



**7<sup>th</sup> DISTRICT AUXILIARY STAFF LEGAL OFFICER  
Suite 300, 200 S. Biscayne Blvd, Miami FI 33131**

Mr. Eddie Beecher  
Risk Manager  
City of Pompano Beach  
101 West Atlantic Blvd  
Pompano Beach, FL 33060

12 July 2010

RE: License Agreement with U. S. Coast Guard Auxiliary Flotilla 34

Dear Mr. Beecher:

I am the Staff Legal Officer for the U. S. Coast Guard Auxiliary in the Seventh Coast Guard District based in Miami, Florida. I am the attorney assigned by the Seventh Coast Guard District Auxiliary Commodore, Donald Frasch, to assist Flotilla 34 in facilitating the placement of their new modular building.

Your e-mail of 9 July 2010 indicates that you believe it necessary that language be inserted into the DRAFT License Agreement Between the City of Pompano Beach and U.S. Coast Guard Flotilla 34 to reflect that Auxiliary Flotilla 34 must have and maintain liability, auto and worker's compensation insurance as part of their agreement with the City of Pompano Beach as well as to provide the City of Pompano Beach with evidence of such coverage.

The United States Coast Guard Auxiliary is the uniformed, civilian, volunteer organization created by Act of Congress to support the operations of the U. S. Coast Guard. Congress has further provided, in 14 U.S. Code § 821, that each organizational element or unit of the Auxiliary organization shall, except when acting outside the scope of their authority, at all times be considered an instrumentality of the United States for purposes, *inter alia*, of the Federal Tort Claims Act, the Military Claims Act, the Admiralty Extension Act, the Suits in Admiralty Act, and the Public Vessels Act.

The mission of the Coast Guard Auxiliary is to assist the U. S. Coast Guard, as authorized by the Commandant, in performing any Coast Guard function, power, duty, role, mission or operation authorized by law. Accordingly, each organizational element and unit of the Auxiliary, specifically including Flotilla 34, is an instrumentality of the United States whenever engaged within the scope of duties, missions and activities authorized by the Commandant of the Coast Guard. That includes the conduct of boating safety, public education and other authorized activities at the modular building to be placed on MSA-727B.

Members of the Coast Guard Auxiliary, specifically including members of Flotilla 34, while assigned to duty, are, pursuant to 14 U.S. Code §823a, deemed to be Federal employees for the purposes, *inter alia*, of the Federal Tort Claims Act, the Military Claims Act, the Admiralty Extension Act, the Suits in Admiralty Act, the Public Vessels Act and all other matters related to third party civil liability. A member of the Coast Guard Auxiliary, while assigned to duty, shall

also be deemed to be a person acting under an officer of the United States or an agency thereof for purposes of Title 28, U. S. Code, § 1442(a)(1).

Thus, no liability insurance, auto insurance or worker's compensation insurance is necessary or required. The organizational elements of the Coast Guard Auxiliary, including Flotilla 34, as instrumentalities of the United States, and its members, acting within the course and scope of their assignment to duty, are "self insured" by the United States Government. As such, the Auxiliary and its members are precluded from obtaining liability insurance, auto insurance or worker's compensation insurance inasmuch as any third party liabilities that they may incur while acting within the course and scope of the performance of duty assignments are covered by the United States Government to the extent authorized and provided by the Federal Tort Claims Act and similar legislative enactments waiving the sovereign immunity of the United States.

Neither the U. S. Coast Guard Auxiliary, as an instrumentality of the United States, nor members of the Auxiliary assigned to duty, in their capacity as Federal employees as set forth above, can be properly required to obtain or produce evidence of such insurance in order to be able to engage in the activities authorized by Congress necessary to carry out their assignment to duty, functions and activities in support of the missions and operations of the United States Coast Guard.

However, we appreciate your concerns. Accordingly, we are willing to agree to the inclusion of the language set forth below in the License Agreement which we believe should satisfy your concerns:

Flotilla 34, as an instrumentality of the United States as set forth at 14 U.S. Code § 821, does not carry liability insurance, auto insurance or worker's compensation insurance inasmuch as the United States Government "self insures" for such liability exposures. Flotilla 34 shall be liable, to the extent provided by the Federal Tort Claims Act, 28 U.S. Code § 2671 et seq., and shall defend and hold harmless the City of Pompano Beach, for death, personal injury and damage to property proximately caused by the act or omission of Flotilla 34 or its members, assigned to duty and acting within the course and scope of such duty, as set forth in 14 U.S. Code § 823a, in connection with the use of a modular building to be placed on a portion of MSA-727B and its appurtenant facilities by Flotilla34 for official Auxiliary purposes.

We trust that this language will adequately address your concerns. Hopefully we can now move forward promptly to conclude the License Agreement and finalize the arrangements for Flotilla 34 to place their modular building on the designated portion of MSA-727B.

Please to don't hesitate to contact me if you have any questions or wish to discuss anything in more detail. You may contact me at 305-372-9044, 304-773-1208 or by e-mail at the address transmitting this letter. I look forward to receiving the License Agreement in the very near future.

Yours truly,

Andrew W. Anderson  
Commander, U. S. Coast Guard RET  
Auxiliary Staff Legal Officer