



VENTURA PORT DISTRICT BOARD OF PORT COMMISSIONERS

Everard Ashworth, Chairman
Brian Brennan, Vice Chairman
Jim Friedman, Secretary
Chris Stephens, Commissioner
Jean Getchell, Commissioner

Oscar Peña, General Manager
Brian Pendleton, Deputy General Manager
Timothy Gosney, Legal Counsel
Jessica Rauch, Clerk of the Board

PORT COMMISSION AGENDA

SPECIAL MEETING

AUGUST 22, 2018 AT 6:30PM

**VENTURA PORT DISTRICT OFFICE
1603 ANCHORS WAY DRIVE
VENTURA, CA 93001**

A **Closed Session** of the Board will be held at **5:30PM** at the Port District Office located at 1603 Anchors Way Drive, Ventura, CA, to discuss the items on the Attachment to Agenda-Closed Session Conference with Legal Counsel.

The Board will convene in **Open Session** at the Port District Office located at 1603 Anchors Way Drive for its Special Meeting at **6:30PM**.

ADMINISTRATIVE AGENDA:

CALL TO ORDER: *By Chair Everard Ashworth.*

PLEDGE OF ALLEGIANCE: *By Chair Everard Ashworth.*

ROLL CALL: *By the Clerk of the Board.*

ADOPTION OF AGENDA (3 minutes)

Consider and approve, by majority vote, minor revisions to agenda items and/or attachments and any item added to, or removed/continued from the Port Commission's agenda. Administrative Reports relating to this agenda and materials related to an item on this agenda submitted after distribution of the agenda packet are available for public review at the Port District's office located at 1603 Anchors Way Drive, Ventura, CA during business hours as well as on the District's website - www.venturaharbor.com (Port District Business-Meetings & Agendas). Each item on the agenda shall be deemed to include action by an appropriate motion, resolution or ordinance to take action on any item.

PUBLIC COMMUNICATIONS (3 minutes)

The Public Communications period is set aside to allow public testimony on items not on today's agenda. Each person may address the Commission for up to three minutes or at the discretion of the Chair.

CLOSED SESSION REPORT (3 minutes)

Closed Sessions are not open to the public pursuant to the Brown Act. Any reportable actions taken by the Commission during Closed Session will be announced at this time.

BOARD COMMUNICATIONS (5 minutes)

Port Commissioner's may present brief reports on port issues, seminars, meetings and literature that would be of interest to the public and/or Commission, as a whole. In addition, Port Commissioners should provide a brief summary and disclose any discussions he or she may have had with any Port District Tenants related to Port District business.

STAFF COMMUNICATIONS (5 minutes)

Ventura Port District Staff will update the Commission on important topics if needed.

STANDARD AGENDA:

1) Approval of SEIU-Local 721 MOU Representing Full-Time Harbor Patrol

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners:

- a) Adopt Resolution No. 3358, approving the Memorandum of Understanding Collective Bargaining Agreement between the Ventura Port District and the Service Employees International Union, SEIU-Local 721, representing all regular full-time employees classified as the Harbor Patrol; and
- b) Adopt Resolution No. 3359 between Ventura Port District and the California Public Employment Retirement System (PERS) ratifying the change to the Employer Paid Member Contribution (EPMC) to reflect the Service Employees International Union, SEIU-Local 721 Memorandum of Understanding (MOU) for the Harbor Patrol employees.

2) Approval of Pipeline License Agreement between Ventura Port District and ARTPS, LLC

Recommended Action: Voice Vote.

That the Board of Port Commissioners approve the License Agreement by and between the Ventura Port District, a California Port District, (Licensor) and ARTPS, LLC, a Texas Limited Liability Company (Licensee) to operate and utilize a 22 inch diameter pipeline and the appurtenances thereto that run 6,643 linear feet through, along, across and underneath the surface of a portion of the District's property for the transport of oil.

3) Award of Contract to the Garland Company, Inc. for the Fish Pier Deck Resurfacing Project

Recommended Action: Voice Vote.

That the Board of Port Commissioners:

- a) Award the Fish Pier Deck Resurfacing Contract to the Garland Company, Inc., in the amount of \$499,950, subject to Legal Counsel's final approval of the contract documents; and
- b) Approve an increased appropriation for the Fish Pier Resurfacing Project of \$175,000 bringing the total project cost to \$575,000.

ADJOURNMENT

This agenda was posted on Friday, August 17, 2018 by 5:00 p.m. at the Port District Office and on the Internet – www.venturaharbor.com (Port District Business-Meetings & Agendas).

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Ventura Port District at (805) 642-8538. Notification 48 hours before the meeting will enable the District to make reasonable arrangements to ensure accessibility. (28 CFR 35.102.35.104 ADA Title II)

**ATTACHMENT TO PORT COMMISSION AGENDA
CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL**

WEDNESDAY, AUGUST 22, 2018

1. Conference with Real Property Negotiators - Per Government Code Section 54956.8:

a) Property: **Pipeline Running Along Harbor Blvd.**
Negotiating Parties: Oscar Peña, Brian Pendleton, Timothy Gosney
Under Negotiation: **Ellwood Pipeline License Agreement with ARTPS, LLC.**

2. Conference with Labor Negotiators - Per Government Code Section 54957.6:

a) Employee Units: **Harbor Patrol Officers**
Groups: Service Employees International Union (SEIU), Local 721
Negotiating Parties: Oscar Peña, Brian Pendleton, Timothy Gosney
Under Negotiation: **Labor Negotiations**

3. Conference with Legal Counsel – Anticipated Litigation: Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: Three Cases.



BOARD OF PORT COMMISSIONERS
AUGUST 22, 2018
SPECIAL MEETING

STANDARD AGENDA ITEM 1
APPROVAL OF SEIU-LOCAL 721
MOU REPRESENTING FULL-TIME
HARBOR PATROL

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

STANDARD AGENDA ITEM 1
Meeting Date: August 22, 2018

TO: Board of Port Commissioners
FROM: Oscar Peña, General Manager
SUBJECT: Approval of SEIU-Local 721 MOU Representing Full-Time Harbor Patrol

RECOMMENDATION:

That the Board of Port Commissioners:

- a) Adopt Resolution No. 3358, approving the Memorandum of Understanding Collective Bargaining Agreement between the Ventura Port District and the Service Employees International Union, SEIU-Local 721, representing all regular full-time employees classified as the Harbor Patrol; and
- b) Adopt Resolution No. 3359 between Ventura Port District and the California Public Employment Retirement System (PERS) ratifying the change to the Employer Paid Member Contribution (EPMC) to reflect the Service Employees International Union, SEIU-Local 721 Memorandum of Understanding (MOU) for the Harbor Patrol employees.

SUMMARY:

The Memorandum of Understanding (MOU) between the Ventura Port District and the SEIU expired on June 30, 2016. The Union members ratified a new MOU on July 24, 2018.

BACKGROUND:

Over the last several months, District staff met with Union Representatives and stewards to meet and confer in good faith concerning wages, hours and other terms and conditions of employment. Subject to the approval by the members of SEIU and approval by the Board, the MOU shall become effective August 29, 2018, wherein wages and retirement benefits shall be adjusted pursuant to the negotiated MOU.

Article 23 – Agency Shop in the MOU is deemed obsolete as a result of the recent US Supreme Court decision in the case of Janus vs. AFSCME. Consequently, the SEIU and the District have agreed to review the language developed by the City of Ventura for their Public Safety represented groups and utilize the same for the Harbor Patrol. This will be stipulated in a separate letter agreement with the SEIU and inserted into the MOU at a later date.

FISCAL IMPACT:

The MOU shall be in full force for a three-year period; therefore, will expire on August 29, 2021.

Salary Range

Upon approval by the District, the top and bottom of the salary range of the Harbor Patrol I and II positions shall be raised annually by 3% through the term of the MOU.

Wages

The Harbor Patrol I and II positions shall be subject to a 7% increase for year one of the contract. This shall be effective on a new pay period (August 29, 2018). Concurrently, 3% of this wage increase shall be applied to the employee's share of CALPERS retirement. There shall be no retroactivity to wages or CALPERS retirement benefits. Effective August 29, 2018, the employee will be responsible for the full amount of employee share to CALPERS Safety Retirement. The wages in years two and three shall be increased by 3% each year.

Also, in the MOU is a shift differential for the 8:00PM to 2:00AM for the Harbor Patrol I and II. The shift differential is subject to the “meet and confer” process with members when the District implements a 24 hour seven day a week operation. In order to extend this type of schedule, three additional full-time employees will be added to this department.

Benefits

The proposed MOU includes language that entitles the Harbor Patrol I and II to the same medical, dental and optional benefit plan as other non-represented employees, known as a “Me Too Clause.”

District staff is implementing two types of incentive programs:

1) Educational Incentive Pay

\$25 per pay period for employees who currently have an Associate’s Degree or who obtain one while employed by the District. Annual on-going benefit is \$650.

\$50 per pay period for employees who currently have a Bachelor’s Degree or who obtain one while employed with the District. Annual on-going benefit is \$1,300.

Proof of these degrees is required.

2) Bilingual Incentive Pay

\$50 per pay period for employees who test as fluent in English to Spanish and Spanish to English in reading, writing and speech. Annual on-going benefit is \$1,300.

Staff is developing the standardized testing process and incentive requirements.

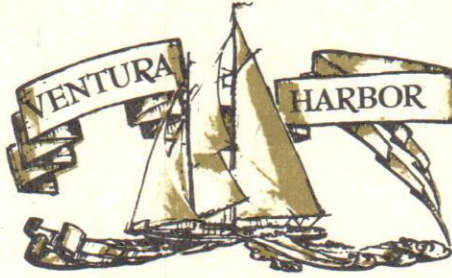
These are the primary fiscal impacts in the MOU. Overall, the payroll cost for the Harbor Patrol in fiscal year 2018-2019 is \$1,226,000. This includes total wages, insurance, optional benefits, incentive pay and required retirement contributions. This is approximately 18% more than the prior fiscal year.

ATTACHMENTS:

Attachment 1 – Resolution No. 3358

Exhibit A to Attachment 1 – Memorandum of Understanding

Attachment 2 – Resolution No. 3359



RESOLUTION NO. 3358

**RESOLUTION OF THE BOARD OF PORT COMMISSIONERS
OF VENTURA PORT DISTRICT APPROVING MEMORANDUM OF
UNDERSTANDING WITH SERVICE EMPLOYEES INTERNATIONAL
UNION (SEIU), LOCAL 721, FOR THE FULL-TIME
HARBOR PATROL OFFICERS**

WHEREAS, the Memorandum of Understanding between the SEIU, Local 721, and Ventura Port District expired on June 30, 2016; and

WHEREAS, in compliance with the requirements of the Meyers-Milias Brown Act, the Ventura Port District and the SEIU continued to meet and confer in good faith concerning wages, hours and other terms and conditions of employment in the form of Exhibit A; and

WHEREAS, the Ventura Port District and the SEIU have reached agreement on a 3% increase to the top and bottom of the pay ranges for the three-year term, effective August 29, 2018, as follows:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Harbor Patrol Officer I	\$3,686 - \$5,321	\$3,797 - \$5,481	\$3,911 - \$5,645
Harbor Patrol Officer II	\$4,226 - \$6,382	\$4,353 - \$6,573	\$4,484 - \$6,770

WHEREAS, effective August 29, 2018, Primary and Secondary Harbor Patrol employees will receive .25 hours of pay for each hour served as an On-Call Officer; and

WHEREAS, effective August 29, 2018, the Harbor Patrol I and II positions, shall be subject to a 7% increase for year 1 of a new three-year contract. Effective on a new pay period, 3% will be applied to the employee's share of CALPERS retirement obligation. There shall be no retroactivity to wages or the CALPERS retirement benefit. Additionally, the full amount of the employee's contribution towards PERS Safety Retirement shall be the employee's obligation. In year 2 of the MOU, the wages for Harbor Patrol I and II shall be increased by 3%. In year 3 of the MOU, the wages for Harbor Patrol I and II shall be increased by 3%.

WHEREAS, the District shall continue to contribute a maximum of \$600.00 per month toward the employee's cost of health and dental insurance. The District's Optional Benefit Plan shall continue to be \$475.00 per month. Those employees who choose not to participate in the District's health and dental insurance plans will receive \$216.00 as additional salary; and



ATTACHMENT 1

WHEREAS, A Harbor Patrol Officer I who obtains and maintains a United States Coast Guard License will receive a 2% increase in base pay. Upon promotion to Harbor Patrol Officer II, the employee shall receive a minimum of a 5% increase in pay; and

WHEREAS, there shall be a 2.5% shift differential for the evening shift (8:00PM to 2:00AM) for both Harbor Patrol Officer I and II. This is subject to a meet and confer with the members of the SEIU to determine scheduling related to a 24/7 operation; and

NOW, THEREFORE, BE IT RESOLVED, the Board of Port Commissioners of the Ventura Port District hereby approves the Memorandum of Understanding between the Ventura Port District and the Service Employees International Union (SEIU), Local 721, for and on behalf of the full-time Harbor Patrol Officers Unit, effective August 29, 2018, attached as Exhibit A to this Resolution; and

BE IT FURTHER RESOLVED, that the General Manager and staff are hereby authorized and directed to take such actions as may be reasonably necessary to implement and abide by the Memorandum of Understanding as described in Exhibit A.

PASSED, APPROVED and ADOPTED this 22nd day of August, 2018.

Everard Ashworth, Chairman

ATTEST:

Jim Friedman, Secretary

(Seal)

ATTACHMENT 1

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss.
CITY OF SAN BUENAVENTURA)

I, Jim Friedman, Secretary of the Ventura Port District, a public corporation, do hereby certify that the above and foregoing Resolution No. 3358 was duly passed and adopted by the Board of Port Commissioners of said District at a regular meeting thereof held on the 22nd day of August 2018, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said District this 22nd day of August 2018.

Jim Friedman, Secretary

(Seal)

EXHIBIT A

MEMORANDUM

OF

UNDERSTANDING

**Ventura Port District
And the
Service Employees International Union (SEIU), Local 721,**

FULL-TIME HARBOR PATROL OFFICERS

EFFECTIVE AUGUST 29, 2018

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**MEMORANDUM OF UNDERSTANDING BETWEEN
THE VENTURA PORT DISTRICT AND THE SERVICE
EMPLOYEES INTERNATIONAL UNION, SEIU-LOCAL 721
FULL-TIME HARBOR PATROL OFFICERS**

PREAMBLE

This Memorandum of Understanding is between the Ventura Port District (hereinafter "District") and the duly authorized representatives of the Service Employees International Union, Local 721 (hereinafter "the Union"). Its purpose is to promote harmonious relations between the District, the Union, and the unit employees by setting forth the understanding of the parties reached as a result of meeting and conferring in good faith regarding the wages, hours and certain other terms and conditions of employment of Harbor Patrol Officers.

ARTICLE 1 – RATIFICATION

It is agreed that this Memorandum of Understanding is of no force and effect until ratified by the Union members and approved and implemented by the Ventura Port District Board of Port Commissioners.

ARTICLE 2 - FORMAL RECOGNITION

SEIU Local 721 is hereby designated as the recognized employee organization for those regular full-time employees occupying the job classification of Harbor Patrol Officer I and Harbor Patrol Officer II in the District Classification Plan.

ARTICLE 3 – RIGHTS

- A. The Union recognizes that the District has and will continue to retain, whether exercised or not, the unilateral and exclusive right to operate, administer and manage District services and work force performing those services in all respects.
- B. The District General Manager and appropriate Supervisor have and will continue to retain exclusive decision-making authority over matters within their jurisdiction that are not lawfully and expressly modified by specific provisions of this Memorandum.

The exclusive rights of the District shall include, but not be limited to:

- the right to determine the organization of the District government and the purpose and mission its constituent departments
- to set standards of services to be offered to the public, and, through its management officials, to exercise control and discretion over its organization and operations
- to establish, modify, and implement administrative regulations and employment rules and regulations consistent with law and the specific provisions of this Memorandum

EXHIBIT A

- to direct its employees
- to take disciplinary action consistent with legal requirements
- to relieve its employees from duty because of lack of work or for other legitimate reasons in accordance with applicable District procedures
- to determine whether goods or services shall be made, purchased or contracted for
- to determine the methods, means, and personnel by which the District's services are to be provided, including the right to schedule and assign work and overtime and to otherwise act in the interest of efficient service to the community.
- Nothing in this provision shall be deemed to supersede Federal and State Laws.

ARTICLE 4 — HUMAN RESOURCES MANUAL

It is understood and agreed that the Ventura Port District maintains a Human Resources Manual and Optional Benefit Plan that applies to all employees of the District. The Operations Department Manual shall be in full force and effect for members of the unit unless specific topics in this Memorandum of Understanding override comparable portions of those documents.

