

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION GRANTING INDEMNITY PURSUANT TO A CONSTRUCTION MAINTENANCE AGREEMENT WITH THE SAN DIEGO AND ARIZONA EASTERN RAILWAY COMPANY FOR THE SAN DIEGO UNIFIED PORT DISTRICT'S IMPLEMENTATION OF THE SWEETWATER BICYCLE PATH AND PROMENADE PROJECT AND E STREET AT-GRADE CROSSING IN CHULA VISTA**

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 I (Port Act); and

WHEREAS, Section 21 of the Port Act states that the District Board of Port Commissioners (BPC) may pass all necessary ordinances and resolutions for the regulation of the District; and

WHEREAS, in 2018, the District entered into a Grant Agreement with the State of California Natural Resources Agency (Agency) for Urban Greening Grant funding for the implementation of the Sweetwater Bicycle Path and Promenade Project (Sweetwater Path); and

WHEREAS, the Sweetwater Path includes the construction of a Class 1 bike path and pedestrian promenade along the E Street portion of the San Diego and Arizona Eastern Railway's (SDAE) inactive Coronado Belt Line, owned and managed by the San Diego Metropolitan Transit System (MTS); and

WHEREAS, in order to facilitate the construction and use of the Sweetwater Path and provide enhanced access to the Chula Vista Bayfront, the District must also convert a portion of E Street from a private at-grade crossing over the SDAE Coronado Belt Line to an at-grade crossing; and

WHEREAS, the schedule to accommodate the grant requires that the District provide evidence of site control to the Agency for all the land included in the project that is not within the District's jurisdiction no later than December 31, 2018; and

WHEREAS, as a result, staff worked diligently with MTS to enter into a no-cost Construction and Maintenance Agreement (CMA) which also provides insurance and grants indemnity to SDAE, to allow the construction of the public access improvements; and

WHEREAS, the indemnity required by the District is for the negligent acts of the District or its contractors which is customary and reasonable for the CMA; and

WHEREAS, the CMA's insurance requirements are within the District's policy limits; and

WHEREAS, the District is also obligated to construct a new rail line and crossing within the area and to provide insurance, if the Coronado Belt Line is ever reactivated; and

WHEREAS, the likelihood of the Coronado Belt Line re-opening is very low and does not represent a significant liability to the District; and

WHEREAS, completion of the Sweetwater Path and E Street crossing will provide much needed access to the Chula Vista Bayfront and will further the vision of the Chula Vista Bayfront Master Plan (CVBMP) and completion of these public access improvements is scheduled for 2020.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District that the indemnity pursuant to a Construction and Maintenance Agreement with the San Diego Arizona Eastern Railway Company for the San Diego Unified Port District's Implementation of the Sweetwater Bicycle Path and Promenade Project and E Street At-Grade Crossing in Chula Vista is hereby granted.

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 9th day of October 2018, by the following vote: