

**Attachment C to Agenda File No. 2019-0299**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE SAN DIEGO UNIFIED PORT DISTRICT  
AND THE CITY OF NATIONAL CITY FOR FUNDING FOR DESIGN AND  
ENTITLEMENTS FOR THE  
BAYSHORE BIKEWAY SEGMENT FIVE FROM THE  
MARITIME INDUSTRIAL IMPACT FUND**

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into on \_\_\_\_\_, 2019 between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter referred to as “District”, the CITY OF NATIONAL CITY, a municipal corporation, hereinafter referred to as “City”. The District and City are collectively hereinafter referred to as “parties”.

**WHEREAS**, the District’s Board of Port Commissioners (BPC) adopted BPC Policy No. 773 to establish a Maritime Industrial Impact Fund (MIIF) and a selection process for projects to offset the adverse impacts of the presence of maritime industrial facilities; and

**WHEREAS**, the City submitted a request to use MIIF funds to fund segment five of the San Diego Association of Government’s (SANDAG) Bayshore Bikeway Project located on City and District property in the City; and

**WHEREAS**, the City submitted a grant application to the California Transportation Commission (CTC) for the Active Transportation Program (ATP), Cycle 4 grant program, administered by California Department of Transportation (CALTRANS) for the purposes of increasing the use of active modes of transportation; and

**WHEREAS**, segment five of the Bayshore Bikeway (Project) is proposed to be located adjacent to and on District Tidelands and generally on Marina Way from 32<sup>nd</sup> Street to Bay Marina Drive, Bay Marina Drive from Marina Way to McKinley Avenue, and McKinley Avenue from Bay Marina Drive to Civic Center Drive; and

**WHEREAS**, the California Harbors and Navigation Code, Appendix 1 (Port Act) Section 30.5 specifies that the District may make capital expenditures between \$100,000 to \$1,000,000 outside District tidelands for transportation facilities like the Project conditioned on giving the California State Lands Commission (SLC) written notice of the proposed expenditure at least 60 days prior to making said expenditure (Section 30.5 Notice); and

**WHEREAS**, in July 2018, the BPC approved \$900,000 in match funding from the MIIF, contingent on an expiration of the Section 30.5 Notice, the City successfully receiving ATP grant funds for the Project, and environmental review in accordance with the California Environmental Quality Act (CEQA) being conducted for the Project; and

**WHEREAS**, when completed, the Bayshore Bikeway will serve as a connector that links the District’s five member cities and provide access to the waterfront; and

**WHEREAS**, the total Project cost is estimated at approximately \$6,400,000; and

**WHEREAS**, District staff has budgeted MIIF funds of \$200,000 for the Project's environmental clearance, topographic survey, and preliminary engineering to be spent in FY20 (collectively, Phase 1), and \$700,000 for final design and permitting to be spent in FY21 (collectively, Phase 2); and

**WHEREAS**, none of the funding subject to this MOU shall be spent on construction of the Project; and

**WHEREAS**, funding of Phase 2 is expressly conditioned upon the adoption of the CEQA review for the Project; and

**WHEREAS**, the total \$900,000 is to be used for the purposes of matching ATP grant funds.

**NOW THEREFORE**, for valuable consideration, the parties agree as follows:

1. This MOU shall be effective on the 1<sup>st</sup> day of November 2019 (Effective Date).

2. The term of this MOU shall be three (3) years from the Effective Date.

3. The District shall, pursuant to the terms of this MOU, reimburse the City up to \$200,000 for the Project's environmental clearance, topographic survey, and preliminary engineering, anticipated to be spent in fiscal year (FY) 20, and also reimburse the City up to \$700,000 for final design and permitting, anticipated to be spent in FY21.

4. The City shall be solely responsible for the Project and shall act as overall program manager for the implementation of the Project. The design and construction of the Project may be carried out by the contractor retained by the City, with prevailing wages paid, and under the management and direction of the City.

5. The District shall not pay the City for Phase 2 until and unless the CEQA review for the Project has been approved by the appropriate CEQA lead agency and responsible agency(ies) (collectively, CEQA Agencies). This MOU shall not in any manner impede, reduce or divest the CEQA Agencies from their legal discretion, including, without limitation, the approval or disapproval of the Project, adoption of conditions related to the Project, and adoption of feasible mitigation measures, alternatives, including the no Project alternative or a statement of overriding considerations, if applicable.

