

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION GRANTING INDEMNITY AND
AUTHORIZING AN AGREEMENT WITH THE
COUNTY OF SAN DIEGO, FLEET MANAGEMENT
DIVISION, FOR AS-NEEDED COOPERATIVE
AUTOMOTIVE FUEL SALES FROM JANUARY 1,
2017 THROUGH DECEMBER 31, 2022, FOR AN
AMOUNT NOT TO EXCEED \$950,000**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 to establish a policy governing the processing and administration of public projects, consulting and service agreements, the purchasing of supplies, materials, and equipment, and grants; and

WHEREAS, the District's Harbor Police (HP) department currently operates 66 gasoline-powered vehicles, and the District's Administrative pool currently operates nine (9) gasoline-powered vehicles; and

WHEREAS, the District contracts for fuel from the County of San Diego (County) for these vehicles; and

WHEREAS, contracting fuel through the County allows the District to reduce costs through a shared cooperative fuel sales agreement, and provides for flexibility as it allows District staff to fuel at various locations throughout San Diego county; and

WHEREAS, the District currently owns and operates one (1) 10,000 gallon above-ground storage tank at the General Services site, which is used to fuel General Services' vehicles; and

WHEREAS, under this agreement, the County permits the District to acquire fuel from 25 fuel station sites at the County's current cost per gallon, plus the annual surcharge approved by the County's Cost Commission to cover costs of fuel management; which includes inspections, permits, automated fuel systems, access devices and other costs associated with fuel site operations; and

WHEREAS, in order to use the County's fueling systems, the District must accept the indemnification language of the agreement; and

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WHEREAS, by accepting of the indemnification language, the District agrees to indemnify the County and the employees and agents of County against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs related to this Agreement and arising either directly or indirectly from any act, error, omission or negligence of the District or its contractors, licensees, agents, servants or employees, including, without limitation, claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of the County; and

WHEREAS, the District shall have no obligation, however, to defend or indemnify the County from a claim if it is determined by a court of competent jurisdiction that such claim was caused by the sole negligence or willful misconduct of the County; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District as follows:

The Executive Director or her designated representative is hereby authorized on behalf of the San Diego Unified Port District to enter into an agreement with the County of San Diego, Fleet Management Division, for as-needed cooperative automotive fuel sales from January 1, 2017 through December 31, 2022, for an amount not to exceed \$950,000: and hereby grants indemnity as set forth in the agreement.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 8th day of November 2016, by the following vote: