

DRAFT

RESOLUTION 20xx-xxx

RESOLUTION GRANTING INDEMNITY AND AUTHORIZING AN AGREEMENT WITH FLEETCOR TECHNOLOGIES OPERATING COMPANY, LLC d.b.a. FUELMAN FOR OFFSITE FUELING OF HARBOR POLICE DEPARTMENT AND DISTRICT VEHICLES EFFECTIVE DECEMBER 12, 2018 THROUGH DECEMBER 11, 2020, FOR AN AMOUNT NOT TO EXCEED \$350,000. ALL FUNDS REQUIRED FOR FISCAL YEARS WILL BE BUDGETED IN THE APPROPRIATE FISCAL YEAR, SUBJECT TO BOARD APPROVAL UPON ADOPTION OF EACH FISCAL YEAR'S BUDGET

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

WHEREAS, the BPC approved Agenda Title No. 2016-0557 on November 8, 2016 with the County of San Diego (County) for as-needed cooperative automotive fuel sales from January 1, 2017 through December 31, 2022, for an amount not to exceed \$950,000; and

WHEREAS, the contract with the County allowed the District to reduce costs through shared cooperative fuel sales agreement and provides for flexibility to allow Harbor Police Department and District staff to fuel at various locations throughout San Diego County; and

WHEREAS, the County has notified the District that the County fuel station in San Diego will be permanently closed effective December 31, 2018; and

WHEREAS, the District's staff is requesting to enter an agreement with FleetCor Technologies Operating Company, LLC, effective December 12, 2018 through December 11, 2020, in an amount not-to-exceed \$350,000; and

20xx-xxx

WHEREAS, the District will pay the cost of the fuel and plus 0.0175 cents per gallon of fuel purchased as part of the agreement with Fleetcor Technologies Operating Company, LLC; and

WHEREAS, under the new agreement with Fleetcor Technologies Operating Company, LLC, the Harbor Police Department and the District vehicles can acquire fuel from various fuel stations within San Diego County; and

WHEREAS, Fleetcor Technologies Operating Company, LLC requires the District to accept the indemnification language of the agreement to indemnify Fleetcor Technologies Operating Company, LLC 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, however the District shall have no obligation to defend or indemnify Fleetcor Technologies Operating Company, LLC 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 company; and

WHEREAS, the risk to the District to provide an indemnity to Fleetcor Technologies Operating Company, LLC, is minimal and appropriate for these types of agreements.

NOW THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District (District), hereby grants indemnity to Fleetcor Technologies Operating Company, LLC d.b.a. Fuelman for 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.

BE IT FURTHER RESOLVED that the Executive Director and/or her designated representative is hereby authorized on behalf of the District to enter into an agreement with Fleetcor Technologies Operating Company, LLC d.b.a. Fuelman for offsite fueling of Harbor Police Department and District vehicles effective December 12, 2018 through December 11, 2020, for an amount not to exceed \$350,000.

20xx-xxx

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 11th day of December 2018, by the following vote: