHORIZING AMENDMENT NO. 1 TO MEMORANDUM OF UNDERSTANDING BETWEEN SAN DIEGO UNIFIED PORT DISTRICT, SAN DIEGO CONVENTION CENTER CORPORATION AND FIFTH AVENUE LANDING, LLC TO EXTEND THE TERM

Agenda Item 37. On motion of Commissioner Peters, seconded by Commissioner Burdick, the Board adopted **Resolution 2009-231**, Authorizing Amendment No. 1 to the Memorandum of Understanding between San Diego Unified Port District, San Diego Convention Center Corporation and Fifth Avenue Landing, LLC to extend the term, by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION APPOINTING ROBERT J. "ROCKY" SPANE AS COMMISSIONER EMERITUS EFFECTIVE JANUARY 3, 2010.

Agenda Item 39. Commissioner discussion ensued. Each member of the Board thanked Commissioner Spane for all of his efforts on behalf of the District, his work in support of the District's mandate for environmental stewardship, and congratulated him on his Commissioner Emeritus status.

On motion of Commissioner Valderrama, seconded by Commissioner Bixler, the Board adopted, with a single vote **Resolution 2009-234** appointing Robert J. "Rocky" Spane as Commissioner Emeritus effective January 3, 2010, by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Spane acknowledged the work of, and, graciously thanked the District staff, the Port tenants, and his fellow Commissioner colleagues.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR MEETING OF JANUARY 5, 2010.

Agenda Item 40. On motion of Commissioner Valderrama, seconded by Commissioner Burdick, the Board approved the proposed Board Agenda for the Meeting of January 5, 2010, by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

OFFICER'S REPORT

Agenda Item 43. In accordance with BPC Policy No. 110, the following change orders, executed by the Executive Director, were reported:

- A) Change Order No. 5 for \$2,320.00 and 8 Calendar Days to Contract No. 2008-03 with Davis & Adams Construction, Inc. for Administration Building Annex Restrooms Improvements, San Diego, California.
- B) Change Order No. 6 for \$5,380.00 and 14 Calendar Days to Contract No. 2008-03 with Davis & Adams Construction, Inc. for Administration Building Annex Restrooms Improvements, San Diego, California.

PRESIDENT'S REPORT

Agenda Item 44. None.

BOARD COMMITTEE REPORTS

Agenda Item 45. None.

COMMISSIONER COMMENTS

Agenda Item 46. Chairman Cushman stated that it had been his pleasure to serve as Board chair; he thanked his fellow Commissioners and the staff for their assistance during his term.

CLOSED SESSION

Port Attorney Duane Bennett announced the closed session agenda as follows:

Agenda Item 3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 221,000 square feet of tideland area leased to Fifth Avenue Landing, LLC, and the adjacent District-owned roadway, all bayward of the San Diego Convention Center.

Negotiating Parties: Carol Wallace, CEO, San Diego Convention Center Corporation; Raymond Carpenter and Arthur Engel, Managing Members, Fifth Avenue Landing LLC; Ellen Corey Born, Karen Weymann, Shahriar Afshar, SDUPD; Charles E. Black, CB Urban Development.

Under Negotiation: Price and Terms

Agenda Item 4.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: District Property: Approximately 35 acres of property located within the Harbor District of the Chula Vista Bayfront. Located West of I-5, South of H Street, and North of J Street in Chula Vista, California

Pacifica Companies Property: Approximately 97 acres located within the Sweetwater District of the Chula Vista Bayfront. Located West of I-5, South of E Street, and North of F Street in Chula Vista, California

Negotiating Parties: Ashok Israni, President, Pacifica Companies; Ellen Corey Born, Dirk Mathiasen, Paul Fanfera, Chris Hargett, SDUPD; Charles E. Black, CB Urban Development

Under Negotiation: Price and Terms

Port Attorney Bennett announced that Commissioner Burdick had a continuing recusal motion and would not be participating in the closed session regarding item 4.

Agenda Item 5.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: City of Chula Vista /Redevelopment Agency of the City of Chula Vista: Approximately 5.67 acres located at 965 Lagoon Drive, Chula Vista.

District: Approximately 1.79 acres, described as Parcel H-17, in the Harbor District of the Chula Vista Bayfront Master Plan

Negotiating Parties: Denny Stone, Economic Development Manager, Redevelopment Agency of the City of Chula Vista, and Eric Crockett, Redevelopment Manager, Community Development, City of Chula Vista; Ellen Corey Born, Dirk Mathiasen, Paul Fanfera, Karen Weymann, Chris Hargett, SDUPD; Charles E. Black, CB Urban Development

Under Negotiation: Price and Terms

Port Attorney Bennett announced that Commissioner Burdick had a continuing recusal motion and would not be participating in the closed session regarding item 5.

Agenda Item 6.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: SDUPD - Approximately 12.42 Acres of Property located on the Southern Portion of the Former LNG Site, West of Interstate 5 and Bay Boulevard, Chula Vista

SDG&E - Approximately 17.69 Acres of Property occupied by SDG&E under an Easement in perpetuity for an Electric Substation and Adjacent Non-Exclusive Easement for Transmission and Distribution Facilities, both of which are located West of Interstate 5 and Bay Boulevard in Chula Vista

Negotiating Parties: Eugene Mitchell, Regional Vice President, External Affairs, SDG&E; Ellen Corey Born, Dirk Mathiasen, Randa Coniglio, Karen Weymann, Chris Hargett, SDUPD

Under Negotiation: Price and Terms

Agenda Item 7.

CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION
Pursuant to Subdivision (c) of Government Code Section 54956.9
One Case

Agenda Item 8.

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Government Code Section 54956.8

Agenda Item 9.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Significant exposure to litigation pursuant to Subdivision (b)(1) of Government Code Section 54956.9:
Three Cases

Agenda Item 10.

PUBLIC EMPLOYEE APPOINTMENT, PERSONNEL EVALUATION OR DISCIPLINE:
EXECUTIVE DIRECTOR AND PORT ATTORNEY

Government Code Section 54957.6

There was no formal or reportable action, pursuant to Government Code Section 54950 et seq to report from the closed session; whereupon, Chairman Cushman adjourned the meeting.



Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:


Clerk of the San Diego Unified Port District