

RESOLUTION 2013-164

**RESOLUTION AUTHORIZING AN AGREEMENT
LIMITING LIABILITY AND GRANTING INDEMNITY
TO THE STATE OF CALIFORNIA DEPARTMENT
OF TRANSPORTATION FOR ACCESS FOR THE
DISTRICT TO MAINTAIN A FENCE ALONG PALM
AVENUE AND THE POND 20 SOUTH PROPERTY
LINE**

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 allows the Board of Port Commissioners (BPC) to pass all necessary resolutions for the regulation of the District; and

WHEREAS, the Pond 20 Short-Term Aesthetic Improvements Project was funded in the amount of \$300,000 at the June 7, 2012 Capital Improvement Program Workshop/Special Meeting; and

WHEREAS, 950 feet of existing fence which borders Pond 20 is in need of maintenance; and

WHEREAS, the fence is located on California Department of Transportation (Caltrans) right-of-way and thereby requires an agreement from Caltrans prior to performing maintenance (see Attachment A to the corresponding Agenda Report); and

WHEREAS, the maintenance agreement includes Caltrans' standard indemnification language for work within its right-of-way whereby the District will indemnify Caltrans for the District's actions which may cause damage or injury.

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

That the Executive Director or his designated representative is hereby authorized on behalf of the San Diego Unified Port District to enter into a maintenance agreement with the State of California Department of Transportation for maintenance of a fence along Palm Avenue and the Pond 20 south property line that limits the State of California Department of Transportation's liability and grants indemnity as follows:

“Neither STATE nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by the DISTRICT under or in connection with any work, authority, or jurisdiction conferred upon DISTRICT arising under this Agreement. It is understood and agreed that DISTRICT shall fully defend, indemnify, and save harmless STATE and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by DISTRICT under this Agreement.”

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in black ink, appearing to read "David Palattus", written over a horizontal line.

PORT ATTORNEY

2013-164

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 8th day of October, 2013, by the following vote:

AYES: Castellanos, Malcolm, Merrifield, Nelson, Smith, Valderrama

NAYS: None.

EXCUSED: Moore

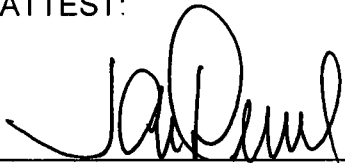
ABSENT: None.

ABSTAIN: None.



Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)