If a provision in the Human Resources Manual, the Optional Benefit Plan and the Operations Department Manual conflicts with any provision of an applicable collective bargaining agreement entered into by the District and a recognized employee organization, to the extent of such conflict, the provisions of the SEIU Local 721 collective bargaining agreement (MOU) shall be deemed controlling.

The District shall provide SEIU Local 721 with advanced reasonable notice, but in no case less than (30) thirty days, of any proposed changes in policy that could affect wages, hours and other terms and conditions of employment with the intent that the District would meet and confer in good faith.

ARTICLE 5 - WAGES

Effective August 29, 2018 and upon ratification by Union members and approval by the Ventura Port District Board of Port Commissioners, the top and the bottom of the salary range of the Harbor Patrol Officer I and Harbor Patrol Officer II positions shall be raised annually through the term of this MOU by 3%.

Salary Range – Year 1

Harbor Patrol Officer I	\$3,761 - \$5,427
Harbor Patrol Officer II	\$4,311 - \$6,511

Salary Range – Year 2

Harbor Patrol Officer I	\$3,874 – 5,590
Harbor Patrol Officer II	\$4,440 - \$6,706

EXHIBIT A

Salary Range – Year 3

Harbor Patrol Officer I	\$3,990 – \$5,758
Harbor Patrol Officer II	\$4,573 - \$6,907

Upon approval of the MOU by its members and the District, the Harbor Patrol I and II positions, shall be subject to a 7% increase for year 1 of a new three-year contract. Effective on a new pay period, 3% will be applied to the employee's share of CALPERS retirement obligation. There shall be no retroactivity to wages or the CALPERS retirement benefit. Additionally, the full amount of the employee's contribution towards PERS Safety Retirement shall be the employee's obligation.

In year 2 of this MOU, the wages for Harbor Patrol I and II shall be increased by 3%.

In year 3 of this MOU, the wages for Harbor Patrol I and II shall be increased by 3%.

There shall be a 2.5% shift differential for the evening shift (8:00PM to 2:00AM) for both Harbor Patrol Officer I and II. This is subject to a meet and confer with the members of the SEIU to determine scheduling related to a 24/7 operation.

Annual Performance Evaluations will continue for the term of the contract. Adjustments within the District approved salary range will be based on individual merit. Merit encompasses an employee's knowledge, experience, ability, and performance among other factors. A merit increase is considered as being earned by an employee. A merit increase is advancement to a higher rate in the employee's salary range. A merit increase is based on performance and must be accompanied by a current employee evaluation prepared and signed by the employee's supervisor and signed and approved by the General Manager or his/her designee. The employee shall acknowledge receipt of such evaluation.

A Harbor Patrol Officer I who obtains and maintains a United States Coast Guard License will receive a 2% increase in base pay. Upon promotion to Harbor Patrol Officer II, the employee shall receive a minimum of a 5% increase in pay.

ARTICLE 6 – HOLIDAYS

Any non-exempt employee who is off on a holiday for any reason, except for industrial related injury or disability, shall receive either one day of Holiday Pay or one day of compensatory time as appropriate.

Employees on Long Term Disability or extended Worker's Comp (over 90 days) shall not be eligible for Holiday Benefits and no compensatory time shall accrue.

Any non-exempt employee who works a holiday as part of his or her normal workweek shall receive 1.5 times his or her hourly wage for each hour worked plus one day of compensatory time.

EXHIBIT A

Any hours a non-exempt employee works on a Holiday over his or her normal workday shall be paid at double-time.

Any non-exempt employee who works a holiday in addition to his or her normal workweek shall receive double-time for hours worked plus one day of compensatory time.

Any hours worked beyond the employee normal workday shall also be paid at double-time.

ARTICLE 7 - UNIFORM ALLOWANCE

Upon being employed as a Full-time Harbor Patrol Officer, the District shall issue the employee a uniform consisting of: 4 shirts, 4 long pants, 2 pairs of shorts, 1 jacket, 1 pair of shoes, 1 Velcro utility belt, 1 pair of handcuffs, 1 pepper spray holder and can of pepper spray, foul weather gear and a wetsuit. The Port District will replace these items on an "as needed" basis. A Harbor Patrol Officer will receive \$50.00 (fifty dollars) per quarter to purchase items related to employment as a Harbor Patrol Officer.

ARTICLE 8 - HEALTH INSURANCE AND OTHER EMPLOYEE BENEFITS

The Port District contribution to Medical and Dental Insurance Plans and Optional Benefit Plan will be equal to the contribution given to other full-time non-represented District employees.

ARTICLE 9 – RETIREMENT

The District shall provide for employee retirement benefits through participation in the California Public Employee's Retirement System (CalPERS) as follows:

- 1.) Local Safety 2% at 55 Retirement Program per Section 21369
- 2.) Level IV 1959 Survivor Benefit per Section 21574
- 3.) Credit for unused sick leave per Section 20965.
- 4.) One-Year Final Compensation per Section 20042
- 5.) Improved Non-Industrial Disability Allowance per Section 21427
- 6.) Effective August 29, 2018, the Harbor Patrol Officers will be responsible for the full amount to CalPERS Safety Retirement.

New employees hired to the Unit on or after January 1, 2013, will be subject to the provisions of "The Pension Reform Act of 2013", including any subsequent legislation or court rulings.

ARTICLE 10 - TRADING SHIFTS

Section 7(p)(3) of the Fair Labors and Standards Act provides that two individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours. In such case, neither employee is entitled to overtime compensation. The employees of the

EXHIBIT A

Harbor Patrol Officer classification within the Ventura Port District may utilize Substitutions or "trade time" in scheduling work hours under the following guidelines and conditions.

1. Prior written approval must be obtained from the Harbormaster
2. The employee requesting the trade is responsible for submitting a written request containing the specific dates, times, and the names of the Officers involved. The written request must be signed, in agreement, by all involved Officers. Approval will only be considered for specific dates; i.e. no open ended trades.
3. The employee requesting the trade is solely responsible for reimbursing the District in any event that overtime pay is required to provide staffing for an approved trade shift.
4. Trade days are to be indicated on the time cards as; TNV for trade day worked and T/O for trade day off. A notation in the comments section of the time card is required.
5. All matters of holiday pay or any variation of pay are the responsibility of the Officers involved.

ARTICLE 11 - VACATION REQUESTS

The District recognizes the value of employees taking time off away from the job. Employees wishing to take time off will submit their requests via the Sling scheduling application or similar product. The electronic scheduling application will accept the request and time stamp the time it was received.

To ensure fairness to all employees, request process has been broken down into three different categories.

- **Annual Requests:** All vacation and comp time off requests shall be submitted to the Harbormaster on or before January 15th of each calendar year. Vacation requests will be assigned/approved by the end of business day (5:00 PM) on January 31st using seniority as the criteria for assigning days off.
- **Throughout the year but more than 30 days:** Vacation and comp time off requested after this initial period shall be considered on a first come first serve basis and processing time could be up to 72 hours.
- **Vacation requests less than 30 days from scheduled shifts:** Vacation and comp time off requests made less than 30 days before the scheduled shift cannot be guaranteed but will be considered and may be approved or denied within 72 hours.

In some instances, when an employee's plans have changed, a request to cancel the time off may be appropriate. Cancellations will be considered by the Harbormaster using these two categories:

- **Cancellation more than 21 Days:** The Harbormaster will cancel the vacation request
- **Cancellations 20 days or less:** The Harbormaster will consider the cancellation. A request to cancel the shift may be denied if the person who took the shift would be unfairly affected. If the affected employee agrees to the change in their schedule, then the cancellation will be approved.

EXHIBIT A

The Union and its employees recognize that these requests may unduly disrupt the operations of the Harbor Patrol. Therefore, only one full-time Harbor Patrol Officer will normally be scheduled off-duty on any specific day to accommodate requests for vacation or comp-time off.

ARTICLE 12 - STAFFING

To the extent possible, the Harbor Patrol shall be scheduled to be staffed in the following manner:

There shall be at least two people scheduled on duty seven days a week from 0600-0200 hours.

Non-Summer Weekends - There shall be at least three people to work on every non-summer weekend between 1000-1800 hours.

Summer Weekends - There shall be at least four people to work on every summer weekend between 1000-1800 hours.

For the purpose of this Article, summer shall be defined as the time beginning with the Memorial Day Weekend and ending one week after Labor Day.

If only one person is on duty on any given day because of a last minute schedule change, such as a person calling out sick, a part-time Harbor Patrol Officer shall be called to cover as soon as possible. If no Part-time Harbor Patrol Officers can be located, Full-time Harbor Patrol Officers are to be contacted using the Overtime Assignment Rotation procedure in Article 15.

Supplemental Staffing -The Harbormaster will determine if any additional staffing is needed.

Mandates:

If a shift is not filled, due to illness or personal emergencies, the Harbormaster, in order to maintain proper staffing levels, shall mandate an employee to work. The Harbormaster may also mandate staffing levels, due to inclement weather, natural disasters, mutual aid emergency responses and other harbor emergencies as described in Article 15. After exhausting the process described in Article 15, the Department, in order to maintain proper staffing levels, shall mandate an employee to work using a list of available employees not currently on vacation, comp time, sick time, or industrial leave.

Mandating Process:

- Mandates will be assigned to on-duty personnel the day before the unassigned shift.
- For last minute sick calls the off-going shift may be required to work overtime until the shift is filled or the Harbormaster or his/her designee determines that it is safe to work with less than the minimum staffing.
- For late night sick calls the off-going shift before leaving will exhaust Article 15, notify the Harbormaster, and leave a note explaining the situation to the assigned morning Harbor Patrol Employee.

EXHIBIT A

If an employee is mandated to work, they shall rotate to the back of the future available list unless the mandate was due to emergency operations. Examples include but are not limited to inclement weather, natural disasters, mutual aid emergency responses, and harbor emergencies.

Employees will not be mandated more than once or until after the list of available employees has been exhausted.

ARTICLE 13 - ON CALL PAY – NOT MANDATORY PARTICIPATION

Each night when the office is unstaffed from 2:00 a.m. to 6:00 a.m., the Harbormaster will assign both a Primary Harbor Patrol and Secondary Harbor Patrol employee to be on call.

On-Call Roles

- Primary On-Call Employee will be responsible for answering the On-Call phone. He/She will be responsible for assessing the situation and be required to notify the second On-Call Employee of the need to respond back to work
- Second On-Call Employee will be responsible for answering the after-hours call from the Primary On-Call Employee and respond back to work.

Primary and Secondary Harbor Patrol employees will receive .25 hours of pay for each hour served as an On-Call Officer.

The Primary and Secondary On-Call positions will be assigned on a rotation basis, following a schedule developed by the Harbormaster or his/her designee. When the same two persons are On-Call, the last person who was the Primary will rotate to the Secondary On-Call Employee.

To serve as an On Call Officer, an officer must meet the following criteria:

- Be available by telephone to respond between 2:00 a.m. and 6:00 a.m.
- Not consume any alcohol after 10:00 p.m.
- Have no alcohol in his or her system at 2:00 a.m.
- Must live within a twenty (20) minute response time to the District office.

ARTICLE 14 - CALL BACK — RETURN TO DUTY PAY

Employees who are called in to return for duty and report to work for two (2) hours or less, including those released from duty without having to work shall receive an amount equal to three (3) hours of pay at straight time computed at the regular hourly rate. Any such employee who works more than two (2) hours shall receive appropriate overtime compensation for all time worked. The District reserves the right to work the employee up to two hours for emergency —related duties.

EXHIBIT A

Such return to duty compensation shall be subject to overtime pay provided this time exceeds the employee's normal 40-hour work week. In the event that any return to duty time is in excess of twelve (12) hours, the employee shall be paid at double time.

An employee who receives a call to return to duty, but ends up not having to actually go out, shall receive an amount equal to one (1) hour of pay at straight time computed at the regular hourly rate.

ARTICLE 15 — OVERTIME ASSIGNMENT ROTATION BASED

To the extent possible, Part-time Harbor Patrol Officers will be utilized to fill slots in the schedule created by Vacation, Comp Time, Sick and other leaves taken by Full-time Harbor Patrol Officers. If a Full-time Harbor Patrol Officer must be used to fill a shift, the Officers will be called according to his or her position on an Overtime Call (OT) List.

The initial list will be established by seniority and then adjusted as follows:

1. To work an (OT) shift, the (HPO) must get off-duty at least 10-hours before the start of the (OT) shift AND there must be at least 10-hours before the start of the (HPO's) next shift.
2. The first call will be made to the (HPO) on top of the list that meets the above criteria
3. If he or she turns down the shift or does not respond within thirty (30) minutes, the next (HPO) on the list who meets the criteria will be called, and so on until the shift is filled.

The names on the Overtime Call List will rotate as follows:

When an (HPO) accepts an offer for (OT), he or she will be moved to the bottom of the list.

ARTICLE 16 - TIME OFF COUNTS AS TIME PAID

For the purposes of determining overtime, time taken off for Vacation or Comp Time, or Sick Time shall count as time worked. Any overtime accrued under these circumstances will be paid at the end of the Pay Period.

ARTICLE 17 - OFFICIAL APPEARANCE

If while otherwise off-duty, an employee is required to attend court or other official matter related to his or her employment as a Harbor Patrol Officer, s/he shall receive a minimum of three hours of pay. If circumstances permit, any appearance shall receive pre-approval from the Harbormaster or his/her designee. Travel Time will only be paid if it exceeds the 3-hour minimum and meets any of the following circumstances:

- Travel over 45 miles during the employee's normal working hours whether it is the employee's work day or not;
- The employee is on a special one-day assignment in another city;

EXHIBIT A

- The travel began while the employee was on duty during a scheduled shift;
- The employee performs work related to his or her job while traveling.

ARTICLE 18 - ACCRUALS WHILE ON INDUSTRIAL DISABILITY LEAVE

A Harbor Patrol Officer on temporary 4850 Industrial Disability Leave shall accrue the same sick leave credit and vacation credit s/he would have normally accrued had s/he not been placed on such leave.

ARTICLE 19 - WELLNESS PROGRAM

The District agrees to implement a Wellness Program within the Harbor Patrol Unit with an agreed upon program designating time and place while on duty for use of proposed cardiovascular and strength training. The designated amount of time will not take priority over calls for service or other responsibilities.

ARTICLE 20 - UNION ACCESS

A. Designation of Stewards

1. The Union may designate a maximum of 2 trained stewards. At the invitation of the represented employee, the steward may represent employees in grievances or disciplinary appeals, as outlined in the District's Human Resources Manual. The steward shall serve as a communication link between the Union and management, and otherwise represent the interests of the Union. The name—of such steward once designated by the Union, shall be submitted, at least annually, or as vacancies occur, to the General Manager for appropriate distribution.
2. The stewards, to the extent such cannot be done on non-duty time, may use a reasonable amount of on-duty time for the purposes of processing grievances or appeals of represented employees. Such use of on-duty time shall be subject to advance approval by the Harbormaster or General Manager and it shall not interfere with the normal operations or with established safety or job requirements.
3. Stewards will not be paid for conducting their Union duties during nonduty time.
4. Harbor Patrol Officer requests for hours off shall be presented to management in advance of the requested time off. Such requests shall not unreasonably interfere with the normal operations of the District, and such requests must have management's prior written notice.

B. Reasonable Access

1. Reasonable access to employees work locations shall be granted to officers of SEIU Local 721 and their officially designated representatives for the purpose of processing grievances or contacting members of the organization concerning business within the scope of representation, provided the District is given reasonable advanced notice and provided such access to work locations does not interfere with the normal operations of the District.
2. Such officers or representatives shall not enter any work location without the knowledge of the Harbormaster or General Manager. Access shall be restricted so as not to interfere with the normal operations of the Department or with established safety or security requirements.
3. Solicitation of membership and activities concerned with the internal management of the Union, such as holding membership meetings, campaigning for office, conducting elections or distributing literature or other general information, shall not be conducted during working hours nor shall District equipment be used, unless otherwise authorized by the General Manager and does not interfere with the normal operations of the District.

ARTICLE 21 - POTENTIAL SUCCESSOR AGENCY

In the event the District sells, transfers, reorganizes or assigns the property or operation of the Harbor Patrol services to another entity, be it a public or private agency, the District will use its best efforts to seek the transfer and acceptance by the successor agency or entity of existing regular Harbor Patrol Officers and their compensation schedule and benefits.

ARTICLE 22 - UNION DUES DEDUCTION

The District shall deduct from 26 paychecks of unit employees the regular [periodic] Union membership dues as certified by an authorized official of the Union, pursuant to the District's deduction authorization form duly completed and signed by the employee, and transmit such deductions monthly to the Union. Such deduction shall be made only when the Union member's earnings for a pay period are sufficient after other legally required deductions are made.

It is agreed that the District assumes no liability on account of any actions taken pursuant to this section.

