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Title: MARINE GROUP BOAT WORKS, LLC LOCATED AT 1313 BAY MARINA DRIVE, NATIONAL CITY:

A. RESOLUTION CONSENTING TO THE ASSIGNMENT AND ASSUMPTION OF THE LEASEHOLD INTEREST FROM MARINE GROUP BOAT WORKS, LLC TO AUSTAL USA, LLC; AND,

B. ORDINANCE GRANTING AN AMENDED, RESTATED AND COMBINED LEASE TO AUSTAL USA, LLC TO UPDATE LEASE TO CURRENT TERMS

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Date	Ver.	Action By	Action	Result
11/9/2021	1	Board of Port Commissioners	adopted as amended	Pass

DATE: November 9, 2021

SUBJECT:

MARINE GROUP BOAT WORKS, LLC LOCATED AT 1313 BAY MARINA DRIVE, NATIONAL CITY:

A. RESOLUTION CONSENTING TO THE ASSIGNMENT AND ASSUMPTION OF THE LEASEHOLD INTEREST FROM MARINE GROUP BOAT WORKS, LLC TO AUSTAL USA, LLC; AND,

B. ORDINANCE GRANTING AN AMENDED, RESTATED AND COMBINED LEASE TO AUSTAL USA, LLC TO UPDATE LEASE TO CURRENT TERMS

EXECUTIVE SUMMARY:

Marine Group Boat Works, LLC, a California limited liability corporation (MGBW), is an existing District tenant which operates two full-service boat and super-yacht facilities that specialize in the repair and fabrication of personal, commercial and government vessels located in the City of Chula Vista and National City. MGBW purchased the National City leasehold from the original tenant, Knight & Carver, in bankruptcy proceedings and assumed the National City leasehold with the District in March 2013. The lease for the National City facility (Lease) expires on March 31, 2027 and consists of approximately 7.4 acres of land and building area and approximately 2.26 acres of water area and

is further delineated on Attachment A - National City Location Map (Premises). MGBW is proposing to transfer its National City assets, including its leasehold interest under the Lease, to Austal USA, LLC, an Alabama limited liability company (Austal).

Austal has extensive experience operating shipyards and is an advanced ship manufacturer, servicer and sustainment provider to the United States Navy (Navy). Austal commenced operations in Perth, Australia in 1988, and in 1999 they opened their United States shipyard headquarters in Mobile, Alabama. Staff believes that Austal has the financial and operational wherewithal to operate a world-class ship repair facility on District tidelands.

During discussions with MGBW and Austal regarding the assignment of the Lease, Austal indicated that due to the Lease expiring on March 31, 2027, an assignment of the Lease with the remaining lease term of 5.5 years would not allow for significant investment in the leasehold needed to realize their business model. As such, staff has negotiated a new Amended, Restated and Combined Lease (ARC Lease) with Austal through November 30, 2050 that would be coterminous with the adjacent lease from the Navy and would require Austal to invest a minimum of \$6,853,885 in the Premises in the first five years, which includes \$5,775,070 of environmentally friendly upgrades. Additionally, the ARC Lease includes additional provisions that would provide substantial benefits to the District and region, including but not limited to: (i) emission reduction commitments; (ii) labor peace provisions; (iii) increased rent; (iv) local hire and community engagement commitments; (v) provisions that entitle the District to receive 2.5% of the proceeds from a future lease assignment and a financing transaction; and (vi) a contribution of \$250,000 to support the National City Balanced Plan. Finally, Austal's obligations under the ARC Lease would be guaranteed by the parent company, Austal Holdings, Inc., including obligations related to hazardous materials.

The proposed ARC Lease with Austal would provide substantial environmental, labor, safety, equal opportunity employment, and community engagement provisions that align with the District's goals. Additionally, the ARC Lease would allow the District to gain a world-class shipyard operator to meet the growing demand for ship repair in San Diego Bay. Staff recommends the Board adopt a resolution consenting to the assignment and assumption of the Lease to Austal and concurrently adopt an ordinance granting the ARC Lease to Austal under the terms presented.

RECOMMENDATION:

- A. Adopt a Resolution Consenting to the Assignment and Assumption of the leasehold interest from Marine Group Boat Works, LLC to Austal USA, LLC.
- B. Adopt an Ordinance Granting an Amended Restated and Combined Lease to Austal USA, LLC.