6. As a prerequisite for payment, the City shall invoice the District for costs associated with the Project. The invoice shall be accompanied by invoices and receipts from the entitlement and design consultant(s) and proof of payment by the City for the work.

7. Invoices shall include documentation, to the satisfaction of the District, of all work performed. All invoices for reimbursement shall be received by the District before the MOU term expires.

8. The District will review invoices submitted by the City. If the services rendered fall within the scope of this MOU, the District will use commercially reasonable efforts to reimburse the City within thirty (30) days of receipt of the qualifying invoice.

9. The City is solely responsible for the remaining funds necessary to complete the Project over and above the \$900,000 in MIIF funds provided by the District under this MOU. The City's funding may come from grants or other sources as determined by the City.

10. If the Project is not completed by the end of the MOU term, both parties shall execute a written amendment to this MOU extending the term. The Executive Director of the District, and the City Manager of the City, are each hereby granted authority to extend the term of the MOU up to a total term of seven (7) years under this Section without returning to the BPC, or the City Council, respectively. Any extensions described in this Section also extend the respective FY reimbursement deadlines in Section 3 and otherwise described in this MOU.

11. The District shall submit the Section 30.5 Notice to SLC, notifying SLC of the MOU and District's commitments thereunder within ten (10) days of the final execution of the MOU.

12. The District has no obligation under the MOU until the Section 30.5 Notice period expires without objection from the SLC.

13. The Project's purpose is to:

- a. Construct segment five of SANDAG's Bayshore Bikeway;
- b. Enhance bicycle connections to public transit, parks, and the working waterfront including Naval Base San Diego and District tenant shipyards and other industrial businesses; and
- c. Promote safe and viable bicycle and public transportation as mobility choices.

14. The MIIF funds shall be used solely for the following purposes and for no other purposes:

- a. Environmental clearance,
- b. Topographic surveys,
- c. Preliminary engineering,
- d. Final design, and

e. Permitting.

15. The City shall indemnify and hold harmless the District and its commissioners, respective officers, directors, members, employees, agents, partners, joint ventures', affiliates, successors and assigns (collectively and individually, Indemnified Party) from and against any and all liabilities, obligations, claims, demands, causes of action, legal challenges, litigation, losses, expenses, damages, fines, judgments, settlements and penalties, including, without limitation, costs, expenses and attorney's fees incident thereto (collectively Claim), arising out of, based upon, or occasioned by or in connection with:

- a. The City's performance of (or failure to perform) the Project;
- b. A violation of any laws or any actions or failure to act by the City or its affiliates, contractors, subcontractors, agents or employees during performance of the Project;
- c. The approval of this MOU and approval of funding of the Project;
- d. A breach of this MOU by the City or its contractor or any of its affiliates, subcontractors, agents or employees; and
- e. Injuries allegedly suffered by City's employees, affiliates, contractors, subcontractors, agents or any other person where such are associated with the Project.

The aforesaid obligation of indemnity shall be construed to extend to all legal, defense and investigation costs, as well as all other reasonable costs, expenses and liabilities incurred by the Indemnified Party, from and after the time at which the Indemnified Party receives notification (whether verbal or written) that a Claim is to be made or may be made. This Section shall survive the term of this MOU and shall be in full force and effect for a period that any Claim may be made against the Indemnified Party. The District may participate in any defense of a Claim, choose counsel of its choice and the City shall reimburse the District all reasonable attorneys' fees and costs. The City's duty to indemnify, and hold harmless described in this Section shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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**IN WITNESS WHEREOF**, the parties have executed this MOU as of the date first above written.

**CITY OF NATIONAL CITY**

**SAN DIEGO UNIFIED PORT DISTRICT**

By: \_\_\_\_\_

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Approved as to form and legality:  
GENERAL COUNSEL

By: \_\_\_\_\_  
Assistant/Deputy

By: \_\_\_\_\_  
Alejandra Sotelo-Solis, Mayor

APPROVED AS TO FORM:  
Angil P. Morris-Jones  
City Attorney

By: \_\_\_\_\_  
Roberto M. Contreras  
Deputy City Attorney