ARTICLE 23 — AGENCY SHOP

Every employee in the bargaining unit is represented by SEIU 721 and shall, as a condition of employment, either join the Union paying the appropriate Union dues, or pay an agency shop fee. Employees who are members of a bona fide religion, body or sect that have historically held conscientious objection to joining or financially supporting public employee organizations, may, as an alternative pay a sum equal to the agency shop fee to a non-religious and non-labor charitable fund, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Such an employee will be required to fill out the appropriate form provided by the District and designate the charitable fund(s) including name, address and phone number for which he/she intends to submit the charitable contribution in lieu of the agency shop fee.

Proof of such payment of such funds will be required to be submitted at the end of each calendar month to Payroll for verification. A copy of proof and the initial form will be forwarded to the Union.

It is mutually agreed by the parties that the agency shop provisions of this MOU may be rescinded by a majority vote of all employees represented by this Unit as set forth in California Government Code section 3501.5(d). There can only be one election during the term of this MOU.

(As a consequence of the Supreme Court's decision in *Janus v. AFSCME*, this section is deemed obsolete.)

ARTICLE 24 – CONCLUSIVENESS

Within this Memorandum of Understanding, the District has met its obligations to meet and confer in good faith as provided by law for the term hereof. However, any changes proposed by the District in the Personnel Rules and Regulations that fall within the scope of meeting and conferring pursuant to the Meyers-Milias-Brown Act (MMB) and this Memorandum of Understanding that affect employees represented by the Union will be submitted to the Union 30 days in advance of such proposed action, except in case of emergency as provided by the Meyers-Milias-Brown Act, for the purpose of meeting and conferring regarding such proposed changes.

ARTICLE 25 - TERM

This Memorandum of Understanding shall be and remain in full force for a three-year period upon ratification by Union members and approved and implemented by the Ventura Port District Board of Port Commissioners.

ATTACHMENT 2



RESOLUTION NO. 3359

**RESOLUTION OF THE BOARD OF PORT COMMISSIONERS OF THE VENTURA
PORT DISTRICT FOR EMPLOYER PAID MEMBER CONTRIBUTIONS TO THE
CALIFORNIA PUBLIC EMPLOYMENT RETIREMENT SYSTEM**

WHEREAS, the governing body of the Ventura Port District has the authority to implement Government Code section 20691;

WHEREAS, the governing body of the Ventura Port District has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer;

WHEREAS, one of the steps in the procedures to implement section 20691 is the adoption by the governing body of the Ventura Port District of a Resolution to commence said Employer Paid Member Contributions (EPMC);

WHEREAS, the governing body of the Ventura Port District has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all employees who are Full-time Harbor Patrol Officers.
- This benefit shall consist of paying 0% of the normal member contributions as EPMC effective August 29, 2018.
- The effective date of this Resolution shall be August 29, 2018 to reflect the Memorandum of Understanding Collective Bargaining Agreement between the Ventura Port District and the Service Employees International Union, SEIU-Local 721 for the Full-time Harbor Patrol Officers.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the Ventura Port District elects to pay 0% EPMC effective August 29, 2018, as set forth above.

PASSED, APPROVED and ADOPTED by the Board of Port Commissioners, this 22nd day of August 2018, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:



ATTACHMENT 2

ATTEST:

Everard Ashworth, Chairman

Jim Friedman, Secretary



BOARD OF PORT COMMISSIONERS

AUGUST 22, 2018

SPECIAL MEETING

STANDARD AGENDA ITEM 2

APPROVAL OF PIPELINE LICENSE
AGREEMENT BETWEEN VENTURA
PORT DISTRICT AND ARTPS, LLC

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

STANDARD AGENDA ITEM 2
Meeting Date: August 22, 2018

TO: Board of Port Commissioners
FROM: Oscar Peña, General Manager
SUBJECT: Approval of Pipeline License Agreement between Ventura Port District and
ARTPS, LLC

RECOMMENDATION:

That the Board of Port Commissioners approve the License Agreement by and between the Ventura Port District, a California Port District, (Licensor) and ARTPS, LLC, a Texas Limited Liability Company (Licensee) to operate and utilize a 22 inch diameter pipeline and the appurtenances thereto that run 6,643 linear feet through, along, across and underneath the surface of a portion of the District's property for the transport of oil.

SUMMARY:

This grant of license was previously with Ellwood Pipeline, Inc./Venoco, LLC which went through bankruptcy and sold all its assets to ARTPS, LLC in 2017. The sale was approved by the bankruptcy court on or around May 18, 2018. ARTPS, LLC is desirous of a ten year License Agreement with the District. This license agreement is for an existing pipeline.

BACKGROUND:

District's Legal Counsel has reviewed all requirements of the License Agreement and is satisfied. The term of this License Agreement shall be from June 1, 2018 and will expire on May 31, 2028.

Licensee will provide a policy of comprehensive general liability insurance with a minimum coverage of \$50,000,000 per occurrence naming the District as an additional insured. Licensee shall also provide and maintain a cash bond in the form of a certificate of deposit in the amount of \$200,000 at all times during the duration of the License and one year after the License term. This bond will be held by a bank and be readily available for the District to withdraw from it in the event Licensee fails to perform its obligations under the License Agreement.

FISCAL IMPACT:

ARTPS, LLC will pay the District \$188,000 upon approval of the License Agreement as consideration for the first five years of the License Agreement. Consideration for year six will be \$40,000 and years seven through 10 will be \$45,000 per year.

ATTACHMENT:

Attachment 1 – Licenses Agreement

LICENSE AGREEMENT

Identification of Parties

1. This License Agreement (the "Agreement") is entered into as of August____, 2018 by and between VENTURA PORT DISTRICT, a California port district, hereafter referred to as "Licensor", and ARTPS, LLC, a Texas limited liability company, hereafter referred to as "Licensee."

Description of Property

2. Licensor is the owner of certain real property situated in the City of Ventura, in the County of Ventura, California (hereafter referred to as the "the Property"), and more particularly depicted in Exhibit "A", which is attached to this Agreement and hereby incorporated by reference.

Grant of License

3. For consideration set below, Licensor grants to Licensee a license (hereafter referred to as "the License") to operate and utilize its 22-inch diameter pipeline and the appurtenances thereto that run 6,642.76 linear feet through, along, across and underneath the surface of a portion of the Property for the transportation of oil. Such pipeline was originally constructed and installed on the Property in 1968 by a predecessor-in-interest to Licensee for the transportation of oil, and Licensee was subsequently assigned the right to use the pipeline. The precise location of the pipeline is depicted in Exhibit "B", attached to this Agreement and incorporated by reference, and more particularly described as follows:

A ten (10) foot strip of land, the centerline of which is described as follows:

Beginning at a point on the southerly prolongation of the centerline of Pierpont Boulevard (80 feet in width), 30.00 feet south of the centerline of Coral Avenue (50 feet in width) in the Ventura Port District; thence N 79° 03' 30" E, 131.50 feet; thence S 10° 56' 30" E, 632.44 feet, thence S 43° 37' 33" E, 263.00 feet, more or less, to a line that is parallel with and 55.00 feet southerly at right angles to that certain course on the common boundary line between the City of San Buenaventura and the Ventura Port District being "N 85° 36' 00" W, 1,338.66 feet", thence S 85° 36' 00" E along said parallel line, 286.00 feet, more or less, to the centerline of Beachmont (also known as Anchors Way Drive); thence continuing S 85° 36' 00" E, 32.98 feet; thence N. 48° 21' 15" E, 40.00 feet, more or less, to a point which is 25.50 feet southerly and at right angles to said common boundary line of the Ventura Port District; thence S 85° 36' 00" E", 793.40 feet to a tangent curve concave to the North having a delta of 5° 03' 00" and a radius of 1,020.00 feet; thence along said curve 89.90 feet; then N 89° 21' 00" E, 346.73 feet to a tangent curve concave to the North having a delta of 5° 32' 30" and a radius of 1,020.00 feet; thence along said curve 98.65 feet; thence N 83° 48' 30" E, 379.85 feet; thence S 11° 29'

ATTACHMENT 1

20" E, 1,342.62 feet; thence S 10° 33' 20" E, 483.84 feet; thence S 15° 03' 35" E, 443.87 feet; thence S 20° 30' 10" E, 161.46 feet; thence S 11° 29' 20" E, 147.53 feet to tangent curve concave to the West having a delta of 9° 36' 15" and a radius of 2,915.00 feet; thence along said curve 488.62 feet; thence S 62° 17' 47" W, 110.86 feet; thence S 56° 33' 17" W, 405.97 feet; thence S 72° 03' 27" W, 166.74 feet; thence S 02° 41' 33" E, 8.68 feet to the intersection with a course on the southerly boundary line of the Ventura Port District property shown as "N 72° 23' 22" E, 236.81 feet" on Record Survey Map recorded in Book 28 of Record of Surveys, Page 3, recorded in the County Recorder's Office of Ventura County.