FISCAL IMPACT:

The proposed Ordinance would grant an Amended Restated and Combined Lease to Austal which includes a \$250,000 one-time contribution to the National City Balanced Plan within four months of the ARC Lease's effective date and an increase in flat rent paid to the District from \$844,644 per year to \$1,103,926 per year, a net increase of approximately \$259,000 per year. Additionally, the flat rent would be adjusted 3% annually commencing January 2023 and every January 1st thereafter with higher adjustments as outlined in the table below:

January 1, 2028 - December 21, 2028	13% increase
January 1, 2034 - December 31, 2034	10% increase
January 1, 2040 - December 31, 2040	9% increase
January 1, 2046 - December 31, 2046	9% increase

This item is subject to Board of Port Commissioners Policy No. 106 - Cost Recovery User Fee Policy.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A thriving and modern maritime seaport.
- A Port with a healthy and sustainable bay and its environment.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Background

MGBW operates two full-service boat and super-yacht facilities that specialize in the repair and fabrication of personal, commercial and government vessels which are located in the City of Chula Vista and National City. The subject of the Board item is the Lease located in National City which MGBW purchased from the original tenant, Knight & Carver, in bankruptcy proceedings in March 2013. The Lease expires on March 31, 2027 and consists of approximately 7.4 acres of land and building area and approximately 2.26 acres of water area.

Lease Assignment Request

In late March 2021, MGBW contacted District staff requesting an assignment of the Lease to Austal. Additionally, MGBW informed staff they will also be assigning their dry dock property to Austal which is located on the Navy property immediately adjacent and north of the Premises. Soon thereafter, and due to the length of the current Lease being unsuitable for Austal's needs, Austal requested to negotiate a new, long term lease that would be co-terminus with the lease at the adjacent Navy property (November 30, 2050). Austal indicated that the remaining lease term of approximately 5.5 years would not allow for significant investment in the leasehold. As such, staff negotiated the ARC Lease with Austal through November 30, 2050. The ARC Lease would provide Austal the required lease term to support the significant capital investment needed to ensure its operations and improvements meet District objectives regarding environmental stewardship, labor practices, safety, job growth, and community engagement.

Austal USA

Austal is an advanced ship manufacturer, servicer and sustainment provider to the Navy and is the leading manufacturer and servicer for the Navy's Littoral Combat Ship (LCS). Austal commenced operations in Perth, Australia in 1988 and in 1999 they opened their United States shipyard

headquarters in Mobile, Alabama. Austal has support facilities in National City, Singapore and Washington D.C. and employs approximately 4,000 people with their supplier network including over 1,155 companies across 44 states supporting more than 34,000 U.S. jobs. In 2014, Austal started its West Coast operations in a facility in Chula Vista with approximately 25 employees. In 2017, Austal expanded and moved to a larger facility in National City where they currently employ over 125 people. Should the Board approve the proposed assignment and the ARC Lease, Austal proposes to operate the premises under the ARC Lease as a repair and support services facility for the maintenance and repair of the Navy's LCS' in conjunction with the future dry dock operations that are planned to be located on Navy property to the north of the Premises.

Staff believes that Austal has the financial and operational wherewithal to operate a world-class ship repair facility on District Tidelands. Additionally, Austal has indicated its intention to pursue substantial capital investments in the leasehold that would meet District objectives regarding environmental stewardship, labor practices, safety, job growth, and community engagement.

Amended Restated and Combined Lease Terms

Austal requested the ARC Lease in order to enable them to amortize the significant capital investment required to meet their business objectives, reduce emissions, improve air quality, create approximately 300 new, high paying jobs for the region and support the Navy's need for additional dry-dock capacity. Therefore, staff has negotiated an ARC Lease with Austal on the District's new lease template as well as new, unique provisions yet to be included in a District lease. As a condition of the Board granting an ARC Lease through November 30, 2050, Austal is required to invest a minimum of \$6,853,885 in the Premises in the first five years, which includes \$5,775,070 of environmentally friendly upgrades. The investment shall include environmental improvements such as a new shore power system, solar panels, LED lighting, EV charging stations for employees and equipment, and stormwater containment systems. Austal is to invest an additional amount of approximately \$6,500,000 within the first eight years toward future projects approved by the District, and if Austal fails to do so, they would be required to pay additional rent of \$30,000 per month until a total minimum investment of \$13,300,000 is achieved. The ARC Lease includes numerous beneficial provisions to the District (see Attachment B - Amended Restated and Combined Lease) as outlined below including several provisions and commitments never before memorialized in a lease from the District.

