



## Legislation Text

---

**File #:** 2018-0549, **Version:** 1

---

**DATE:** December 11, 2018

**SUBJECT:**

**RESOLUTION GRANTING INDEMNITY AND AUTHORIZING AN AGREEMENT WITH FLEETCOR TECHNOLOGIES OPERATING COMPANY, LLC dba 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 FUTURE FISCAL YEARS WILL BE BUDGETED IN THE APPROPRIATE FISCAL YEAR, SUBJECT TO BOARD APPROVAL UPON ADOPTION OF EACH FISCAL YEAR'S BUDGET.**

### **EXECUTIVE SUMMARY:**

The County of San Diego (County) has notified the San Diego Unified Port District (District) that their fuel station in San Diego will close permanently effective December 31, 2018. This fuel station is used to fuel the Harbor Police Department and District vehicles. The District's Board of Port Commissioners (Board) approved Agenda Title No. 2016-0557 on November 8, 2016 with the County for as-needed cooperative automotive fuel sales from January 1, 2017 through December 31, 2022, for an amount not to exceed \$950,000.

Staff recommends the Board authorize the District to grant indemnity and enter into an agreement with FleetCor Technologies Operating Company, LLC, dba Fuelman, (FleetCor) effective December 12, 2018 through December 11, 2020, in an amount not-to-exceed \$350,000. This will allow the District's Harbor Police Department and District vehicles to fuel vehicles at any of its stations located throughout San Diego County. This agreement through National IPA satisfies the competitive requirements of Board of Port Commissioners Policy No. 110 (BPC 110).

### **RECOMMENDATION:**

Adopt a resolution selecting and authorizing an agreement with, and granting indemnity to, Fleetcor Technologies Operating Company, LLC, dba Fuelman for offsite fuel for Harbor Police Department and District vehicles effective December 12, 2018 through December 11, 2020, in an amount not-to-exceed \$350,000.

### **FISCAL IMPACT:**

Funds for the remainder of FY 2019 are included in the current year approved budget for the General Services Department within the fuel and lubricant expense account # 630170. All funds required for future fiscal years will be budgeted in the appropriate fiscal year, subject to Board approval upon adoption of each fiscal year's budget.

## **COMPASS STRATEGIC GOALS:**

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

- A Port that the public understands and trusts.
- A Port that is a safe place to visit, work and play.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

## **DISCUSSION:**

The Board approved Agenda Title No. 2016-0557 on November 8, 2016 with the County for as-needed cooperative automotive fuel sales from January 1, 2017 through December 31, 2022 for an amount not to exceed \$950,000. 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. The County has notified the District that the County fuel station in San Diego will be permanently closed effective December 31, 2018.

The District utilizes National IPA which is a nationwide cooperative purchasing program where contracts are competitively solicited, evaluated and awarded by government entities acting as the lead agency. The District's agreement with Fleetcor. satisfies the competitive requirements of BPC 110. 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.

FleetCor was established in 2000 and has over 7900 employees. They provide customers various fuel payment options, including cards, RFID tags, and vouchers, which are accepted within numerous payment networks or third-party networks, such as MasterCard and Visa. They possess state-of-the-art user-level controls, programmable alerts, and detailed transaction reporting give customers the tools they need to monitor fuel and operating expenses.

Fleetcor requires the District to accept the indemnification language of the agreement. By accepting of the indemnification language, the District agrees to indemnify Fleetcor 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.

The District shall have no obligation, however, to defend or indemnify the Fleetcor 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.

District staff have reviewed the risk to the District to provide an indemnity to Fleetcor to allow the

Harbor Police Department and District vehicles to fuel at various sites located throughout San Diego County and found the risk to be minimal.

Additionally, the District will be charged 0.0175 cents per gallon of fuel purchased as part of the agreement with Fleetcor with monthly invoice net 30 payment as part of the agreement.

Staff recommends the Board authorize the District to grant indemnity and enter into an agreement with FleetCor effective December 12, 2018 through December 11, 2020, in an amount not-to-exceed \$350,000.

### **General Counsel's Comments:**

The Office of the General Counsel has reviewed the agreement and indemnity requirements with FleetCor Technologies Operating Company, LLC and approves as to form and legality.

### **Environmental Review:**

The proposed Board action to select and an agreement for fueling services and to grant indemnity does not constitute an "approval" or a "project" under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the proposed Board action that requires the District or the Board's approval, including without limitation District proposed legislation or a request for funding, will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The current Board action in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

In addition, the proposed Board action complies with Sections 16, 35 and 87 of the Port Act, which allows the district to be governed by a Board of Commissioners, that Board to do such necessary and convenient acts for the exercise of its power, and the promotion of the uses specified in the Port Act. 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.

Finally, the proposed Board Action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, the District's projects require processing under the District's CDP Regulations. If a project is formulated as a result of the proposed Board action, the Board will consider approval of the project and any improvements associated after the appropriate documentation under District's CDP Regulations has been completed and authorized by the Board, if necessary. The proposed Board action in no way limits the exercise of the District's discretion under the District's CDP Regulations.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:**

Jacquelyn Atkinson  
Department Business Manager, General Services

Attachment(s):

Attachment A:      Agreement with FLEETCOR