Consideration and Term

4. This License shall be for a term of ten (10) years commencing June 1, 2018 and terminating on May 31, 2028, unless terminated sooner as provided by this Agreement. Consideration for the License shall be payable by Licensee to Licensor as set forth in the payment schedule below, with the first payment of one hundred eighty eight thousand dollars (\$188,000.00) for the first five (5) years of the License term due within seven (7) days of the execution of this Agreement. The remaining annual License fees shall be due as set forth in the following schedule:

Period	Amount	Due
Years 1 through 5	\$188,000.00	Within 7 days of execution
Year 6	\$40,000.00	June 1, 2023
Year 7	\$45,000.00	June 1, 2024
Year 8	\$45,000.00	June 1, 2025
Year 9	\$45,000.00	June 1, 2026
Year 10	\$45,000.00	June 1, 2027

All of Licensee's obligations under the terms and conditions of this Agreement are material, and therefore any breach of any obligation or duty of Licensee hereunder may result in termination of the License by Licensor. Upon the occurrence of a breach, Licensor shall provide written notice thereof to Licensee and an opportunity to cure. For any breach by Licensee under this Section 4 (Consideration and Term), Section 6 (Cash Bond), and Section 7 (Insurance), Licensee shall be given a period of seven (7) business days to cure said breach. For any other breach of this Agreement, Licensee and Licensor shall meet and confer within thirty (30) days of the notice of breach in a good faith effort to resolve the purported breach to the satisfaction of Licensor. In the event a resolution cannot be reached within said 30-day period, or longer if mutually agreed upon by the parties in writing, Licensor may thereafter immediately terminate the License granted to Licensee. Any termination of the License hereunder shall not terminate any existing obligation or duty that continues beyond the termination of this Agreement.

Duty to Operate, Maintain, Repair and Not Interfere

5. Licensee shall maintain the pipeline to ensure its proper operation and use so as to not interfere with or obstruct the normal use and occupancy of the Property, or injure or interfere with any person or property on the Property. Licensee shall also act and immediately respond with all due urgent and requisite speed to repair any malfunction or damage to said pipeline to mitigate any damages, threatened or actual, that may result therefrom to the Property and the surrounding environment.

Cash Bond

6. Licensee shall, at all times during the duration of the License and for one (1) year after the termination or expiration of the License term, keep on deposit with a bank of national recognition, a cash bond in the form of a certificate of deposit running to the benefit of Licensor in the amount of two hundred thousand dollars (\$200,000.00). The bond shall be conditioned on Licensee performing and observing each of the terms and conditions of this Agreement, and shall be readily payable to Licensor upon demand. Failure to do so shall result in Licensor immediately recovering the amount of damages suffered from the cash bond. In the event that payment withdrawn from the cash bond, Licensee must immediately replenish the cash bond back to its original amount within fourteen (14) days of notice by Licensor of withdrawal thereon. Failure to maintain a cash bond in the amount of \$200,000.00 as required by this section may result in termination of the License by Licensor.

Insurance

7. Licensee agrees to maintain in full force during the term of this License, at Licensee's sole expense, a policy of comprehensive general liability insurance with a minimum coverage amount of fifty million dollars (\$50,000,000.00) per occurrence naming Licensor as an additional insured party on the policy. This additional insured status of Licensor pursuant to the foregoing is a material contractual obligation of this Agreement and Licensee must provide Licensor with a certificate of insurance naming Licensor on said certificate prior to the execution of this Agreement. The insurance policy shall be an occurrence based policy issued by an insurance company authorized to do business and have an agent for service of process in California and have at least an "A-" policyholder's rating and a Financial Size Category rating of at least VII in accordance with the most recent A.M. Best Insurance Guide, or as otherwise approved by Licensor. If A.M. Best is no longer published, comparable ratings must be provided from a service acceptable to Licensor. The policy shall insure Licensor against any and all claims arising out of or in connection with the maintenance, use, and operation of the pipeline that is the subject of the License, including, but not limited to liability arising from: 1) activities performed by or on behalf of Licensee; 2) products and/or equipment used and installed for use in conjunction with the pipeline; and 3) activities that occur on the Property that cause damage or death as a result of Licensee's occupancy or use of the Property. The policy shall contain no special limitations on the scope of protection afforded to additional insureds, and shall be approved as to form and insurance by Licensor. Licensee shall provide Licensor with a copy of

the policy with the certificate naming Licensor as an additional insured, including an endorsement that states that the policy will not be cancelled except after 30 days written notice to Licensor. Licensee shall defend, protect and save harmless Licensor from and against all claims, suits, and actions arising from any failure of Licensee to maintain such coverage or insurance.

Waiver and Indemnification

8. Licensee, as a material part of the consideration to be rendered to Licensor under this Agreement, waives all claims against Licensor for damages to any and all personal property of Licensee in, on, or about the Property, except for those caused by Licensor's active negligence. Licensee shall indemnify, protect, defend, and hold harmless Licensor from and against any and all claims, loss of profits, damages, costs, liens, claims, judgements, penalties, attorneys' fees, expenses, or liabilities arising out of, involving, or in connection with the License, use and occupancy of the Property or any portion thereof, or the exercise of any rights or privileges granted to Licensee under this Agreement. This indemnification by Licensee shall not be limited by or to the extent of any applicable insurance. Licensor shall not be liable to Licensee for any damage by or from any act or negligence of any other occupant of the Property or any occupant of adjoining or contiguous property. Licensee agrees to pay for all damages to the Property, as well as all damage to occupants of the Property and to the property of those occupants caused by Licensee's misuse or neglect of the Property or its actions, or the actions of its agents, employees, contractors and invitees, under and pursuant to this Agreement.

Environmental Indemnity

9. Licensee shall indemnify, protect, defend and hold harmless Licensor against any losses, liabilities, damages, demands, actions, claims, judgments, causes of action, assessments, penalties, costs and expenses (including, without limitation, the reasonable fees and disbursements of legal counsel and accountants) and all foreseeable and unforeseeable consequential damages which might arise or be asserted against Licensor as a result of a claimed violation of any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) and the applicable provisions of the California Health and Safety Code and the California Water Code, relating to the environment or to any Hazardous Substance, activity or material connected with Licensee's exercise of rights under the License or this Agreement. If any such action or proceeding is brought against Licensor, its officers, elected officials, agents, attorneys, or employees, Licensee, upon notice from Licensor, shall defend the claim at Licensee's sole expense with counsel reasonably satisfactory to Licensor. Licensee's obligations under this section shall include, without limitation, loss of rents to Licensor, the effects of any contamination or injury to person, property or the environment, the costs of investigation, remediation, restoration, and abatement as well as any related legal, accounting, or expert consultants' fees reasonably necessary to protect the interests of Licensor. Licensee's obligations hereunder shall survive the expiration or termination of this Agreement, but,

assuming Licensee abandons the pipeline as set forth under Paragraph 10, below, such obligation shall terminate three (3) years after pipeline abandonment.

Reports and Safety Surveys

10. Licensee shall provide a copy of any and all safety surveys and reports, or parts thereof pertaining to the portion of the pipeline that is the subject of this License, including, but not limited to, any Pipeline Inspection Reports (aka "ILI Smart pig run") conducted on or for pipeline, to Licensor within thirty (30) days of Licensee's receipt thereof.

Abandonment

11. Upon termination of this License, Licensee shall purge the pipeline and comply with all applicable laws and regulations for pipeline abandonment, at Licensee's sole expense. In such event, Licensee shall give Licensor written notice of completion of abandonment, and shall provide Licensor with a copy of the report of abandonment which Licensee is required by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration to provide to the National Pipeline Mapping System. Licensor shall have the right and opportunity to inspect the pipeline to assure that abandonment was conducted in accordance with all applicable laws and regulations. If such right of inspection is exercised by Licensor, the reasonable costs and expenses for such inspection shall be reimbursed by Licensee.

Relocation or Modification

12. In the event that Licensee's pipeline needs to be modified, repositioned, or relocated due to any construction or development on the Property, Licensee agrees to assume all responsibility and cost of such relocation on the Property, and shall monitor and ensure the timely modification or relocation of the pipeline. In such event, Licensee shall relocate and/or construct its pipeline so as to be at all points at least forty-two (42) inches below the surface of the ground, and restore the Property to its original condition. Licensor will coordinate with Licensee as to a suitable and agreeable location for relocation of the pipeline on the Property. Any relocation of the pipeline will be documented by a written amendment to this License to describe and depict the new location of the pipeline.