Environmental Emission Reduction Commitments (ARC Lease Section 4.4 and Exhibit C)

As part of the ARC Lease, Austal has agreed to lease provisions aimed at reducing air emissions and improving air quality. Austal has agreed to a provision requiring the conversion of 50% of their diesel equipment to electric within 240 days following execution of the ARC Lease and 100% conversion of diesel equipment to electric within two years. If it is not feasible (as "Feasibility" is strictly defined in the ARC Lease) to convert certain equipment (for example, a backup generator) to electric within two years, said equipment is required to use the next cleanest technology that is feasible, such as near zero equipment or Tier 4 engines. Additionally, Austal has committed to reassessing their diesel equipment inventory every five years and converting any remaining diesel equipment to electric or the next best alternative. Furthermore, when Austal is purchasing new equipment or any diesel-powered equipment is being decommissioned and replaced, Austal is required, when feasible, to replace such equipment with electric-powered equipment, or the next cleanest technology such as near zero equipment or Tier 4 engines.

In addition, Austal has agreed to obtain an emission reduction consultant within 120 days of the

effective date of the ARC Lease. The emission reduction consultant will identify mobile and stationary emission source reduction opportunities at the Premises, develop a program to implement emission reduction methods and ensure Austal meets all applicable local, state, and federal regulatory requirements including those of the San Diego Air Pollution Control District (SDAPCD) and California Air Resources Board (CARB). Additionally, the environmental consultant will prepare an environmental report that establishes a baseline of emissions that were being produced by MGBW's operations at the Premises between the years 2017 through 2020. Austal is then required to reduce their emissions to ensure that such emissions are lower than what were produced by MGBW operations and assess such emission reduction efforts every 24 months.

Austal will also be required to invest in several environmental and air quality improvements at the Premises by December 31, 2025, including the installation of shore power, additional solar panels, LED lighting upgrades, EV charging stations for employees and equipment, stormwater system upgrades, and grading and paving of the employee parking lot. Additionally, the ARC Lease requires Austal to utilize rail service whenever possible to reduce truck trips. Finally, the ARC Lease requires that Austal adhere to the Maritime Clean Air Strategy recently adopted by the Board. Staff believes these environmental provisions and improvements meet the District's environmental stewardship goals and objectives and represent significant commitments from Austal.

Labor Peace (ARC Lease Section 17.3)

Austal has agreed to include lease provisions that would prohibit them from interfering with attempts from a bona fide labor organization to communicate or attempt to represent Austal employees. Additionally, Austal has agreed to permit representatives of a bona fide labor organization access to areas of the Premises for purposes of labor representatives meeting with employees to discuss their rights to representation.

Community Engagement/Local Hire & Small Business Requirement (ARC Lease Sections 17.4 and 17.5)

There are several provisions in the ARC Lease that demonstrate Austal's commitment to supporting local hiring practices and community engagement. Austal's operations at the Premises would generate approximately 300, high paying jobs for the region. In light of the National City waterfront being occupied by the maritime industry as well as issues associated with climate change, greenhouse gas reduction efforts, commuter traffic mitigation, COVID-19 impacts, and to provide assistance to the National City community, the ARC Lease identifies workforce hiring goals for Austal including the hiring of no less than 25% of the workforce from National City zip codes and no less than 50% of the workforce from San Diego County. In order for Austal to satisfy the workforce hiring goals identified in the ARC Lease, Austal shall make efforts such as participating in local hiring events and advertising job opportunities in local publications. Additionally, Austal committed to establishing a development program with local apprenticeship programs and schools to establish training and apprenticeship opportunities for the local community. Lastly, Austal has agreed to establish a goal of awarding 10% of work to San Diego County small businesses (as small business is defined by the U.S. Small Business Administration).

Rent (ARC Lease Section 1.4)

Given Austal's substantial investments needed to electrify and modernize the facility, a "ramp-up" rent structure has been negotiated that establishes the highest rental rate for shipyards on District Tidelands. The current annual rent of \$844,644 has been increased to \$1,103,926 per year which is a net increase of approximately \$259,000 annually. Rent would increase 3% annually commencing January 1, 2023 and every January 1st thereafter. Additionally, higher rent increases have been

negotiated as outlined in the table below:

January 1, 2028 - December 21, 2028	13% increase
January 1, 2034 - December 31, 2034	10% increase
January 1, 2040 - December 31, 2040	9% increase
January 1, 2046 - December 31, 2046	9% increase

This rental rate provides the District a strong rental comparison for future industrial negotiations.

