

**MEMORANDUM OF UNDERSTANDING  
BETWEEN SAN DIEGO UNIFIED PORT DISTRICT  
AND THE CITY OF IMPERIAL BEACH REGARDING THE IMPERIAL BEACH  
BOULEVARD ENHANCEMENT PROJECT**

THIS **MEMORANDUM OF UNDERSTANDING**, made and entered into this \_\_\_\_ th day of \_\_\_\_\_, 2019, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "District," and the CITY OF IMPERIAL BEACH, a municipal corporation, hereinafter called "City."

**WHEREAS**, the City will be constructing the Imperial Beach Boulevard Enhancement Project (City Project) including street resurfacing and reconstruction, pedestrian improvements, and landscaping to improve and enhance Imperial Beach Boulevard; and

**WHEREAS**, the District has received a grant for San Diego Bay Regional Fiber Optic Infrastructure Phase 4A (District Project) under the Federal Emergency Management Administration Department of Homeland Port Security Grant Program FY16 to construct fiber optic infrastructure in Imperial Beach Boulevard, Imperial Beach; and

**WHEREAS**, the City has agreed to include the District Project in the City Project, which will benefit both agencies and share some project costs. The District Engineer of Work included and prepared the design for the District Project in the construction plans and specifications for the City Project.

**NOW THEREFORE**, the parties agree with the following:

1. The term of this MOU shall be three (3) years from the date of approval by the District's Board of Port Commission.
2. The District agrees to manage and inspect the construction of the fiber optic infrastructure at no additional cost. The City will provide general assistance during construction.
3. The City agrees that District shall not be a party to the City's construction contract and shall, in no way, be liable under the construction contract to City, City's contractor, or other entities. The District has reviewed, commented, and approved the construction plans and specifications for the portion that relates to the District Project but shall not relieve the City of obligations under the terms set forth in this MOU or those imposed by the State or Federal agencies, nor shall it impose any responsibility or liability on the District for construction of the Project.
4. The District agrees to reimburse the City for payments made to the City's contractor pursuant to the construction contract for the work completed in furtherance of the District Project in an amount of \$997,900 for the bid items specified in the Base Bid and Additive Bid Schedule associated with the District Project, including the District Project's share of 10% of the bid amounts for Mobilization and Traffic Control.

5. City agrees to submit to the District any change order request as it relates to the District Project for approval. Said change order will not exceed 5% Construction Cost for the District Project. The District will reimburse the City any District Project change orders in an amount not to exceed \$1,047,795.
6. City shall submit contractor's pay application and proof of payment when requesting reimbursement. All invoices for reimbursement shall be received by the District prior to the end of the MOU term.
7. Any credits or adjustments subsequently agreed upon between City and contractor shall be reflected in reimbursement requests to District.
8. The District shall maintain the District Project within the City jurisdiction for the life of the improvements. The City can utilize said improvements for security and safety communications. This District obligation shall extend beyond the term of this MOU.
9. All obligations of the parties under the terms of this MOU are subject to the appropriation of the required resources by the parties and the approval of their respective Boards of Directors, Councils or Commissioners.
10. This MOU shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this MOU, the action shall be brought in a state or federal court situated in the County of San Diego, State of California.
11. All terms, conditions, and provisions hereof shall inure to and shall bind each of the parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns.
12. For purposes of this MOU, the relationship of the parties is that of independent entities and not as agents of each other or as joint ventures or partners. The parties shall maintain sole and exclusive control over their personnel, agents, consultants, and operations.
13. No alteration or variation of the terms of this MOU shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
14. Nothing in the provisions of this MOU is intended to create duties, obligations to or rights in third parties to this MOU, or affect the legal liability of the parties to this MOU to third parties.
15. The City shall indemnify and hold harmless the District and their respective officers, directors, members, employees, agents, partners, joint ventures', affiliates, successors and assigns from and against any and all liabilities, obligations, claims, demands, causes of action, losses, expenses, damages, fines, judgments, settlements and penalties, including, without limitation, costs, expenses and

attorneys' fees incident thereto, arising out of, based upon, or occasioned by or in connection with:

- a. City's performance of (or failure to perform) the City Project;
- b. a violation of any laws or any negligence, gross negligence or willful misconduct by the City or its affiliates, contractors, subcontractors, agents or employees during performance of the City Project;
- c. a breach of this Agreement by the City's contractor or any of its affiliates, subcontractors, agents or employees; and
- d. injuries allegedly suffered by City's employees, subcontractors, agents or any other person where such are associated with the City Project.

The aforesaid obligation of indemnity shall be construed so as to extend to all legal, defense and investigation costs, as well as all other reasonable costs, expenses and liabilities incurred by the party indemnified, from and after the time at which the party indemnified receives notification (whether verbal or written) that a claim or demand is to be made or may be made.

The City's obligation of indemnification under this section does not extend to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from any act, omission, conduct, misconduct, negligence, default, gross negligence, or willful misconduct of the District or any employee or agent of the District.

**IN WITNESS WHEREOF**, parties hereto have executed this Memorandum of Understanding as of the day and the year first above written.

SAN DIEGO UNIFIED PORT DISTRICT

APPROVED AS TO FORM

By \_\_\_\_\_  
Karen Porteous  
EVP Administration

By \_\_\_\_\_  
;  
Deputy General Counsel

CITY OF IMPERIAL BEACH

APPROVED AS TO FORM

By \_\_\_\_\_  
  
City Manager

By \_\_\_\_\_  
  
City Attorney