Assignment

13. This License shall not be assigned by Licensee without the prior written consent of Licensor, which consent shall not be unreasonably withheld or delayed by Licensor. In the event Licensee wishes to assign this License, Licensee must provide at least sixty (60) days written notice to Licensor and pay in advance a processing fee of one thousand dollars (\$1,000.00) to Licensor for its evaluation of any proposed assignment. In addition, Licensee shall pay Licensor's out-of-pocket costs, including the reasonable cost of legal review, for the cost of processing and approving the proposed assignment, whether or not Licensor gives its consent thereto.

Attorney's Fees

14. If any legal action or proceeding arising out of or relating to this Agreement is brought by either party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party. The term "prevailing party" shall be defined as the party that is granted the greater degree or amount of relief sought, whether monetary or otherwise and whether by compromise, settlement, judgement, or the abandonment by the other party of its claim or defense. Licensor, prior to executing this Agreement, shall be reimbursed for its reasonable attorneys' fees incurred in connection with the preparation of this License Agreement.

Entire Agreement

15. This Agreement constitutes the entire agreement between Licensor and Licensee relating to the License. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by Licensor and Licensee.

Severability

16. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

Binding on Successors

17. Each and all of the covenants, terms, and conditions herein contained shall, in accordance with the context, inure the benefit of Licensor and apply to and bind Licensee and Licensee's respective heirs, legatees, devisees, administrators, and successors.

Notices

18. All notices, demands, or requests shall be in writing and shall be mailed by certified or registered mail, postage prepaid, return receipt requested, or by reliable overnight courier at the following addresses and to the attention of the person named, with a courtesy copy sent by facsimile or e-mail. Addresses and persons to be notified may be changed by either party by giving thirty (30) days prior written notice thereof to the other party.

ATTACHMENT 1

Notices to Licensor shall be addressed as follows:

Ventura Port District
1603 Anchors Way Drive
Ventura, CA 93001-4229
Attn: General Manager
E-mail: opena@venturaharbor.com

Notices to Licensee shall be addressed as follows:

ARTPS, LLC
8401 N. Central Expwy.
Suite 525
Dallas, TX 75225
Attn: Ryan Templeton, Manager
E-mail:_____

and

DCOR, LLC
290 Maple Court, Suite 290
Ventura, CA 93003
Attn: Alan Templeton, Manager
E-mail:_____

Notices shall be effective upon receipt or date of delivery as shown by the records of the courier or USPS.

Time of the Essence

19. Time is of the essence with respect to the performance of all obligations to be performed or observed by the parties under this Agreement.

Counterpart Execution

20. The Agreement may be signed in counterparts and be transmitted by facsimile and/or e-mail.

[SIGNATURES NEXT PAGE]

ATTACHMENT 1

DATED: _____

DATED: _____

LICENSOR

LICENSEE

Oscar Peña, General Manager
Ventura Port District

Ryan Templeton, Manager
ARTPS, LLC

ATTACHMENT 1

EXHIBIT A

Description of Property

ATTACHMENT 1

EXHIBIT B

Location of Pipeline



BOARD OF PORT COMMISSIONERS

AUGUST 22, 2018

SPECIAL MEETING

STANDARD AGENDA ITEM 3

AWARD OF CONTRACT TO THE
GARLAND COMPANY, INC. FOR THE
FISH PIER DECK RESURFACING
PROJECT

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

STANDARD AGENDA ITEM 3
Meeting Date: August 22, 2018

TO: Board of Port Commissioners
FROM: Richard Parsons, Consultant
SUBJECT: Award of Contract to the Garland Company, Inc. for the Fish Pier Deck
Resurfacing Project

RECOMMENDATION:

That the Board of Port Commissioners:

- a) Award the Fish Pier Deck Resurfacing Contract to the Garland Company, Inc., in the amount of \$499,950, subject to Legal Counsel's final approval of the contract documents; and
- b) Approve an increased appropriation for the Fish Pier Resurfacing Project of \$175,000 bringing the total project cost to \$575,000.

SUMMARY:

The Port District's FY18-19 Capital Improvement Budget includes \$400,000 for the resurfacing of the fish pier deck. Utilizing procedures established by the U.S. Communities government cooperative contracting process, a proposed scope of work and a \$499,950 cost proposal (*attached*) has been negotiated with the Garland Company. The scope of work includes the removal of the existing overlay and approximately one inch of the existing concrete from the entire 13,000 sf of deck surface. A four layer waterproofing membrane would then be applied. The work has a cost of \$38.45 per sf and Garland would guarantee the product for five years.

It should be anticipated that during Garland's performance of the contract work, that the need for possible change orders could arise. It is felt that a 10% contingency, i.e. \$50,000, for such a situation would be appropriate. Additionally, \$25,000 for the continuing services of Noble Consultants, the engineering firm that has been assisting the District with its evaluation of the concrete pier deck will be needed. That brings the total project cost to \$575,000.

BACKGROUND:

In recent years, the District has devoted considerable engineering analysis to identifying a prudent course of action for extending the life of the fish pier in light of the adverse alkali-silica reaction (ASR) in the structure's concrete deck. In early May 2018 the Port Commission was advised that continuing with a deck overlay maintenance program appeared to be the most appropriate course of action for prolonging the service life of the pier.

The District's previous overlay efforts involved only those limited portions of the deck that showed more problematic deterioration. Those efforts included:

- A 2013 job utilizing a SIKA specified material that was performed by Western Waterproofing that covered 3,500 square feet of deck surface at a cost of \$218,000 (\$62.30/sf).
- A 2014 job also utilizing the SIKA product that was performed by ECO Construction that covered 2,800 square feet of deck surface at a cost of \$170,000 (\$60.90/sf).

Garland's proposal is thus cost effective, in Noble Consultant's opinion, in that it addresses the entire deck surface at a lower square foot cost, while providing an overlay system consisting of structural components and a polyurethane membrane topped with a wear coating. Garland is a U.S. Communities approved contractor. U.S. Communities is a cooperative contracting effort involving hundreds of government agencies across the United States that utilizes one another's

competitively bid project costs rather than each agency individually bidding their own projects. This has resulted in substantial cost savings to the District based on recent experience.

FISCAL IMPACT:

The approval of a contract with the Garland Company will exceed the \$400,000 current budget allocation for this work and will thus require a \$175,000 budget adjustment. The District's budget reserves are adequate to support such an increase.

ATTACHMENTS:

Attachment 1 - Garland Co Proposal and Warranty

ATTACHMENT 1



Garland/DBS, Inc.
3800 East 91st Street
Cleveland, OH 44105
Phone: (800) 762-8225
Fax: (216) 883-2055



PLAZA DECK MATERIAL AND SERVICES PROPOSAL

Ventura Harbor
Ventura Pier
Ventura, CA 93001

Date Submitted: 07/25/2018

Proposal #: 25-CA-180801

MICPA # 14-5903

California General Contractor License #: 949380

Purchase orders to be made out to: Garland/DBS, Inc.

Please Note: The following budget/estimate is being provided according to the pricing established under the Master Intergovernmental Cooperative Purchasing Agreement (MICPA) with Cobb County, GA and U.S. Communities. This budget/estimate should be viewed as the maximum price an agency will be charged under the agreement.

Scope of Work: Base Bid - Pier Deck Coating

1. Work to be divided into two phases with fencing to protect work space.
2. Removal of the existing overlay and approximately 1" inch of the existing concrete until a stable substrate is reached
3. Removal to terminate at straight line parallel to edge of dock at concrete cleat base.
4. Saw-cuts to be performed at all terminations of work performed.
5. Application of Durawalk Primer per manufacturer's written instructions followed by a broadcast until refusal of Crystalline Silica 16/20 while primer is still wet.
6. Application of approximately 1" inch UPI Dexcelcrete, providing 1 inch slope from crown to finish flush at saw cut edge of deck. Dexcelcrete to be mixed with 21-25lb. 3/8" Pea Gravel and 2oz Reinforcement fibers per 50lb bag. *Alternate bid below*
7. All joints in original deck must be honored.
8. Possible surface grinding of Dexcelcrete to be performed if deemed appropriate by UPI/Garland representative, in order to provide appropriate substrate for Durawalk system.
9. Once Dexcelcrete is deemed fully cured by a UPI representative, application of full Garland Durawalk Vehicular Traffic Coating System with double broadcast for Heavy Traffic as per application instructions.