National City Balanced Plan Contribution (ARC Lease Section 1.7)

Austal is supportive of the National City Balanced Plan and its initiatives and has included a statement of support in the ARC Lease. Additionally, as consideration for the Board granting Austal a long-term lease, Austal has committed to a one-time contribution of \$250,000 within four months of the ARC Lease becoming effective to be used to support the National City Balanced Plan.

Equal Opportunity Employment (EOE) and Diversity, Equity, and Inclusion (DEI) (ARC Lease Section 17.1)

Austal has agreed to include an EOE and DEI provision in the ARC Lease that requires them to be an equal opportunity employer and not discriminate against any of Austal's hires because of race, religion, color, national origin, handicap, ancestry, sex, gender, gender expression, sexual orientation or age. Additionally, Austal has agreed to submit a written statement to the District within 45 days of the execution of an ARC Lease and every two years thereafter, outlining its commitment to diversity, equity and inclusion and metrics used by Austal to further such commitments and efforts, and to hire in a non-discriminatory manner. This language is consistent with recently executed District service agreements requiring DEI reports from Service Providers.

Additional ARC Lease Provisions

In addition to the lease provisions outlined above, the ARC Lease is on the District's new lease template which in comparison to the Lease includes numerous beneficial provisions to the District including updated indemnity, insurance, prevailing wage and hazardous materials provisions. Additionally, the ARC Lease would entitle the District to receive 2.5% of the proceeds from a future lease assignment or applicable financing transaction. Furthermore, the ARC Lease requires Austal to fund a demolition and remediation account to cover end of term demolition costs and environmental remediation.

Conclusion and Recommendation

Granting the long-term ARC Lease to Austal would provide the required lease term to support the significant capital investment needed to ensure its operations and improvements meet District objectives regarding environmental stewardship, labor practices, safety, job growth, and community engagement. Staff believes that Austal's commitments are substantial, and they have the financial and operational wherewithal to operate a world-class ship repair facility on District Tidelands. The proposed ARC Lease with Austal includes several provisions and commitments never before memorialized in a District lease. Therefore, staff recommends the Board consent to the assignment of MGBW to Austal and adopt an ordinance granting an ARC Lease to Austal under the terms presented.

General Counsel's Comments:

The Office of the General Counsel has approved this agenda sheet and the attachments as presented to it and approves the same as to form and legality.

Environmental Review:

The proposed Board actions, including without limitation, a resolution consenting to the assignment and assumption of the leasehold interest from Marine Group Boat Works, LLC to Austal USA, LLC; and an Ordinance granting an amended, restated and combined lease to Austal USA, LLC to update lease to current terms, including environmentally friendly site improvements is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15301 Existing Facilities, 15302 Replacement or Reconstruction, and 15304 Minor Alterations to Land and Sections 3.a, 3.b, and 3.d of the District's Guidelines for Compliance with CEQA because the project would consist of landside infrastructure systems that improve environmental conditions at the project site, including stormwater conveyance and collection, potable water, sanitary sewer, electrical systems including solar energy and vehicle charging, improving the functionality of the on-site pneumatics (compressed air) system, paving an existing dirt and gravel parking lot trenching, backfill and paving associated with underground infrastructure installation and site security fencing and gates, that would involve no expansion of use beyond that previously existing, be located on the same site and have substantially the same purpose and capacity as the structure being replaced, and not involve the removal of mature, scenic trees. The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2). No further action under CEQA is required.

The proposed Board action complies with Sections 21, 35, and 87 of the Port Act, which allow the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers, and which authorizes the use of tidelands for all commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action is considered "excluded development" pursuant to Sections 8.a. (Existing Facilities) and 8.b (Replacement or Reconstruction) and 8.d (Minor Alterations to Land) of the District's Coastal Development Permit Regulations because the project would consist of landside infrastructure systems that improve environmental conditions at the project site that would involve no expansion of use beyond that previously existing, be located essentially on the same site and have substantially the same purpose as the structure being replaced, and not include the removal of scenic, mature trees. No further action under the Coastal Act is required.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact.

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Attachment(s):

Attachment A: National City Location Map

Attachment B: Amended Restated and Combined Lease