ATTACHMENT 1

Line Item Pricing

Item #	Item Description	Unit Price	Quantity	Unit	Extended Price
18.21.09	FLUID APPLIED WATERPROOFING MEMBRANE SYSTEMS WITH POLYURETHANE RESIN COATINGS: FLUID APPLIED WATERPROOFING MEMBRANE SYSTEM BASE ON POLYURETHANE RESINS - CONCRETE SURFACE REPAIRS & PREPARATION - GRINDING Grind an existing coating	\$ 1.95	13,000	SF	\$ 25,350
18.21.06	FLUID APPLIED WATERPROOFING MEMBRANE SYSTEMS WITH POLYURETHANE RESIN COATINGS: FLUID APPLIED WATERPROOFING MEMBRANE SYSTEM BASE ON POLYURETHANE RESINS - CONCRETE SURFACE REPAIRS & PREPARATION - CONCRETE REPAIRS TO HORIZONTAL SURFACES: 2"-4" DEPTH Removal and replacement of damaged concrete to exclude substrate repair / re-installation	\$ 28.70	13,000	SF	\$ 373,043
18.21.12	FLUID APPLIED WATERPROOFING MEMBRANE SYSTEMS WITH POLYURETHANE RESIN COATINGS: FLUID APPLIED WATERPROOFING MEMBRANE SYSTEM BASE ON POLYURETHANE RESINS - CONCRETE SURFACE REPAIRS & PREPARATION - PRESSURE WASHING - HORIZONTAL Pressure washing horizontal surfaces with 2000 PSI or greater	\$ 0.14	13,000	SF	\$ 1,820
18.11.04	FLUID APPLIED WATERPROOFING MEMBRANE SYSTEMS WITH POLYURETHANE RESIN COATINGS: POLYURETHANE COATINGS DIRECT TO PRIMED CONCRETE SUBSTRATE (INCLUDE PRIMER FOR CONCRETE SUBSTRATE): FLUID APPLIED MEMBRANE SYSTEM: - Four Coat Reinforced System	\$ 10.05	13,000	SF	\$ 130,650
	Sub Total Prior to Multipliers				\$ 530,863
PWM	Prevailing Wage Multiplier - Ventura County, CA Laborer = \$52.53	26.10%		%	\$ 138,555
	Sub-Totals After Multipliers				\$ 669,419

Base Bid:

Total Maximum Price of Line Items under the MICPA:

\$ 669,419

Proposal Price Based Upon Market Experience:

\$ 499,950

ATTACHMENT 1

Unforeseen Site Conditions

Additional Grinding of Concrete	\$ 5.70	per Square Foot
Delays	\$ 2,850.00	per Day
Repair of Rebar	To Be Determined	
Any Work Not Expressly Indicated	\$ 108.30	per Man Hour
Any Work Not Expressly Indicated	\$ 867.54	per Man Day
Cracks, Epoxy Injection/Caulking	\$ 79.80	per Linear Foot
Spalls, Repairs (2" Deep)	\$ 399.00	per Square Foot
Shotblast, 13,000 Square Feet	\$ 17,100	per 13,000 Square Feet

Potential issues that could arise during the construction phase of the project will be addressed via unit pricing for additional work beyond the scope of the specifications. This could range anywhere from wet insulation, to the replacement of deteriorated wood nailers. Proposal pricing valid through 12/31/2018.

Clarifications/Exclusions:

1. Sales and use taxes are excluded. Please issue a Tax Exempt Certificate.
2. Permits are included.
3. Bonds are included.
4. Plumbing, Mechanical, Electrical work is excluded.
5. Masonry work is excluded.
6. Temporary protection is excluded.
7. Prevailing Wages are included.
8. Any work not exclusively described in the above proposal scope of work is excluded.

If you have any questions regarding this proposal, please do not hesitate to call me at my number listed below.

Respectfully Submitted,

Matt Egan

Matt Egan
Garland/DBS, Inc.
(216) 430-3662

ATTACHMENT 1

The Garland Company, Inc.®

Warranty No: Effective Date:

Five (5) Year Material Warranty

Owner Name: _____ Contractor Name: _____
Address: _____ Address: _____
City: _____ State/Zip: _____ City: _____ State/Zip: _____
Project Name: _____ Products: Dura-Walk
Job ID: _____ Square Footage: _____

MANUFACTURER RESPONSIBILITIES

The Garland Company, Inc. (hereinafter referred to as "Garland"), a Corporation of the State of Ohio, warrants to the above named owner that our plaza deck system will be free from defect and meet the minimum published specifications for the material for a period of five (5) years from the date of manufacture.

Any materials found to be defective or below the minimum published specifications during the warranty period will be replaced by Garland in fresh, unopened containers. Garland will not be responsible for any damages to the structure, attached items, equipment, vehicles, goods or any other consequential damages and its responsibility is limited to replacing any defective materials.

This warranty cannot be altered or amended nor may any other warranties or representations be made by any agent or employee of Garland unless such alteration, amendment or other representation is issued in writing by a duly authorized officer of Garland and sealed with Garland's Corporate Seal. This warranty does not cover cosmetic deficiencies. In order to qualify for this warranty, the plaza deck system must have been installed in strict accordance with Garland's published literature.

APPLICABILITY OF WARRANTY

This warranty is valid only when applied by a Garland approved contractor for approved plaza deck system specifications. All repairs, changes, alterations, modifications and additions to the plaza deck system must be authorized in advance in writing by Garland. This warranty is not assignable, directly or indirectly as a result of the sale of the premises or otherwise. This warranty shall not be applicable if, in the sole judgment of Garland, any of the following shall occur:

- A. The plaza deck system is damaged by natural disasters including, but not limited to, fire, floods, lightning, hail, earthquakes, wind damage, etc..
- B. The plaza deck system is damaged by structural movement or failure or movement of any material underlying the plaza deck system or base flashing.
- C. The plaza deck system is damaged by acts of negligence, misuse or accidents including, but not limited to, use of the deck for other than providing a wear surface for the Structure, vandalism, civil disobedience or acts of war.
- D. Discoloration, cosmetic deterioration or change in the visual appearance of the plaza deck system or Garland's top coating.
- E. Damage to the plaza deck system resulting from:
 - 1. Infiltration or condensation of moisture through the structure or underlying or surrounding areas.
 - 2. Lack of positive drainage.
 - 3. Movement or deterioration of metal adjacent or built into the plaza deck system or base flashing.
 - 4. Chemical contaminate attacks on the plaza deck system which have not been approved or accepted by Garland.
 - 5. Building design or construction.
 - 6. Abusive traffic, abuse, neglect or storage of materials on the deck coating system.
 - 7. Defects in, failure or improper application of the underlying material used as a base upon which the plaza deck coating system is applied.
 - 8. Acts of parties other than manufacturer or authorized waterproofing contractor.
- F. Failure of owner to properly notify Garland in writing and receive written approval of:
 - 1. Changes in the usage of the building.
 - 2. Modifications or additions to the plaza deck system.
- G. Failure of owner to properly maintain the plaza deck.
- H. Failure of owner to comply with each and every term or condition stated herein.
- I. Failure of the decking system or its constituent parts from causes related to the pier's structure, including but not limited to the concrete and its chemical and structural components.
- J. Failure due to factors related to the concrete substrate, including but not limited to ASR, soluble salts, moisture vapor, corrosion of reinforcing steel or weak concrete.

Garland assumes no responsibility for damage that occurs to the structure or interior of the structure, including the contents therein, from any type of leaks or any other consequential damages. Garland's sole responsibility is limited to replacing any defective materials.

OWNER RESPONSIBILITIES

Garland recommends owner participation in the Garland Maintenance and Inspection Program.

This warranty becomes effective only upon full payment of all bills for supplies and installation of the Garland system.

This warranty shall be construed under and in accordance with the laws of the State of Ohio. This warranty constitutes the sole and only warranty of the parties hereto and supersedes any prior understandings or written or oral warranties between the parties respecting the subject matter within.

ALL IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED FROM THE SALE OF PRODUCTS COVERED BY THIS WARRANTY.

In the event that any one or more of the provisions contained in this warranty shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this warranty shall be construed as if the invalid, illegal or unenforceable provision had never been contained therein.

WARRANTY ACCEPTANCE: Owner hereby accepts and agrees to the terms and conditions set forth in this Warranty.

By: The Garland Company, Inc. _____ Owner: _____
Signed By: _____ Signed By: _____
Date: _____ Date: _____